



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

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

Dydd Llun, 1 Mehefin 2015
Monday, 1 June 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
Lindsay Whittle	Plaid Cymru (yn dirprwyo ar ran Simon Thomas) The Party of Wales (substitute for Simon Thomas)

Eraill yn bresennol
Others in attendance

Carl Sargeant	Aelod Cynulliad, Llafur (y Gweinidog Cyfoeth Naturiol Assembly Member, Labour (the Minister for Natural Resources)
Rhodri Asby	Llywodraeth Cymru Welsh Government
Nicola Charles	Llywodraeth Cymru Welsh Government

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
Naomi Stocks	Clerc Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service

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've received apologies from Simon Thomas. I'm very pleased to see Lindsay Whittle here again as a substitute. So, you're very welcome, Lindsay. Can I just start with the usual housekeeping remarks? 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 the building safely. Please switch any mobile devices at least to silent as they can interfere with our broadcasting equipment. These proceedings will be conducted in Welsh and English and, when Welsh spoken, there is a translation on channel 1. Channel 0 will amplify our proceedings, should you require that service.

13:33

**Tystiolaeth mewn Perthynas â Bil yr Amgylchedd (Cymru)
Evidence in Relation to the Environment (Wales) Bill**

[2] **David Melding:** We move then to item 2, which is evidence in relation to the Environment (Wales) Bill, and I'm delighted to welcome Carl Sargeant, the Minister for Natural Resources, who is the Minister in charge of the Bill. Minister, do you want introduce your team before we start questions?

[3] **The Minister for Natural Resources (Carl Sargeant):** Good afternoon, Chair and committee. I'll ask Rhodri to start with his title.

[4] **David Melding:** It must be a marvellous title if you have to give it yourself. *[Laughter.]*

[5] **Carl Sargeant:** Personal touch, Chair.

[6] **Mr Asby:** Deputy director for climate change and natural resource policy.

[7] **Ms Charles:** Nicola Charles, lawyer in Legal Services.

[8] **David Melding:** So, Minister, the first question really is why this Bill is quite so wide-ranging. Could it not be more coherently set out in separate Bills? This is all rather confusing; it reminds me of what a very cruel professor said of one of my essays: 'eclectic, if not random'. *[Laughter.]* So, why have we got this approach?

[9] **Carl Sargeant:** I probably wouldn't agree with your professor either. He's produced a very fine person to take on legislation and challenge Ministers, as you do, Chair.

[10] I don't accept that it's complex. I think the whole principle of managing the environment is a complex process. What we've done here is bring together a suite of actions that we believe complement each other. I think the problem of tackling issues around the environment has been that there are lots of pieces of legislation. We're bringing them together here to have a more coherent impact, so they work in complement within the Bill but also as a whole within my department. You'll be aware of the Well-being of Future Generations (Wales) Act 2015 that passed recently. Again, we're linking into that to see how the sustainable development principle is applied alongside the environment Bill, and that's why we've brought a wide-ranging Bill, of course—I do accept that—but we believe that it's the appropriate vehicle to bring all these pieces of legislation together in order to make the biggest impact.

[11] **David Melding:** As it's wide ranging, are there any issues around competence?

[12] **Carl Sargeant:** No, we don't believe there are any issues. Of course, I think committee will be aware around the permissions from the Secretary of State, and I think it's just unfortunate timing, really. The general election came upon us, and the discussions with the Wales Office continued, but we weren't able to secure the granting of permissions. But we

have had no indication of any concern over the principle of competence. It's just a process issue.

[13] **David Melding:** You are required to get all this sorted, really, on introduction. So, you would anticipate the formalities being completed very soon, would you, with the Secretary of State?

[14] **Carl Sargeant:** Absolutely. That's our intention, and, as I said, the discussions that we've had with the Wales Office have been friendly fire, and it's just a process thing that we believe we haven't been able to complete because of the general election.

[15] **David Melding:** Okay. Suzy Davies will take us through the next set of questions.

[16] **Suzy Davies:** Thank you, Chair. Before I start with my own questions, can I just ask you—? I mean, it is a portmanteau Bill, a collection of—. I appreciate you say they're connected, but you can also argue that they're not. If, during the course of scrutiny of the Bill, there's one particular area on which you're trying to act that becomes clearly very, very important—important enough to require a Bill of its own, for example—would you be open to that happening? I'm thinking of the education Bill where exactly that happened.

[17] **Carl Sargeant:** Well, of course, scrutiny process is important to me, as well, as a Minister, to understand what the concerns are from all people who are involved in that scrutiny process—both internal and external organisations. We've presented the Bill already, publicly, and we've had wide-ranging support from organisations saying that they believe the suite of interventions within the structure of the Bill complement each other. So, I do recognise it's complex and I do recognise there's a lot in there. Would we be subject to change? Of course we're interested in what we can do to make the Bill feel more comfortable for people who need to use it or read that, but we do believe that it's complete, and we hope that, through the scrutiny process, we'll be able to polish that with you.

[18] **Suzy Davies:** Okay, thank you very much. Let me take you back to some of these competence questions, now. It's, as you know, section 6—and perhaps this is no surprise to you, this question. The Bill tries to create and impose duties on bodies that are excepted under the Government of Wales Act 2006. How can you square that circle for us, having said that you believe this is entirely within competence?

[19] **Carl Sargeant:** I suppose the easiest way to put this, as I understand it best, is that it's not about the actual organisation; it's about the duties that they're delivering. So, an organisation that may be an English body, works and operates in Wales. What we're doing is around the biodiversity element of that organisation that's operating in Wales. So, it's not exactly the organisation, but the biodiversity issue that the organisation is delivering on. That's no different to the current position that's required of them under current legislation.

[20] **Suzy Davies:** I think there's a question, for me, of whether what you're asking them to do is incidental to their other wider-ranging duties, which cause them to be excepted in the first place. Presumably, you took some advice from these individual authorities about whether what you were planning to do was, in their view, within competence.

[21] **Carl Sargeant:** All our legal advice has been scrutinised by Counsel General and my legal team. We believe we're fully in competence on that. As I said, we're not putting an additional duty on anybody who is exempt; we are saying their activity within Wales is because they are in Wales. It's not because they are police and crime commissioners or anybody else. The fact is they are performing their duty within Wales and they already have a biodiversity action upon them. So, it's not additionality. We're saying that they have to comply with this because they are delivering in a Welsh context, not because they are an

English body, which is outside of competence. Actually, their function and role is within the competence of Wales.

[22] **Suzy Davies:** I think I understand what you're saying, but I'm still not 100 per cent sure I'm convinced by it, though. Did you actually speak to the police and crime commissioners, the sewerage undertakers and aviation authorities, or did your officials?

[23] **Carl Sargeant:** Can I ask my legal team to qualify that?

[24] **Ms Charles:** Not as far as we're aware. We looked at the exceptions in this case, and we felt that they didn't actually apply, because we're talking about general laws for Wales. This provision is clearly about biodiversity, which is well within competence. It's actually named as a subject. We feel that, yes, it is within the competence of the Assembly to be able to apply general laws for Wales.

[25] **Suzy Davies:** Even though these happen to be on the face of GOWA as excepted organisations? I think I do understand what you're saying. I perhaps might need a little bit more convincing, particularly as it's unclear whether you've spoken to those bodies directly.

[26] Can I ask a pretty similar question, then—

[27] **David Melding:** Before you move on, I think Alun just wanted to clarify something there.

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

[29] **Alun Davies:** That's right. I'm interested in the same point. My assumption, listening to this discussion and when I read this, was that, in imposing these duties on, for example, the police commissioners, who are bodies established in Wales and operating entirely in Wales, you are seeking to use the same body of law that enables the Welsh Government to ensure that these bodies operate bilingually, for argument's sake. It's imposing qualifications, if you like, on how they do their business. Although they're not devolved functions, the way in which those non-devolved functions are delivered in Wales is different, and I presume the Agricultural Sector (Wales) Act 2014 provides for a means of interpreting those bodies, those areas that are devolved, in a more expansive way.

[30] **Carl Sargeant:** Your latter point I can't answer, regarding the agricultural board, but certainly the principle of what you're suggesting is exactly the same in terms of the planning function. Organisations such as the police and crime commissioners, because they operate in Wales and are devolved bodies, still have to comply with Welsh laws. They would have to apply for planning permission using the same principle as they will have to apply the biodiversity duty within that organisation. We're not asking them to do anything in their function as a body, as police and crime commissioner, but their duty, operating in Wales, is around biodiversity in this element. The same would apply to planning in that principle.

[31] **Suzy Davies:** I understood where you were coming from initially, I think. I just was a little bit concerned that there don't seem to have been any direct conversations with these bodies, and indeed those others that are listed in section 6.

[32] Can I move you on to something else now, which is section 22? This gives you, under the Act, the ability to suspend certain statutory requirements for up to two successive three-year periods. So, that would be changing the rules for up to six years, effectively. I don't know if you want to speak around that. Just to help you, the power is intended to enable Natural Resources Wales to undertake an experimental scheme by temporarily suspending legislation that might be an obstacle to that scheme. Can you tell us a little bit about what

you've got in mind there, because a total suspension for potentially up to six years is quite a serious change to the purpose of NRW?

[33] **Carl Sargeant:** Indeed. I also recognise that, too, that these would only be used in extreme circumstances where NRW would bring to us a case of where they could demonstrate very clearly an activity that was prohibiting them from making any beneficial changes in a pilot area, or subject to that. I haven't got anything in mind in terms of specifics, but I could give you examples of where they potentially might be used, or maybe used around the fisheries Orders, or indeed some experimental schemes which have legislation prohibiting change. On NRW, I think it's about a hundred and—how many pieces of legislation are they currently operating within?

[34] **Mr Asby:** About 240, I think.

[35] **Carl Sargeant:** There are 240 separate pieces of legislation they're operating under.

[36] **Suzy Davies:** Consolidation Bill time, Minister.

[37] **Carl Sargeant:** Absolutely right, but you've been saying to me there's far too much in the Bill already.

[38] **Suzy Davies:** Ah, but this is a portmanteau Bill, not a consolidation Bill. You missed a chance there.

[39] **Carl Sargeant:** It's exactly the same principle as what happened in planning. We were saying there are elements of bringing together function and operation, and then I believe the next Government should bring in a secondary planning Bill. I think exactly the same should happen with the environment legislation—start to bring that together to start consolidating regulation. That's why this particular section is in there—it gives NRW the opportunity to demonstrate that their activities will make the difference if they have the opportunity to suspend parts of legislation for a controlled period of time. But not without demonstrating the reason why and how they're going to do that.

13:45

[40] **Suzy Davies:** Okay. Are you confident that the Bill, as it's currently drafted, would give Natural Resources Wales enough steer about what they would need to do to convince you that they should be eligible—

[41] **Carl Sargeant:** Indeed.

[42] **Suzy Davies:** —to apply for a suspension?

[43] **Carl Sargeant:** Indeed. It may be helpful for me to drop the committee a note in terms of that process that we would expect for that to happen—if that would be helpful.

[44] **Suzy Davies:** I think it would. Otherwise, you will be leaving NRW with this glorious opportunity dangling and no opportunity to actually apply for it.

[45] **Carl Sargeant:** Indeed.

[46] **Suzy Davies:** Finally from me, Chair, section 24 is a power to amend periods for the preparation and publication of documents. It sounds fairly innocuous, but it does mean that you'd be looking at amending primary legislation if you were to seek to do this. When amending primary legislation, we would normally, as a committee, expect to see an

affirmative procedure, however small-scale the change might be. Have you got any reason why it's the negative procedure on this occasion?

[47] **Carl Sargeant:** We believe these are certainly very small pieces, as the Member recognises. It's just about the timing of this. For examples of elections or emergency elections as something that may change in the future, it just gives the opportunity to amend this process. As you will see from the legislation, we've got over half of the regulation-making powers in the affirmative. We've got, I think, 20 affirmative and 14 negative procedures, so we have been very consistent with the committee's approach to creating affirmative resolution. Not that it's not important, but we didn't think that we'd raise the stakes to this point that this needed to be the affirmative procedure, but committee will have a view on that, I'm sure.

[48] **Suzy Davies:** Well, just from the point of view of consistency from our point of view, with anything that amends primary legislation, we tend to encourage Ministers to use the affirmative, but if it is such a small item, did you consider actually not including the original provision on the face of the Bill and working backwards, if you can see where I'm coming from? Is it important enough to go on the face of the Bill, then?

[49] **Carl Sargeant:** I think it is. It's just a position that we just needed to have in order to protect the opportunity to do this, subject to—. There may be a different way of drafting it that would give you more comfort, but the current position is that we don't believe that it requires an affirmative position on this because it is of small consequence, we believe.

[50] **Suzy Davies:** Okay, but I get the feeling you might be open to persuasion on that.

[51] **Carl Sargeant:** I'm always open to persuasion. It doesn't mean I agree. [*Laughter.*]

[52] **Suzy Davies:** Right. Thank you, Minister.

[53] **David Melding:** I'll now ask William Powell to take us through the next set of questions.

[54] **William Powell:** Diolch, Gadeirydd. Good afternoon, Minister.

[55] **Carl Sargeant:** Good afternoon.

[56] **William Powell:** Moving to a topic that we've discussed on several occasions already and that, no doubt, we'll discuss in the future—the topic of climate change—I think it's well understood that emissions, greenhouse gas emissions, pollution, and so on do not respect national boundaries, which is very much the rationale for legislation at a European level. But given that we're focusing in on this piece of legislation in this place, could you explain how the regulation-making power in section 35 to include greenhouse gas emissions from international aviation and shipping as Welsh emissions is intended to work, given that international aviation and shipping are included, as we all realise, as exemptions in Schedule 7 to the Government of Wales Act 2006?

[57] **Carl Sargeant:** Yes. It is really complex, and I know the Member is well established in his knowledge in this. The issue for us is not about legislating on international aviation or shipping. It's about having the ability to measure the actual impact—what is happening, again, in the boundaries of Wales. We'll be able to use this provision enabling Welsh Ministers, if specified, to measure what the extent of the impact is within the Welsh context. This is something that I believe Scotland has done recently as well in terms of their fuel consumption on aircraft leaving Scottish airspace, which is something that is very complex. It's something where we believe that, to have a true picture of impact within Wales, we have

to consider what shipping and aviation's impact is on the environment. This is just a tool to do that, but there is no regulation in there making a direct impact on the non-devolved function of both these operations.

[58] **William Powell:** Okay. So, are you confident, given the advice you've received, that this won't lay us, in some way, open to challenge from another place—to the overall legislation?

[59] **Carl Sargeant:** Not at all; we believe that this is completely within the scope of the Bill, and within the exceptions that the Member mentions in GOWA.

[60] **William Powell:** Thank you. Moving on to section 44, around the advisory body, Minister, could you explain why the negative procedure is considered appropriate for the power to make regulations, so as to designate a person to be the advisory body for the purposes of Part 2 of this Bill?

[61] **Carl Sargeant:** It's just a procedural process—again, the ability to designate a person, or body, to an advisory role. We believe that this is a standard process, really, for us, as Ministers, to have the ability to do so, but, again, I'm not hung up on the detail regarding whether that's affirmative, or otherwise. I'd be grateful for your views on that.

[62] **William Powell:** Okay, thank you. Moving on now to an item that is seen by many to be one of the great achievements of this current Assembly, in terms of the carrier bag levy. But, in terms of the implications for this current legislation, could you please explain how the power in section 55, which permits Welsh Ministers to require sellers of goods to charge for carrier bags, is intended to apply to deliveries by supermarkets in England, or by post from further afield? I know you're very familiar with a part of Wales that is very much cross-border, and, indeed, we've got a porous border drive to work, and goods and services crossing in both directions. How will that actually apply in practice?

[63] **Carl Sargeant:** It's the same principle as operates now. Any company, or supermarket, that has the intention of supplying goods to Wales has to comply with Welsh law, so there's no difference to what's happening with the current position now.

[64] **William Powell:** Okay. So, it's basically the way that things are bedded down in the first two and a half years or so of this will continue.

[65] **Carl Sargeant:** Yes, that's correct.

[66] **William Powell:** Okay, thank you. And finally from me, I wonder if you could explain how matters of this kind actually do fall within the Assembly's legislative competence.

[67] **Carl Sargeant:** In regard to—?

[68] **William Powell:** To the latter question regarding the—

[69] **Carl Sargeant:** Well, there is competence, and there's also legislation already in place, in terms of an established piece of legislation, which gives us the competence around carrier bag charging. I think what we're trying to do here is make sure that the very successful programme that's taken place is more encompassing. Times have moved on; you'll be aware that, regarding the single-use carrier bag provision, in many supermarkets now, they are very rarely on offer. You're usually offered a bag for life, and that is a slight loophole in the system, where there is no charge attributed to that process—it's either the single-use carrier bags, or not. We're trying to successfully close that loophole on the basis of not taxing carrier

bags and actually trying to encourage people to use fewer carrier bags, and re-use a more appropriate method of carrying shopping, or goods acquired. We believe that the competency of this hasn't changed, and we will continue to press with this Bill accordingly.

[70] **William Powell:** And, Minister, has it come to your attention that there's any sort of systematic pattern of seeking to evade this levy, or dodge the tax, so to speak, in terms of cross-border business, or is that something that's not featured?

[71] **Carl Sargeant:** No, we're not aware of that. Of course, I'm aware of anecdotal evidence of suggestions of people seeking not to passport funding that has been attributed to single-use carrier bags. We believe that this will capture that process effectively, in the way that we are able to deliver it through this piece of legislation.

[72] **William Powell:** I'm grateful for your reassurance, Minister. Thank you. Diolch.

[73] **David Melding:** I think Suzy wanted to clarify something in this section.

[74] **Suzy Davies:** Yes, if you don't mind, it's just going back a little bit, to Bill's question about climate change, and sections 33 and 36, which refer to carbon units slightly differently. If my understanding of the Bill is right, there's no definition of carbon units there at the moment, and section 36 permits you, but doesn't oblige you, to specify what carbon units actually are. This part of the Bill refers to carbon units a fair bit, actually, so I'm wondering: do you already have something in mind as to which particular measure of carbon unit you're thinking of? And, in which case, should it not be on the face of the Bill, or at least if it's to be introduced by regulation, that there's an obligation on you to do that so that other sections in the Bill actually make sense?

[75] **Carl Sargeant:** Yes, this is really an involving piece of process that is not just unique to Wales—it's a process across the globe about trying to understand this better. It is something that we are keen to issue a statement of policy intent on in regards to how this will operate, and we'll do that as quickly as we possibly can. Maybe in the note that I write to the committee, I will try and indicate a timeline as to when we intend to do that.

[76] **Suzy Davies:** That would be helpful, but I think you also need to address the question about whether you should be obliged to bring in a definition of some description, even if you haven't got it now, rather than just be allowed to do it at some point in the future.

[77] **Carl Sargeant:** Rhodri?

[78] **Mr Asby:** In terms of section 34, what we're trying to there is to, obviously, have the provisions in place to define what Welsh emissions are and the net Welsh emissions account. In terms of looking at section 36, that provides us the flexibility, if needed to in the future, to actually look at carbon trading schemes.

[79] **Suzy Davies:** I appreciate they cover different things, but, in fact, that just adds to the uncertainty. You might have two different measures, in which case you need to persuade us that clarity will be introduced by regulation, rather than it might be introduced by regulation.

[80] **Carl Sargeant:** It's a fair point, Chair, and we will give you a note on that.

[81] **David Melding:** I still don't quite understand the section 55 power to impose a requirement to charge. I just want to clarify this for my own purposes, really. For instance, a supermarket in Ludlow could supply a weekly shop to a resident in Powys. You would then have the power to make that supermarket charge for the five bags that contain that shopping. I mean, am I way off, or is that right?

[82] **Carl Sargeant:** That's correct.

[83] **David Melding:** That doesn't operate at the moment.

[84] **Carl Sargeant:** The rules are clear in that they should be.

[85] **David Melding:** That's your interpretation—they should be charging now.

[86] **Carl Sargeant:** Indeed.

[87] **David Melding:** The same resident goes to the supermarket in person in Ludlow. There is no obligation, obviously, to charge. So, you know, where's the locus here? What's happening?

[88] **Carl Sargeant:** You're absolutely right. Let's take a step back on what this actually is. This isn't about a tax on carrier bags for the sake of a tax of carrier bags; we don't have the competency around that. This was always about and has been very successful in the reduction of use of carrier bags. People, generally, if there's a charge, whether that be 5p or whatever fee, have suggested that that has had an impact on them taking them for free, or taking them and using them or using them less. So, the principle of this is about just generating less usage. Therefore, on the person going to Ludlow and purchasing their shopping, I'm not quite sure I see the relevance there, apart from the fact that the supermarket or the trader should be making the charges to the person if it's sent to a person in Wales.

[89] **Ms Charles:** Can I just add to that?

[90] **David Melding:** I didn't realise that currently that is the law—that they should be charging even if it's difficult for whatever reasons to make them charge, but—. Yes, go on.

[91] **Ms Charles:** Again, as the Minister said earlier, this is about charging for things that happen in Wales. If a supermarket in Ludlow delivers goods to a household in Wales in a carrier bag, then that is in relation to Wales, we would say.

[92] **David Melding:** Okay.

[93] **Suzy Davies:** Can I just quickly follow up on that? I understand what you're saying—that the levy is to do with behaviour change; it's not a tax as such. But, if you've ordered online from a supermarket in Ludlow, they're going to deliver stuff in plastic bags. It's a process over which you have no control as a paying individual. They're going to deliver it in plastic bags. I can't change my behaviour there. How does this Bill deal with that sort of lack of power for the individual?

[94] **Carl Sargeant:** Well, don't buy from there. [*Laughter.*]

[95] **Suzy Davies:** [*Inaudible.*].

[96] **Carl Sargeant:** That's one element, but, more importantly—

[97] **Suzy Davies:** But, you know what I'm saying.

[98] **Carl Sargeant:** Yes, of course. The actions of the supermarket are not your responsibility—they're the actions of the provider, and, therefore, they should be making sure they comply with the Welsh rules—

14:00

[99] **David Melding:** I've mentioned Powys, and now I've got William, who wants to—

[100] **William Powell:** Thank you, Chair. I'm very grateful to you for—

[101] **David Melding:** Oh, sorry; had you finished? I'm sorry.

[102] **Suzy Davies:** No, I have, thank you.

[103] **William Powell:** I'm very grateful to you for unpacking this issue, as I distinctly failed to do. Would it be possible, Minister, for us to receive a brief note as to how in practice this is currently operating, and how thoroughly it's being communicated to local authorities across the border? Because I don't know whether it comes under the remit of the memorandum of understanding that the First Minister signed a couple of years ago. Curiously, I think it was in Ludlow, as well, that that took place.

[104] **David Melding:** Famous for its food.

[105] **William Powell:** It would be very helpful just to gain an understanding as to how it operates in practice because that would then inform our confidence as to how you propose to tighten arrangements.

[106] **Carl Sargeant:** Well, I'd certainly be delighted to send you a note on that specific issue. Can I just say that we should not underestimate the success of this programme? This has been—

[107] **David Melding:** I think it's genuinely interesting. I meant no criticism in my question whatsoever.

[108] **Carl Sargeant:** I'd be very happy to send you a note, Chair.

[109] **David Melding:** Okay; I'll ask Lindsay Whittle to take the next set of questions.

[110] **Lindsay Whittle:** Thank you, Chair. Good afternoon, Minister. I must say that I know people who go to London and purchase a small item in Harrods just to have the carrier bag. Perhaps you should—

[111] **Carl Sargeant:** I think they charge as well.

[112] **Lindsay Whittle:** Do they? Good. I hope they do. Charge them a bit more. I wanted to ask you about the proceeds, really. We know that section 57 states that the net proceeds of the carrier bag charge should be applied to charitable purposes. Can I ask you, Minister, why the requirement that the net proceeds of the carrier bag charge to be used for charitable purposes needs to be in the regulations rather than being a requirement in the Bill?

[113] **Carl Sargeant:** Again, it's just the way that the Bill has been drafted, that we think it's the most appropriate place to put this section—in regulation. As you'll be aware, and I know, the nervousness of this particular committee is about content within regulations as opposed to being on the face of the Bill, but we are content that we have the flexibility within the structure to make amendments in the future with a little bit more ease, with it being in regulation as opposed to it being on the face of the Bill.

[114] **Lindsay Whittle:** Okay. Thank you. We know that some charitable purposes may be outside the Assembly's legislative competence. Can the Minister confirm that such charitable

purposes will be those within the Assembly's legislative competence?

[115] **Carl Sargeant:** Yes, they will.

[116] **Lindsay Whittle:** Okay. Thank you. If I can go on to section 63, which does provide for the making of carrier bag regulations for England and Wales in one instrument—I think that would be a disaster—I'd be interested if you could tell us, Minister, whether you wish to explore, perhaps, any circumstances in which you would consider it appropriate to make carrier bag regulations for England and Wales in one instrument.

[117] **Carl Sargeant:** That wouldn't be the intent or journey of travel for us in terms of—. You know, we're making Welsh laws here, and that would be something that we would seek to protect with the best interests of Wales at heart.

[118] **Lindsay Whittle:** Just what I wanted to hear, Minister. Thank you very much.

[119] **David Melding:** Can I just go back to this issue of charitable purpose? I'm slightly surprised that you didn't want to put that on the face of the Bill because it seemed such a central, sort of purposeful thing of this whole scheme, as it got public support because the funds went to charitable purposes. Is there any intent to, in time, make this a charge that would come to the Welsh Government? Is that why you want the flexibility?

[120] **Carl Sargeant:** I probably can't answer that question directly. I think what we're trying to do here, and I think—. The success of the scheme would be that there would be no funding going to charitable organisations because we would have achieved what we set out to do in the first place by reducing the number of carrier bags. Very similar to a principle that I know the Plaid Cymru group are considering regarding the taxation of fizzy drinks. You know, the fact is that the fewer people that we have drinking fizzy drinks, the less money you get coming back into the system. That's where it could be considered slightly flawed. But the principle of this is about giving us enough flexibility in the future to make amendments in regulation that would give us the opportunity to do, perhaps, what the Member suggested in his initial remarks, or indeed having the flexibility to make some changes should we just wish to do so.

[121] **David Melding:** So, if you did want—. You know, say that behaviour didn't change—. I think that one of the wonders of the whole scheme is that a fairly modest charge has changed behaviour. But if, for some reason, that trend was reversed, you might then want to up the charge, but not sort of stain charitable causes with being unpopular because they've received the actual charge.

[122] **Carl Sargeant:** I think we're in some dangerous territory of competence issues here, Chair, in terms of taxation or otherwise. I think we are erring on the current position of legislative competence, where we believe we have full competence in the process we have enshrined within the Bill. The danger is potentially of making changes, of increasing charges or otherwise, and coming straight to Government—possibly could be interpretation, and interpretation given to a new tax. That isn't the intention of this current position of Government.

[123] **David Melding:** Okay, I've probably just got a very suspicious mind.

[124] **Carl Sargeant:** I bet you have, Chair.

[125] **David Melding:** As does Lindsay, I think, and Suzy.

[126] **Lindsay Whittle:** Can I ask you, Minister, how does the Welsh Government monitor

how much money goes to charity? I know that it's probably easier to do the larger supermarkets and larger companies and shops. I know that my local shop always donates the money to the local school, which is really good. But, how do you monitor all of these shops, because there's a lot of shops in Wales?

[127] **Carl Sargeant:** It may come as some surprise to you, but some shops don't donate the money that they collect from carrier bag charges.

[128] **Lindsay Whittle:** I thought not.

[129] **Carl Sargeant:** That's why this piece of legislation is really important.

[130] **David Melding:** But, again, it raises the question of why not make it virtue of it and put it on the face of the Bill. But, anyway, I've covered that. Suzy.

[131] **Suzy Davies:** Actually, I just wanted to extend that a little bit, because I'm still not sure I understand why the central purpose of charitable giving can't be on the face of the Bill and then to reserve some powers to yourself through regulation to amend things in the future in order to make sure that the original power remains within the competence of this Assembly. Because a blanket obligation would possibly step outside the competence question, because there are certain charitable actions that can't be governed from here, but that's where your flexibility can come in—to amend the original central principle. I'm wondering whether you could perhaps consider putting that main purpose on the face of the Bill and then using the regulations to make sure that nobody wanders over the competency line.

[132] **Carl Sargeant:** Of course, and I've listened to your arguments very carefully, Chair. I think what we've tried to do here is navigate on the right side of the competency ruling that has been given to us. If there is a different way or a way that you feel more comfortable with, I would be very happy to explore that. But, I think the current position we have has been very clear in ensuring that we are within the rules as set.

[133] **Suzy Davies:** It would certainly reassure us that that charitable purpose wouldn't change without amending primary legislation then. Okay. Thank you.

[134] **David Melding:** Perhaps the policy committee that's looking at this will want to look at this issue as well because we shouldn't wander too far, but it is an interesting point. I'll ask Alun Davies to take us through the final set of questions.

[135] **Alun Davies:** Yes, thank you very much. Minister, I'm sure you agree with myself and other members of this committee that absolutely fundamental to the work of the Welsh Government is to ensure that legislation is always compliant with the European convention on human rights and that the current Human Rights Act 1998 is fundamental to the way we function here in Wales. I was wondering, therefore, if you could explain to us which steps have been taken to ensure that this Bill will comply with that convention.

[136] **Carl Sargeant:** All the legal advice I've received is that we believe it complements or is within the boundaries of the equality and human rights Act.

[137] **Alun Davies:** You and I have discussed, on many occasions, sea fisheries and particularly shellfish fisheries. You are proposing today to move the procedural matters relating to the Sea Fisheries (Shellfish) Act 1967 and how you apply for those for a fishery. At the moment, they're specified by regulation and you're intending to amend that so that it's specified by yourself as Minister or by Welsh Ministers. That takes away a level of certainty for people applying for a fishery. At the moment, people know how to apply because it's all set out in regulation and they know that any application will have to follow particular routes.

Now that you're taking that out of regulation, you'll be able to specify how you do that. That gives you great flexibility, of course, but it does take away the certainty, doesn't it, that people have of where regulations are at any one time?

[138] **Carl Sargeant:** I'm not sure I fully agree with the certainty aspect of it. The only thing that's certain is the process. I think what has not been very helpful to the industry—and I know this is something that we do share a view on—is the complexity of different fishing arrangements across the diverse areas across Wales; they're all very different and yet they're all subject to the same process. We're saying we should be much more clever in the way we think about how this operates.

[139] I can give the Member assurance that we're very clear with those area-based approaches. I suppose it goes back to the original part 1 of the Bill and the leading question that the Chair started with. The principle of managing natural resources is much more than just one element, and the fisheries aspect of this is just a part of the whole ecosystem that we operate in. Giving us flexibility to work, whether that is in the Menai straits of north Wales to a catchment area in Swansea, they are very different in their activities, and I think what we've got to be very clear about with the industry and with people in the processing sector is what is the regulation surrounding that catchment area. And that's what we believe will give us flexibility to deliver that, but also the ability to be much more nimble in the way that we can deliver with the industry. There's a huge market and opportunity for shellfish industries, and I think this gives us control, but the flexibility to manage that better.

[140] **Alun Davies:** So, you would tailor those procedural issues for individual fisheries. So, for argument's sake, the cockle fishery just off your constituency in Deeside would be different, conceivably, to that which governs the Loughor in the south-west.

[141] **Carl Sargeant:** If that was appropriate, yes.

[142] **Alun Davies:** Okay, that was just for clarity.

[143] **Ms Charles:** Can I just add to that? Welsh Ministers are, of course, under a duty to comply with the Human Rights Act under the Government of Wales Act, so they would have to take that into account.

[144] **Alun Davies:** Yes, I appreciate that; thank you. Going on to European marine sites, section 74 of this Bill gives you a power to serve site protection notices and the power to appeal against such notices, and section 75 contains a power to vary or revoke an Order if a site protection notice has been served, but not been complied with. Are you content that the right of appeal in section 74 provides sufficient protection of property rights under article 1 or protocol 1 of the convention?

[145] **Carl Sargeant:** That's a very detailed question, if I may say, Chair. I'm confident that what we've proposed is certainly within the boundaries of the human rights convention, but I'm more than happy to specifically answer that question for the Member. It was quite detailed in terms of section.

[146] **Alun Davies:** Perhaps we could have a note from the legal advice—

[147] **Carl Sargeant:** I'm more than happy to do that, unless my—

[148] **David Melding:** Unless you can give an immediate response.

[149] **Ms Charles:** I would say that we have built in safeguards into notices: they've got to be in writing, they've got to give reasons for the notice and they've got to specify a time.

And, again, Welsh Ministers are already under a duty to comply with human rights, so it's something that factors very carefully and something we have considered at length.

[150] **Alun Davies:** We understand the duty exists. The question was not simply: are you sure that this does comply with it? Because, clearly, you would say, 'Yes, we are sure about that'. But, how do you justify your position is really what I'm trying to get at. How would you seek to argue your case?

[151] **Ms Charles:** Well, we are limited, to some extent, about disclosing legal advice and we can give committee assurance that we have given very full consideration to this without—. It's sort of, if we go beyond a certain point, we are actually disclosing our own internal discussions and deliberations.

[152] **Carl Sargeant:** Can I just give the committee reassurance that it would be a failing for me to knowingly deliver a Bill that was outside of competence and I don't believe that that is the case? Alun's question was detailed, but the simple question is: are we content that we are complying? Absolutely. But, I'm more than happy to give some more detail and more thought around the specifics that the Member asks and I will send you a note on that.

[153] **Alun Davies:** I'm content with that. Moving on to marine licences in terms of non-payment of fee or deposit, section 74 in relation to sea fishery appeals, which we've just discussed, sets out the appeal arrangements where that might or might not be necessary. In terms of marine licensing appeal arrangements, they are to be contained in regulations under section 80. I was wondering why you set it out in that way, and what the rationale and reasoning for that actually is.

14:15

[154] **Carl Sargeant:** Again, the shellfish and marine licensing process is, as the Member is very aware, highly complex. We are under lots of other legislation to comply with, particularly European legislation around marine licensing. We believe that the appeals mechanism for marine licensing is appropriate, as we've laid out in the Bill. We think it's proportionate to the way that the licensing system is granted, and therefore the appeal process is proportionate to that. We believe we have drafted that appropriately.

[155] **Alun Davies:** I'm content.

[156] **David Melding:** William, did you have a point you wanted to follow up on?

[157] **William Powell:** Just on this issue, if you'd be so kind. Minister, you've indicated on several occasions the complexity of this particular section of the Bill and the tasks that it has to fulfil, and you've got a stated intention that it should apply nimbly in a differential way to different settings. In that context, I wonder if you could clarify to the committee what level of engagement you've thus far had, or your team, with the Welsh Fishermen's Association and the specific cockling associations in the different parts of Wales to which you refer to gain a better insight into those issues?

[158] **Carl Sargeant:** I can assure the Member I've met many cocklers, who come to my surgery on a regular basis, and they have an interesting view of the Bill, too. It's a really important question, actually, as engagement with the sector is important, and, in terms of the point that Alun made about making sure that people fully understand the process that they're involved in, I certainly have met with individuals, and I know my team have, and NRW as well is an important player in this as one of the regulatory bodies for the cockling industry. So, the work has been undertaken, and through the White Paper, the Green Paper and the development of the Bill we have lots of background information to get where we are today.

But for me—and I genuinely say this—the scrutiny process for me is really important, because we as a Government—. It is a starting position. We've laid down the Bill and what we think is right, affirmative or otherwise, negative procedures, in that process. Your teasing out of more detail helps us understand that better as well, and therefore we're up for discussions about how we can make a better Bill. That's the key to this. So, it is also going to be a question of challenging and helping to better inform me and my team about redrafting elements for the future. So, stakeholders are an important part of that process, too.

[159] **William Powell:** Thank you.

[160] **David Melding:** Are there any further questions? I just have a final question then, Minister. The Bill would repeal section 15 of the Countryside Act 1968 when you do have an option, actually, of just disapplying that Act to Wales. Wouldn't that be a clearer way of achieving the same result?

[161] **Carl Sargeant:** Do you have any legal advice on that?

[162] **Ms Charles:** Yes, it is a drafting issue of how we present Welsh law in a way that people can read and easily understand, and we recognise that there are issues. In this particular case, the drafting lawyers considered that it was the best way to present this provision in the least confusing way. But, we acknowledge there are issues with the way every Welsh law is presented, and how there is confusion for how people read things—there can be.

[163] **David Melding:** So, you did have a discussion about what would be the clearest way to proceed?

[164] **Ms Charles:** Yes, and we felt that, on balance, this was probably the best way to present this and the least confusing to the reader.

[165] **David Melding:** Okay. Well, thank you very much, Minister. That was very helpful. Thank you also to your team.

[166] **Carl Sargeant:** Thank you.

14:19

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

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

[167] **David Melding:** Item 3 is on instruments that raise no reporting issues under our Standing Orders, but they are listed there, or 'it' is listed there. Are there any questions? We're content.

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

[168] **David Melding:** Item 4 is instruments that do raise reporting issues. There are a couple there, including a superaffirmative resolution of sorts. Do you have any questions? Right, that's fine.

14:20

Papurau i'w Nodi
Papers to Note

[169] **David Melding:** Item 5 is papers to note. There's a letter from the Presiding Officer in relation to budget procedures. This does form part of our general work at the moment, so I'm sure Members will be content to note that.

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

Cynnig:

Motion

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

that 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.*

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

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:20.
The public part of the meeting ended at 14:20.*