



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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[Y Pwyllgor Cyllid](#)

[The Finance Committee](#)

02/02/2017

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

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mike Hedges Bywgraffiad Biography	Llafur Labour
Eluned Morgan Bywgraffiad Biography	Llafur Labour
Nick Ramsay Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Mark Reckless Bywgraffiad Biography	UKIP Cymru UKIP Wales
David Rees Bywgraffiad Biography	Llafur Labour
Simon Thomas Bywgraffiad Biography	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others in attendance

Emma Cordingley	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Mark Drakeford Bywgraffiad Biography	Aelod Cynulliad, Llafur (Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol) Assembly Member, Labour (The Cabinet Secretary for Finance and Local Government)
Sarah Tully	Rheolwr Prosiect Polisi Treth Ddatganoledig, Llywodraeth Cymru Devolved Tax Policy Project Manager, Welsh Government

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

Bethan Davies	Clerc Clerk
Helen Jones	Y Gwasanaeth Ymchwil The Research Service
Georgina Owen	Dirprwy Glerc Deputy Clerk
Katie Wyatt	Cynghorydd Cyfreithiol Legal Adviser

Dechreuodd y cyfarfod am 13:00.

The meeting began at 13:00.

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

[1] **Simon Thomas:** Galwaf y Pwyllgor Cyllid i drefn, felly, y prynhawn yma. Rwy'n gobeithio bod yr Aelodau wedi mwynhau'r ymweliad â safle tirlenwi Ffordd Lamby y bore yma. Pawb wedi gwneud. Mae offer cyfieithu—ie, bydd eisiau offer cyfieithu i Mark pan fydd e'n dod hefyd. Dyna ni, fe wnawn ni'n siŵr y bydd hynny'n digwydd. Croeso i'r Gweinidog i'r sesiwn dystiolaeth olaf. Cyn i ni symud at hynny yn derfynol, jest i ddweud ein bod ni wedi derbyn ymddiheuriadau gan Steffan Lewis ac mae cyfle, wrth gwrs, i bobl gofio bod offer cyfieithu ar gael—sianel 1 ar gyfer cyfieithu. Fe gawn ni mwy o offer pan fydd Mr Reckless yn dod hefyd.

Simon Thomas: I call the Finance Committee to order this afternoon. I hope that the Members did enjoy our visit to the Lamby Way landfill site this morning. Everyone did. Is the interpretation equipment working? Mark will need it when he arrives. We'll ensure that that happens. So, I would like to welcome the Cabinet Secretary to the final evidence session. Before we move to that, I would just like to say that we have received apologies from Steffan Lewis and I would remind people that the interpretation equipment is available and to turn to channel 1 for interpretation. We'll make sure that there is equipment available for Mr Reckless when he arrives.

13:01

Papurau i'w Nodi Papers to Note

[2] **Simon Thomas:** Mae yna eitemau i'w nodi jest ar ddechrau'r cyfarfod. A gaf i ofyn i'r pwyllgor nodi ein bod ni wedi derbyn llythyr gan Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol parthed y dreth yma—hynny yw, llythyr y 23 Ionawr—a llythyr pellach ar y cyd rhwng Llywodraeth Cymru a Chyllid a Thollau ei Mawrhydi ynghylch y dreth, ar 26 Ionawr? A ydy hynny'n iawn? A chofnodion y ddau gyfarfod diwethaf hefyd. Pawb yn hapus i nodi hynny. Océ.

Simon Thomas: There are papers to note just at the beginning of the meeting. I ask the committee to note that we have received a letter from the Cabinet Secretary for Finance and Local Government in relation to this tax—and that is dated 23 January—and a further letter, jointly from the Welsh Government and Her Majesty's Revenue and Customs, on the tax on 26 January. Is that okay? We've also got the minutes of the last two meetings to note. Is everyone content to note those? Okay, I see that you are.

13:02

Y Bil Treth Gwarediadau Tirlenwi (Cymru): Sesiwn Dystiolaeth 8 Landfill Disposals Tax (Wales) Bill: Evidence Session 8

[3] **Simon Thomas:** Fe wnawn ni droi at y sesiwn dystiolaeth—yr un olaf ar y dreth dirlenwi. Croeso yn ôl i'r Gweinidog, i'r Ysgrifennydd Cabinet, a gwnaf i jest ofyn iddo fe gadarnhau y swyddogion yn eu tro, plîs. Os gwelwch yn dda.

Simon Thomas: So, we will move on to the evidence session, which is the final evidence session on the landfill disposals tax. I would like to welcome the Cabinet Secretary back and ask him to confirm each of his the officials in turn, please.

[4] **Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol (Mark Drakeford):** Diolch yn fawr, Gadeirydd. Gyda mi'r prynhawn yma, fel y tro diwethaf, mae Sarah Tully, ar yr ochr polisi, ac Emma Cordingley, ar ochr y gyfraith.

The Cabinet Secretary for Finance and Local Government (Mark Drakeford): Thank you very much, Chair. With me this afternoon, as last time, is Sarah Tully, on the policy side, and Emma Cordingley, on the legal side.

[5] **Simon Thomas:** Diolch yn fawr i chi. Fel yr ydych chi'n gwybod, mae'r pwyllgor wedi bod yn casglu tystiolaeth ar y Bil. Mae'n rhaid dweud ar y cychwyn bod y rhan fwyaf o'r tystion wedi bod yn unfrydol eu barn fod y Bil yn briodol a bod y Bil yn un sy'n ymateb i ofynion y Llywodraeth. Dyna'r farn gyffredinol. Wedi dweud hynny, mae yna agweddau y bydd y pwyllgor am eich holi chi ymhellach yn eu cylch. Un o'r agweddau hynny yw bod yna un corff, o leiaf, wedi dweud efallai bod cyfle wedi cael ei golli fan hyn i roi mwy o ddarpariaethau'r dreth dirlenwi ar wyneb y Bil yn hytrach na mewn rheoliadau. Y corff yna oedd Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr. Fe wnaif i ddyfynnu yn Saesneg beth y dywedon nhw wrthym ni.

Simon Thomas: Thank you very much. As you know, the committee has been collecting evidence on the Bill. I have to say at the outset that the majority of the witnesses have been united in their view that the Bill is appropriate and that the Bill is one that meets the requirements of the Government. That's the general view. However, having said that, there are aspects that the committee would like to ask you further questions regarding. One of those aspects is that at least one body has stated that there might have been a missed opportunity here to put more provisions in relation to the landfill tax on the face of the Bill rather than in regulations. That organisation was the Institute of Chartered Accountants in England and Wales. I will quote what they said in English.

[6] 'We appreciate that this approach largely mirrors that used in landfill tax, but do think an opportunity has been missed to put the vast majority of the LDT provisions into primary legislation.'

[7] A ydych chi wedi cael cyfle i ystyried a oes modd gwneud mwy o roi pethau ar wyneb y Bil nag sydd nawr yn y rheoliadau?

Have you had an opportunity to consider whether it would possible to put more on the face of the Bill that is currently in regulations?

[8] **Mark Drakeford:** Wel, diolch, Gadeirydd, wrth gwrs, am y cwestiwn. Rydw i wedi bod yn dilyn y dystiolaeth mae'r pwyllgor wedi'i derbyn. Mae lot o bethau rwyf wedi'u clywed lle rwy'n cytuno â beth mae pobl wedi'i ddweud, ond ar y pwynt yma, nid ydw i cweit yn gallu deall beth oedd y grŵp yn ei ddweud.

Mark Drakeford: Thank you, Chair, for the question. I have been following the evidence that the committee has received. There are a lot of things that I've heard that I agree with, but on this point, I don't really understand what the group was trying to say.

[9] The major thrust of this Bill has been to try to consolidate on the face of the Bill the very many different ways in which the law is currently scattered, because here is an example of a policy area where the current state of legislation is difficult to follow. The original primary legislation has been amended, often there is a Schedule, there is secondary legislation, notices, directions, guidance, case law, and our effort has been to try to consolidate as much of that as possible onto the face of the Bill. There are a series of important areas that the committee will have explored, I'm sure, in relation to weighing provisions, water discounts, non-disposal areas, prescribed landfill site activities, all of which appear on the face of this Bill. So, I was puzzled, I have to say, by the suggestion by the chartered accountants that somehow an opportunity had been missed, because it's been our single most important endeavour to do what they suggested. There are a small number of examples where we have left things to regulations rather than putting them on the face of the Bill, but there's always, I hope, a reason why we've done that.

[10] So, there are three key distinguishing principles that we've used for trying to distinguish between primary legislation and regulation powers. If something is subject to regular review, so the listing of qualifying materials, for example, we've left that to regulations because it needs updating, potentially, regularly. Where something is new, the testing of fines material and loss-on-ignition testing, well, that's something that's only recently been embarked upon in Scotland and England, and we think we will learn from the experience, so we leave that to regulations. And when there is a great deal of technical detail, for example in how credit powers will be operated, we think that's better done through regulation. But other than in that relatively small number of examples, the Bill puts a great deal of material that is currently not in primary legislation onto the face of this Bill

[11] **Simon Thomas:** Rwy'n credu y byddai hi'n deg i ddweud bod y dystiolaeth, ar y cyfan, yn cefnogi'r whole, supports that position. But as safebwynt yna. Ond fel yr oeddwn i'n I stated, a few witnesses have said dweud, mae ambell i dyst wedi something different, and possibly dweud yn wahanol, ac o bosib y they're referring to the fact that you maen nhw'n cyfeirio at y ffaith eich say that there are a few examples bod chi'n dweud bod ychydig o where you turned to regulations enghreifftiau lle nad yw'r rheoliadau rather than the face of the Bill, but I ar wyneb y Bil, ond rwy'n credu ei think it's true to say that, in total,

bod hi'n wir i ddweud, at ei gilydd, fod yna 29 o bwerau i wneud rheoliadau a bod 19 o'r rheini yn caniatáu newid y ddeddfwriaeth sylfaenol. Yn sgil rhai o'r pethau rydych newydd eu hamlinellu, ac felly yn y cyd-destun yna, efallai bod rhai o'r tystion—nid y cyfan, rwy'n derbyn hynny—wedi holi a ydy hi'n glir bob tro beth yw pwrpas polisi a bwriad y Llywodraeth pan fydd pŵer yn dal i gael ei ddal yn ôl er mwyn newid y ddeddfwriaeth sylfaenol.

there are 29 regulation-making powers and 19 of those permit changes to the primary legislation. Given what you've just said, and the context, perhaps some witnesses—and I accept that it wasn't everyone—have therefore questioned whether it's always clear what the policy intent of the Government is when the power is reserved in order to change the primary legislation.

[12] **Mark Drakeford:** Fe ges i drafod y pwnc yma o flaen y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, wrth gwrs, achos ar un ochr rydw i wedi bod o flaen y pwyllgor yna o'r blaen pan maen nhw wedi dweud wrthyf i, 'Wel, mae'n rhaid i chi wneud mwy i roi pethau ar wyneb y Bil, a pheidiwch â rhoi pethau yn y *regs* bob tro', ond os ydych chi'n rhoi mwy o bethau ar wyneb y Mesur, mae'n bwysig cael rhyw fath o hyblygrwydd i gadw'r Bil yn fyw, a'r ffordd o wneud hynny yw cymryd pwerau i ail-greu'r gyfraith drwy'r *regulation-making powers*, a dyna pam mae 29 ohonyn nhw ar wyneb y Mesur. So, mae tensiwn yna. Rŷm ni wedi trio ymateb i'r galwad i roi mwy o bethau ar wyneb y Mesur, ond os ym ni'n mynd i gadw'r gyfraith mewn lle ble y mae'n gallu ymateb i bethau sy'n newid y tu fas i Gymru, neu lle mae datblygiadau yn y maes technolegol, er enghraifft, dyna pam rŷm ni wedi ei wneud e yn y ffordd rŷm ni wedi ei wneud e.

Mark Drakeford: I discussed this subject before the Constitutional and Legislative Affairs Committee, of course, because on one side I've been before that committee before when they told me, 'Well, you have to do more to put things on the face of the Bill, and don't put things in the regs every time', but if you do put more things on the face of the Bill, it's important to have flexibility to keep the Bill live, and the way to do that is to take powers to recreate the law through regulation-making powers, and that's why there are 29 of them on the face of this Bill. So, there is a tension there. We have tried to respond to the call to put more things on the face of the Bill, but if we are to maintain the law in a way so that it can respond to things that are happening outside Wales, or where there are developments in the field of technology, for example, well, that's why we've done it in the way that we have.

[13] **Simon Thomas:** Just on this point, I think, Mark Reckless.

[14] **Mark Reckless:** Yes, and I note the tension you describe, Minister, but isn't there another trade-off about how much is determined by the legislature and how much by Ministers? You've just referred to two different ways in which Ministers may exercise power, but isn't there also an issue that the fundamentals should be determined by the Assembly, rather than being sort of moved around as Ministers fancy over time? And aren't you going too far in trying to provide yourself a flexibility in areas where, actually, there's not the requirement sufficient to justify taking those powers?

[15] **Mark Drakeford:** Well, Chair, I think that's a very important point. We try and answer it in the legislation in this way: that all but two of the regulation-making powers that we take to amend primary legislation are through the affirmative procedure. That means that those regulations have to come in front of the Assembly, they have to be accompanied by a regulatory impact assessment of their own, and the changes cannot be made without the direct guaranteed oversight of the legislature itself. So, I recognise the tension that the Member is pointing to. I think we've tried to respond to that as positively as we can by erring on the side of, if there was any 50/50 decision, should this be the affirmative or the negative procedure, we have opted for the affirmative procedure. We therefore use the affirmative procedure here significantly more than existing legislation does in these areas, and we've done that in order to make sure that the proper oversight of the legislature can be guaranteed and powers don't slip into the Executive's hands without that oversight.

[16] **Mark Reckless:** So, if you're going to have the power anyhow to change the rate of the key issue, surely, of what we're doing, why not put at least the initial rate on the face of the Bill to give taxpayers certainty, and allow that to have the full weight of legislation and this place's authority?

[17] **Mark Drakeford:** Well, Chair, I'm not attracted to doing that. I don't think it's a course of action that a finance Minister anywhere else would be attracted to, either.

[18] **Simon Thomas:** It doesn't mean that it's wrong. [*Laughter.*]

[19] **Mark Drakeford:** No, but I think it does suggest that we're not doing anything that's unusual here. I think you heard from a number of witnesses

that they didn't think that that would be a sensible course of action either, because one of the things that we have heard very consistently from stakeholders is the need for consistency between tax rates across the border. So, we could put something on the face of this Bill on the basis that that was providing certainty, but it could turn very quickly into being a spurious certainty, because rates could change across our border, and then, in order to maintain consistency, I'd have to be coming forward to change the rates that are on the face of the Bill. So, I think the way that we construct it here is the right way. Members here will have noticed that, a couple of years ago, the UK Treasury gave a guarantee that rates would only be uprated in line with the retail prices index for a period of four years. We're now well into the second half of that period. I don't think it will be unexpected if, during the time that this Bill is in front of the Assembly, we would hear something from the Treasury about their plans beyond that period. So, I think the certainty would not be a reliable certainty, and, therefore, that we are better off doing it in the way that we are saying we will do it. I will come forward, of course, with rates as part of the budget-making process in the autumn. I've already given, and I gave in front of this committee the last time I was here—I'm happy to repeat it today—that, in a broad policy sense, I recognise the case for not diverging from the position in England in the early stages, at least, of this Bill, for reasons of certainty and continuity and business confidence and so on. So, as a general proposition, I'm happy to say that again today. When it comes to the specifics of rates, I think they are better left to the budget-making process that we will be embarked on later this year.

[20] **Mark Reckless:** Thank you.

[21] **Simon Thomas:** Nick Ramsay on this.

[22] **Nick Ramsay:** Yes. I understand what you're saying about it not being a reliable certainty—it's an interesting phrase, 'a reliable certainty'. But given that you are sticking to the maxim of 'things here will remain the same; the regime here will remain the same as across the border in the early stages', which I think we all understand and accept, then I don't see—. I think what Mark Reckless is getting at is that we don't see what the harm would be of giving that initial indication, that confirmation, that the starting rates here would be similar with across the border. Even if you do say, you quantify that by saying that, in years to come, they can vary and be different, at least it would give people who are anxious about any change at all—it would give them that initial reassurance that those starting rates are going to be similar. But, at the end of the day, Minister—Cabinet Secretary—it's the actual rate

that is of greatest interest and concern to a lot of the stakeholders involved.

[23] **Mark Drakeford:** Well, Chair, those are all fair points and I don't dissent from them. I think the difference is between—and, Nick, actually, I think you elided between these two things even in the way you were asking the question—the difference is between 'similar' and 'same'. So, I am very happy to give that general confirmation, but I understand the need for consistency and similarity.

13:15

[24] I'm not prepared to go as far as saying, at this stage, that the rates will be the same. And I think there is a difference there. As I say, I could say today, and put them on the face of the Bill, that they are the same, and then they could change across our border while this Bill was going through the Assembly, and they wouldn't be the same after all. So, I think, and I don't think you've heard much to dispute this, actually, that the message we have given the sector, that we understand the case for continuity and we understand the need for similarity—they are able to read enough from that to give them the confidence they need. Just putting the rate on the face of the Bill wouldn't add materially to the confidence they already have.

[25] **Nick Ramsay:** You're not tempted?

[26] **Mark Drakeford:** I'm not, really.

[27] **Nick Ramsay:** A little bit?

[28] **Mark Drakeford:** Not even a little bit, really, on this one. [*Laughter.*] I think we're giving people the assurance they need and I think the way that we propose to set rates is the right way to do it.

[29] **Simon Thomas:** Okay. I think we've tempted you enough on that point.

[30] Ond mae'n perthyn i bwynt But it does relate to a broader point, ehangach, sef y gwahaniaeth rhwng which is the difference between Cymru a Lloegr. Rŷch chi newydd Wales and England. You have just grybwyll, efallai, nid jest o ran y mentioned that, perhaps, not just in cyfraddau ond hefyd o ran rhai terms of the rates but also in terms materion technegol, *specifications* a of some technical issues, the phethau felly, fod yna newid yn gallu specifications and so forth, there may

digwydd—mae yna newid yn digwydd nawr yn ôl beth rwy'n ei ddeall. A allech chi esbonio, o ran polisi Llywodraeth Cymru, y ffordd rŷch chi'n ymateb i newid yn Lloegr? Un awgrym, er enghraifft, yw eich bod yn cyhoeddi rhyw fath o ddatganiad, nid yn rhan o'r Bil, ond bod yna ryw fath o ddatganiad polisi gan y Llywodraeth yn cyd-fynd â'r Bil yn dweud, 'Dyma Cymru, dyma Lloegr, dyma'r gwahaniaeth a dyma pam rydym ni'n gwneud rhai o'r penderfyniadau polisi yma yn y cyd-destun Cymreig'.

[31] **Mark Drakeford:** Rwy'n cydnabod y pwynt, wrth gwrs. Rydw i wedi esbonio o flaen y pwyllgor y tro diwethaf rai o'r llefydd lle mae'r bwriad yw gwneud pethau'n wahanol i'r ffyrdd mae pethau'n mynd ymlaen ar hyn o bryd. Yn y memorandwm esboniadol, rŷm ni'n rhoi mwy o fanylion a mwy o enghreifftiau. Os yw'r pwyllgor yn meddwl y byddai'n ddefnyddiol i fi roi rhywbeth at ei gilydd ar bapur jest i ddangos lle mae'r gwahaniaethau yn fwy pwysig, rwy'n hapus i feddwl am baratoi rhywbeth fel yna i'r pwyllgor.

[32] **Simon Thomas:** Diolch am hynny, achos mae rhai tystion yn meddwl y byddai hynny o gymorth. Fel rydych chi yn gwybod, rŷm ni wedi bod yn Ffordd Lamby y bore yma, ac yn diolch i gyngor dinas Caerdydd am y croeso—a'r mwd. Yn amlwg, mae'n safle sy'n cael ei reoli'n broffesiynol ac i safonau uchel

be changes. Because there are changes afoot now, as I understand it. So, can you explain what the Welsh Government's policy is in terms of how you respond to changes in England? One suggestion, for example, is that you publish some sort of statement, not as part of the Bill, but make some sort of policy statement as a Government that goes along with the Bill that says, 'Here's Wales, here's England, here are the differences and this is why we've made some of these policy decisions in the Welsh context'.

Mark Drakeford: I acknowledge the point, of course. I have explained before the committee the last time some of those areas where we intend to do things differently to the way things are being done at present. In the explanatory memorandum, we provide more details and more examples. If the committee thinks that it would be useful for me to draw something together on paper just to show where the differences are more important, then I'm happy to think about preparing something like that for the committee.

Simon Thomas: Thank you for that, because some witnesses have said that that would be of assistance. As you know, we were at Lamby Way this morning, and we do thank Cardiff Council for the welcome we received—and the mud. It's obviously a site that is managed professionally and to very high standards, but it's

iawn, ond safle hefyd a fydd yn cau mewn rhyw flwyddyn neu ddwy, os nad mwy na hynny. Gyda'r cynnydd yn ailgylchu, a llosgi hefyd, yng Nghaerdydd, mae'r angen am dirlenwi gan gyngor y ddinas yn diflannu. Ni fydd safle tirlenwi gan ddinas fwyaf Cymru ar ôl i Ffordd Lamby gau.

also a site that will close in a year or two, if not a little more than that. With the increase in recycling, and also incineration, in Cardiff, the need for landfill by the city council is disappearing. There will be no landfill site in Wales's largest city after Lamby Way closes.

[33] Mae'r gyfran sy'n mynd i dirlenwi yn mynd yn llai bob blwyddyn—ac mae hynny'n llwyddiant y dreth, mewn ffordd. Ond mae'n gofyn y cwestiwn—yn y pen draw mae'r dreth yma'n dod i ben, ac mae costau casglu'r dreth yn mynd yn uwch na beth rydych chi yn ei wneud mas o'r dreth; mae effeithlonrwydd y dreth yn ddigwydd—. A oes unrhyw—? Gyda'r cynnydd yng Nghymru, a gyda'r ffaith bod gan Gymru dargedau sydd ddim gan Lloegr ynglŷn ag ailgylchu ac ati, a oes unrhyw waith wedi cael ei wneud gan y Llywodraeth ynglŷn â sgopio am ba hyd y bydd angen treth o'r fath yma yng Nghymru?

The proportion going to landfill is reducing every year—and that's the success of the tax, in a way. But it does raise the question—ultimately, this tax going to come to an end, and the costs of tax collection will be greater than what you raise from the tax; the effectiveness of the tax will happen—. Is there any—? With the increase in Wales, and, as Wales has recycling targets that England does not, has any work been undertaken by the Government to scope for how long we will need a tax of this type in Wales?

[34] **Mark Drakeford:** Diolch, Gadeirydd. Wrth gwrs, mae'r dreth yma'n anarferol—pwrpas y dreth yw peidio â chael cyfle i gasglu'r dreth yn y dyfodol.

Mark Drakeford: Thank you, Chair. Of course, this tax is an unusual one—the purpose of the tax is to not collect the tax in the future.

[35] You know, the built-in obsolescence of the tax—. Of course, we have, as a Government, to be alert to the inevitability that, at some point in the future, the costs of collecting the tax will outweigh the tax itself. So, we are making some projections into the future, but we are reliant on the OBR for doing so. The OBR has now published its forward predictions for receipts from this tax into the next Assembly term. It will continue to update them

twice a year. We will continue, therefore, to be able to track at least five years ahead from where we are. In 2021–22, which is the furthest point the OBR forecasts go at the moment, they predict that receipts from the tax will have reduced to £23 million in that year. At that level, the tax is still worth collecting, and it will be bringing in more than it would cost to administer it. So, insofar as we have figures we can reasonably rely on, we think that the tax will continue, but we will continue to update those figures every time the OBR does, and we will come to a point, which we're not at yet, when the position that you outlined will undoubtedly appertain.

[36] **Simon Thomas:** Would you be making, perhaps, a written statement to the Assembly when you get those OBR figures, every six months, just to update—or to this committee, just to update us as to the progress of the tax?

[37] **Mark Drakeford:** I'm very happy to make sure that, as we get those updates, we draw them to the attention of the Assembly through the committee or in some other way.

[38] **Simon Thomas:** Thank you for that. Mike Hedges.

[39] **Mike Hedges:** A very quick question: even with incineration, you'll have residual ash; in fact, it might be turning it back to what it used to be—ash being put into tips, as opposed to what's been put in in recent years. So, there'll still be that residual ash that will have to be put somewhere, won't there? The second thing is that this is a behaviour tax, and, even if it costs money to collect it, is it worth that to keep the behaviour, because, if you abolished the tax, you'd change around behaviour quite dramatically, I would suggest, and people would be opening lots of empty holes in the ground to use for waste? The tax has been one of the most successful—in my opinion; I don't know whether the Minister agrees—ever. It's changed behaviour, and it's changed behaviour by proxy, because the people who are being taxed are not the individuals who are recycling; it's the local authorities who collect it. And we've had this tremendous achievement of changing behaviour by proxy, which I think we're all very proud of, and I'm sure the Minister will be proud of it as well. I'll stop there, but do you see the points I'm making and do you tend to agree with them?

[40] **Mark Drakeford:** Well, look, I absolutely recognise the points that are being made. There will always be a need for landfill, even in its most residual form. We have 25 landfill sites in Wales today; we expect that to reduce to nearer 10 in the medium—in the foreseeable future, but there will always be

a need for landfill. So, the point Mike then makes is: say you get to a point where collecting the tax is costing you more than the tax is bringing in, would you want to revert to a position where landfill was the cheapest form of disposal? Because, if you abolish the tax, that's what you would do, and would you then reverse the second big objective of the tax, because the tax has two main objectives, doesn't it: one is to secure resources for investment in public services and, as finance Minister, that's a very important purpose for me, but the second thing is to influence behaviour and to have an environmental impact, and the tax has been massively successful in changing the way that people behave. And so you certainly would, from that environmental perspective, want to at least ask yourself the question. Even if the tax is no longer paying for itself, would you want to knowingly enter into a position where taking stuff to landfill suddenly becomes the cheapest thing to do with it—cheaper than incineration and cheaper than other forms? Well, it'll be a very important question to ask at that point.

[41] **Simon Thomas:** We were told this morning in committee, at Lamby Way, it's gone from 3 per cent to 58 per cent in Cardiff—recycling rates—as a result of this tax. And other things, but this tax has been a driver in that.

[42] **Mark Drakeford:** They are remarkable.

[43] **Simon Thomas:** Mr Reckless.

[44] **Mark Reckless:** The policy framework and the shift in the timing seems to have suited Cardiff and brought the achievements described. I just wonder in some other areas whether that is the case, though. For instance, I know in Newport there's a very different approach to recycling, and we try and pre-sort stuff, with householders' co-operation, to the extent possible. But while Lamby Way is about to be capped off, and that's all great, we have a substantial landfill in Newport with a large void needing to be filled with landfill over a substantial number of years. And, if it's the case, as we learned this morning, that it's now cheaper to incinerate than it is to landfill, is there a danger that we may incentivise people in such a way that there'll be great voids in landfill tips that are not filled for decades when, potentially, that site could be used for better purposes, if filled more quickly?

[45] **Mark Drakeford:** Well, I see the point that's being made, Chair. I think the counter evidence would be the declining number of landfill sites. So, the way that this is being managed is not by having a continually large number of sites with empty spaces in them but a reduction in the number of sites

themselves. There will always be a need for landfill, but technologies are changing. There are new developments in the field. There will be different possibilities 10 years from now, some of which we won't have identified sitting here. The industry itself will adapt to that. I don't think, myself, they will adapt to it by allowing large tracts of land to sit unused and incurring costs in the process.

[46] **Simon Thomas:** Eluned Morgan.

[47] **Eluned Morgan:** Diolch yn fawr. Rydych chi wedi bod yn trafod y ffaith nad ydych chi eisiau cyfraddau treth i fod yn rhy wahanol i'r rheini dros y ffin. Roeddwn i eisiau gwybod: a ydyw'r un peth yn wir ynglŷn â'r diffiniadau o wastraff? Oherwydd mae yna ymgais yn cael ei wneud ar hyn o bryd i newid y diffiniad o wastraff yn Lloegr. A ydych chi wedi meddwl, efallai, beth fyddai *implications* hynny i ni yng Nghymru?

Eluned Morgan: Thank you. You've been discussing the fact that you don't want tax rates to be too different to those across the border, but I wanted to know whether the same thing true in terms of definitions of waste, because there is an effort being made at present to change the definition of waste in England. Have you thought, perhaps, what the implications would be of that for us in Wales?

[48] **Mark Drakeford:** Diolch am y cwestiwn. Wrth gwrs, ysgrifennais i at y pwyllgor ar 4 Ionawr i dynnu sylw at y ffaith bod yna bosibiliad newid y ffordd y mae'r dreth yn gweithio yn Lloegr. Nid ydym wedi clywed unrhyw beth eto, ar ôl hynny, gan yr HMRC. Yn ôl ym mis Ionawr, roedden nhw'n awgrymu eu bod nhw'n mynd i ddod ymlaen â *draft regulations* i esbonio beth yn union maen nhw eisiau ei wneud.

Mark Drakeford: Thank you for the question. Of course, I did write to the committee on 4 January to draw attention to the fact that there is this possibility of a change in the way that the tax operates in England. We haven't heard anything as of yet, following that, from HMRC. Back in January, they were suggesting that they were going to bring forward draft regulations to explain what precisely they intend to do.

[49] Chair, the basic change appears to be that, whereas we, at the moment, have a system where nothing is taxed unless the law tells you it is taxed, they may want to reverse that position and say, 'Everything will be taxed unless you fall into a list of exemptions.' We've rehearsed that possibility with our sector here in Wales. They're not tempted by that, and neither are we. The reason why HMRC may decide to change the way they

operate is because of the litigious nature of the tax. Our fear is that they will simply substitute a set of unknown litigious possibilities for a set of at least known litigious possibilities at the moment.

[50] It does seem a bit curious that HMRC are deciding to do it at this point, just when a number of landmark cases are being resolved through the courts and are being resolved in HMRC's favour. So, only just before Christmas, there was a very significant case involving methane gas, where the landfill operator argued that, because methane gas was being produced, it could be collected, and that the material had not been discarded into landfill because there was this secondary use of producing methane gas. The Court of Appeal found, against the plaintiff in that case, in favour of HMRC. So, we are unconvinced that this is the right moment to change the way the whole system operates. We don't think Scotland intends to change the system, and we're not tempted to do it in Wales. Until we see the colour of the regulations, it's difficult for us to make a fully informed assessment of what the position would be one way or another. HMRC has assured officials that the changes will have no practical effect as far as Wales is concerned, because although the legislation may be changed, the scope and the administration of the tax will not. So, I'm bound to consider it, Chair. The timing is not helpful—

[51] **Eluned Morgan:** No.

[52] **Mark Drakeford:** —you know, happening during the time that the Bill is in front of this committee. But nothing that I've seen so far suggests to me that I would want to change the fundamental approach that this Bill takes.

[53] **Eluned Morgan:** Okay, thank you. Can I ask you about the idea of establishing tax liability by inference? That's something that preoccupies Deloitte in particular. Is that something that is tight enough in terms of wording in your opinion? Is that something that may be able to be tightened, or should it be tightened?

[54] **Mark Drakeford:** Well, Chair, I want to stress that the Bill does not establish tax liability by inference. That is not, in our view, what the Bill does.

13:30

[55] Section 3 of the Bill sets out four conditions that need to be met in order for there to be a taxable disposal. One of those—in a carefully crafted

way and taking account of some of the case law that I've just outlined to you—does have as a test whether there was an intention to discard. That's the inference issue that I think Deloitte was getting at. That is one of four tests, and it allows a more objective understanding of whether, when something ends up in a landfill void, the intention of the disposer was that a disposal should have taken place. In order to understand where that strand fits in the four strands altogether, I might ask Emma who will give you a more lawyerly account of the way that this part of the Bill operates, if you'd like to hear that.

[56] **Simon Thomas:** Yes, that would be good.

[57] **Ms Cordingley:** The four conditions that the Cabinet Secretary has referred to are in section 3, which set out when you've got a taxable disposal. Condition No. 3 is that there's a disposal of the material as waste. That condition is then expanded on in section 6(1) and says that

[58] 'A disposal of material is...waste if the person responsible for the disposal intends to discard the material',

[59] which is exactly the same as in the current UK legislation, so none of that is any different. What we've done differently is then expanded section 6 to add subsections (2) and (3), which are basically meant to assist the landfill site operators, WRA and the courts in deciding whether or not a person has intended to discard the material, so they don't change the test—they supplement it, really. So, in subsection (2) we're saying that if the circumstances of the disposal suggest that there's an intention to discard, you can infer that from the circumstances, and we particularly point to the fact that material is deposited in a landfill disposal area, which is basically the void. So, thinking about the Patersons case that the Cabinet Secretary was just talking about—in that case, biodegradable material was taken, nothing was done to it, it was put in the void and then produced methane gas. So, this test, we would say, would help address that issue in that you could infer from the fact that they just took the material and put it in the void that they intended to discard it, as opposed to making use of it. So, we're trying to address quite a specific issue that has come up in UK litigation and send the message out there.

[60] **Simon Thomas:** Just to be clear, therefore, you don't rely only on section 6—it must be read in conjunction with section 3. Yes?

[61] **Ms Cordingley:** Yes. Section 6(1) is the test of whether there is an intention to discard, and then subsections (2) and (3) are sort of assisting with the understanding of that. So (3) is then going on to say that if somebody is making temporary use of material or deriving a benefit from it, such as the production of gas, that doesn't mean there can't be an intention to discard as well. So, they've been very carefully and specifically drafted to address the issues that we're aware of to try and reduce the risk of further litigation.

[62] **Simon Thomas:** Do you feel it adds anything at all, because it does seem to be a rather circular argument in a way, if I can—?

[63] **Ms Cordingley:** We think it makes our position clear in terms of where we would be coming from as a tax collection authority on those cases. And I think it could also be relevant if you think about unauthorised disposals as well that don't apply in the UK. So, if you think about a lorry load of black bags found in a secluded area, this would allow you to say, 'We could infer from the circumstances of that deposit of material that there's been an intention to discard it.'

[64] **Simon Thomas:** An intention to discard it, okay. Sorry, Eluned.

[65] **Eluned Morgan:** No, that's fine. It's interesting that there are occasions when the formal people responsible for operating the sites are different and they give permission to discard to people who also want to dispose. So, although the people who we had in front of us didn't have that arrangement, I just wondered: should there be more clarity in terms of whose responsibility it is to pay for the tax liability there?

[66] **Mark Drakeford:** Chair, I think this is the difference about getting this right between operators and controllers. So, you have operators and then controllers. We investigated this issue for Wales in advance of the Bill being prepared, and all the information that we have from HMRC is that there are no controllers at landfill sites in Wales. So, the issue doesn't exist in the Welsh context and I think that was borne out by the landfill operators that you heard evidence from—that in their particular sites it didn't happen. So, our investigation suggests that it doesn't happen in any landfill sites in Wales and we weren't able to discover from any landfill operators any intention to move in this direction either. However, the Scottish legislation takes a regulation-making power to make provision for controllers to be liable for tax where they exist. So, we have done the same, but it's a futureproofing

part of the Bill. We are not aware of any circumstances, at the moment, where this would be necessary, but given that the issue has been raised—and it's obviously been raised more widely than Wales—we thought it was a sensible balance to put a regulation-making power in, subject to the affirmative procedure, so that if confusion were to arise in the future between who was responsible—the operator or a controller—we would be able to regularise that as far as Wales is concerned. But it's not a problem that we are aware of.

[67] **Eluned Morgan:** And we can't just say, 'Actually, you're not allowed to have controllers in Wales; we only allow operators.' Would that be easier?

[68] **Mark Drakeford:** Well, where controllers exist, I imagine that operators would say that there is a sensible, operational reason why they need to do things in that way. Therefore, we could respond to that if we thought it was the right thing to do and wouldn't prohibit businesses from coming forward with such a proposition.

[69] **Eluned Morgan:** Okay. Can I move on to ask about bad debt now, and in particular whether you think it's appropriate to see tax credit in the form of bad debt reliefs on the face of the Bill?

[70] **Mark Drakeford:** Well, Chair, this is one of the areas in which we've taken a regulation-making power because of the complexity of constructing bad debt relief. I'm happy to provide an assurance that we do intend to bring regulations forward for this purpose and that we aim to introduce them in the autumn of this year—subject to the Bill, of course, proceeding through the Assembly and then receiving Royal Assent. So, the provision in the Bill is there and we do intend to use it. I think I ought to be clear with the committee as well that, at present, my intention would be to use it for insolvency—bad debt. So, drawing the bad debt credit more narrowly than it is currently drawn.

[71] **Eluned Morgan:** Okay. Right, that's interesting. So, there wouldn't be the responsibility, for example, if somebody simply just disappeared. There wouldn't be a need for them to prove that they had done due diligence on a particular person who wanted to use their site.

[72] **Mark Drakeford:** Chair, I intend to introduce a credit for bad debt, which is similar to that in Scotland. There, a landfill site operator is only able to claim a credit where their customer has become insolvent and where that insolvency means that the operator has been unable to recover some or all of

the debt owed to them. We'd anticipate there would be a number of criteria that the operator would have to fulfil to demonstrate that. What I don't intend to do at present is to extend the credit to circumstances where a landfill operator is owed money by somebody—they haven't gone into insolvency, they're just not paying the money. Now, at the moment, in some circumstances, landfill operators can get the taxpayer to pick up that Bill for them. I'm not sure that I think the taxpayer's interests are fully defended in those circumstances. Where it is simply a bad commercial decision and a landfill operator has entered into a relationship with someone and then that person turns out not to be reliable, is it right that the taxpayer picks up the consequences? Well, I think probably not. Insolvency—a different matter, because there's nowhere for the operator to go. So, I intend to make provision, but not to the extent that the provision is currently.

[73] **Simon Thomas:** Does insolvency cover all business failures? Is that a definition that covers sufficiently all business failures, because the principle you're making is that, in terms of bad commercial decisions or poor judgment, the taxpayers should bear the weight of that, but if there's a genuine failure to pay because a business has gone out of business, in effect, the tax relief should be then allowed—we shouldn't tax money that hasn't actually been raised? But, in that case, does insolvency cover all those cases sufficiently?

[74] **Ms Cordingley:** The definition will need to be worked through in the regulations, but the definition that Scotland has adopted is fairly broad so it includes administration, bankruptcy and lots of things that you would think of under the general umbrella of insolvency.

[75] **Simon Thomas:** So, you'd be looking for definitions in other Acts—UK or England-and-Wales Acts?

[76] **Ms Cordingley:** Yes, we'd be looking at other Acts, and then that would be set out in the regulations.

[77] **David Rees:** On this particular point, you're therefore recommending that the bad debt will be covered as a consequence of insolvency. When businesses go insolvent, obviously, the creditors are looked at being paid out, and one of the highest creditors is HMRC. Are you, therefore, going to look at transferring the debt to the WRA, so they become a major creditor of the insolvent company so that the operator is no longer the creditor?

[78] **Ms Cordingley:** I'm not an expert in this field, but I believe that HMRC are no longer a preferred creditor—they're just treated the same as all other creditors.

[79] **David Rees:** You'll often find that, in fact, they're always seen as a priority.

[80] **Mark Drakeford:** Obviously, we'll pick through the point that David Rees is making. I said that there will be some criteria that a landfill operator would have to demonstrate, and one would be that they themselves had registered to claim any money back through insolvency. Before they could expect a taxpayer to do it, they'd have to demonstrate that they'd made efforts themselves. But the principle is the one that the Chair set out, and we will try to navigate the regulations to reflect that principle.

[81] **Simon Thomas:** Can you just confirm when you're likely to introduce those?

[82] **Mark Drakeford:** In the autumn of this year.

[83] **Simon Thomas:** A gaf i jest **Simon Thomas:** May I just return to fynd yn ôl at y pwynt yr oedd Eluned Morgan yn holi amdano, ynglŷn â the point that Eluned Morgan asked you about, in relation to the rheolwr a gweithredwr recognised site controller and cydnabyddedig y safle? Rydych chi operator? You have given your wedi rhoi eich tystiolaeth i'r pwyllgor. evidence to committee. There are no Nid oes rheolwyr, fel y cyfryw, yng controllers in Wales, as such, Nghymru, felly, mae gennych bwerau therefore you have powers in case rhag ofn y codiff y posibiliad. Ond this arises. But what stops you, as a beth sy'n eich rhwystro chi rhag dodi precautionary measure, from putting ar wyneb y Bil, rhag ofn, ryw on the face of the Bill some sort of ddarpariaeth ar gyfer rheolwyr hefyd? provisions for the controllers also? Er nad oes dim yng Nghymru ar hyn Although that is not an issue that o bryd, pam na fyddech chi'n gallu arises in Wales presently, why rhoi ar y wyneb fod yna *liability*, fod couldn't you put on the face of the yna gyfrifoldeb ar reolwyr, ac, felly, Bill that there is a liability, that there byddai'r diffiniad o leiaf yno? Efallai is a responsibility for controllers, so fydd angen pwerau pellach er mwyn the definition is there at least? There creu'r rheoliadau, ond o leiaf y may be a need for further regulation– byddem ni wedi'i gwneud yn glir i making powers, but at least we will unrhyw un sy'n debygol o weithredu have made it clear to anyone who is

yng Nghymru mewn dull gwahanol i'r hyn sy'n cael ei wneud ar hyn o bryd fod y math yna o weithredu gan gwmni yn mynd i gael ei gynnwys yn y Bil yma.

likely to operate in Wales by taking a different approach to what is done currently that that sort of operation by a company will be covered in this Bill.

[84] **Mark Drakeford:** Rydw i, wrth gwrs, yn fodlon meddwl am y pwynt yna. Ar hyn o bryd, y sefyllfa rydym ni wedi dod ati yw nad oes problem gyda ni fan hyn i'w datrys ond mae'n bosibl y bydd y broblem neu'r sefyllfa yn codi yn y dyfodol. Felly, rydym wedi cymryd pwerau i ddelio â'r sefyllfa, ond, achos nad oes galwad o gwbl ar hyn o bryd i'w wneud e yng Nghymru, nid ydym ni wedi ei roi e ar wyneb y Bil. Mae'r Bil yn ddigon cymhleth a hir fel y mae wrth ddelio â phroblemau yr ydym ni yn gwybod amdanynt.

Mark Drakeford: Of course, I am willing to think about that point. At present, the approach we've taken is that we don't have a problem here to resolve but it is possible that that problem or situation could arise in the future. So, we have taken powers to deal with that situation, but, because there's no call or demand for this to be done in Wales, we haven't put it on the face of the Bill. The Bill is sufficiently complex and long as it is in dealing with problems that we do know about.

[85] **Simon Thomas:** A ydych chi'n fodlon edrych ar hynny fel ffordd o ddangos i'r diwydiant yn gyffredinol, achos y ôl tystiolaeth rydym ni wedi ei derbyn fel pwyllgor yw bod hyn wedi digwydd mewn cyd-destun arall, ond nid yng Nghymru?

Simon Thomas: Would you be willing to look at that as a means of demonstrating to the industry in general, because the evidence that we've had in committee is that this has happened in another context, not in Wales?

[86] **Mark Drakeford:** Wrth gwrs.

Mark Drakeford: Of course.

[87] **Simon Thomas:** Roedd un o'r gweithredwyr yn dweud wrthym am gyd-destun lle'r oedd rheolwr oedd yn wahanol i'r gweithredwr, fel petai. Mae wedi codi yng nghyd-destun Cymru a Lloegr.

Simon Thomas: One of the operators referred to the context where a controller was different to the operator of the site, as it were. It has arisen in an England-and-Wales context.

[88] **Ms Cordingley:** What we do do at section 88, the same as the Scottish equivalent power, is we define what we mean by 'controller', and then there's

quite a detailed list of what regulations would include. So, it's not just a short, sharp power. There's quite a lot of detail there in terms of what we mean by a 'controller; and what those regulations could do. So, there is quite a lot there.

[89] **Simon Thomas:** But, anyway, I'm thankful that you'll have a look at that and see whether there's an issue that you can come back to us with. Nick Ramsay.

[90] **Nick Ramsay:** Diolch. The respondents to our consultation were divided over whether there should be a prescribed percentage of non-qualifying materials allowed in a mixed load. Is it your intention to set a prescribed percentage in regulations and, if so, at what level do you think it should be?

[91] **Mark Drakeford:** Well, I thank Nick Ramsay for a complicated question. That was—

13:45

[92] **Simon Thomas:** It's a simple question but with a very complicated inference.

[93] **Mark Drakeford:** Yes, a complicated intellect.

[94] **Nick Ramsay:** I didn't finish with, 'Should it be on the face of the Bill?' You will notice that I left that bit out.

[95] **Mark Drakeford:** In our consultation leading up to the Bill, just as you have heard finely balanced views on this question, it was very finely balanced in the evidence that we took as well. I think it's useful just to give a small overview for a moment. The power to prescribe a percentage comes in the context of six other requirements that are already there in the Bill that have to be satisfied in order for a load containing a mixture of both qualifying and non-qualifying material to be eligible for the lower rate. So, there is a comprehensive set of tests that have to be applied before you ever get to the question of whether you need a percentage to calibrate what is one of the six tests, because the 'small and incidental' test—. Remember, the percentage would only apply to the 'small' part of 'small and incidental', so it's a way of calibrating just half of one of the six tests that the Bill sets out. So, the 'small and incidental' test is one of a series of others. For example, requirement 3

is that the non-qualifying material cannot have been deliberately mixed with qualifying material for the purpose of disposal, and requirement 5 is a requirement that a mixture cannot contain any hazardous waste.

[96] Section 16(2) goes on to further define what is meant by 'small and incidental' by saying that it has got to be assessed in relation to both weight and volume. So, the test is further subdivided there. Now, some people you will have heard say that, by the time that comprehensive set of tests has been exhausted, there is no need to go on and then define what we mean by 'small' as a percentage.

[97] **Nick Ramsay:** So, you are left with such a small number of loads that—

[98] **Mark Drakeford:** Yes, because you have already answered the question that you started off with. Some people have argued, as you know, that the minute you set a percentage, the percentage becomes the minimum, not the maximum. But, if you say, 'You can have so much at this percentage,' every load will have—

[99] **Nick Ramsay:** Twenty per cent?

[100] **Mark Drakeford:** Well, if it were 20 per cent, everybody would have 19.9 per cent in it because that is what you would do if you were a commercial operator, wouldn't you?

[101] **Nick Ramsay:** Although, operators considering that would be restricted by that rule that you are not allowed to artificially mix, so they couldn't just try to bring—

[102] **Mark Drakeford:** Absolutely. All the other tests would have had to have been applied before you got to that point. I'm sorry to have probably confused rather than clarified things here.

[103] **Nick Ramsay:** I've forgotten my question now.

[104] **Mark Drakeford:** The question to go back to then, Nick, is that I don't have any immediate intention to trigger that power in the Bill that would allow a percentage to be identified to calibrate the 'small and incidental' test. It is there in case we find that the six tests that are there already, and their subdivisions, don't do the trick, and to see whether that will be helpful. The closely balanced nature of the argument would mean that, if we were to think

of doing it, we would only do it with a further, very careful, stakeholder consultation, weighing up—sorry, not ‘weighing up’—

[105] **Simon Thomas:** Measuring?

[106] **Mark Drakeford:** Yes, sorry—deciding whether or not the balance of arguments comes down in favour of using it.

[107] **Nick Ramsay:** So, you are by no means convinced that a threshold is helpful, necessarily, at this point.

[108] **Mark Drakeford:** Not at this point, and I don’t intend to use it. But, potentially, in the future—

[109] **Ms Tully:** Can I just build on that point, really? I just want to say that it is a futureproofing thing again. A few years ago, the industry was looking at the loss-on-ignition testing, and that has now come in for fines material. In the future, there could be new tests developed, and new technology, that would make having a new test and a percentage a sensible thing to do. So, that’s something in the future and in time to come. So, it’s there, as technology develops, to see how that technology develops and to futureproof, really.

[110] **Nick Ramsay:** You would have to consider, then, how the WRA would check the nature of the mixed loads.

[111] **Ms Tully:** Yes. There are lots of practical considerations that would need to be taken into account.

[112] **Nick Ramsay:** Okay, thanks. Like you, Cabinet Secretary, we’re all trying to come up to speed on the exact science of landfill disposal. I was going to ask you questions about tax on the face of the Bill but you answered a lot of those that earlier. The Bill contains the provision to define multiple rates of tax. Is this a regulation-making power that you’ll be likely to use in the future?

[113] **Mark Drakeford:** Chair, it’s been one of the things that I’ve enjoyed in following the evidence given to the committee, that a series of interesting ideas have come forward in that evidence as to how this power could be used in the future. I’m sure you’ll have heard the debate about asbestos, for example, as to whether or not there should be a specific tax rate for

asbestos given that, at the moment, it can only go to landfill. Should we be encouraging its safe disposal in that way by setting a tax rate that recognises that this is the only current safe way of doing it? Or, if you did provide that, would that discourage efforts to invent new and better ways of disposing of asbestos?

[114] At the moment, it's a power that we think of as potentially being there for the future. There would be practical issues we would have to work through with landfill operators because the IT systems that they have are designed to cope with the current way. We have two rates at the moment and this Bill proposes a third, unauthorised rate. If we were to go down the route of a more fine-tuned set of rates, they would face issues of updating their IT systems to cope with that. So, we want to do it with the sector. While I don't have immediate intentions in this area, reading the evidence that you've received has made me think that this may be a power that's got more potential in it than maybe I had realised starting off on this journey.

[115] **Nick Ramsay:** So, it's futureproofing.

[116] **Mark Drakeford:** It is futureproofing, but, as I said, the number of ideas that you've heard of that will have a policy purpose behind them makes me think that we will want to look at this a bit more actively than just having it in the back pocket.

[117] **Nick Ramsay:** Okay. Could you explain the rationale for including section 87, on the adjustment of contracts, in the Bill?

[118] **Mark Drakeford:** Chair, the effect of section 87 is to allow for the adjustment of a contract in order to take account of a change to the tax legislation that affects either the amount of tax chargeable or whether or not disposal is taxable at all. We do it for two reasons. First of all, this is what the current state of the law allows. The current law in England and Wales allows for this. The Scottish legislation replicated it for Scotland. So, we think it should be available to businesses in Wales as it's available elsewhere. The second reason is that the provision ensures that landfill site operators and contactors are not disadvantaged as a result of changes in tax that are not reflected in historical contracts.

[119] However, it's important to be clear that this is simply a facility that we are making available. If any party to a contract does not want this to be in play in the contract that they have, they can simply say that in their contract

and then section 87 wouldn't apply to them. So, this is not obligatory on anybody. It's a facility that the law currently allows and we want to see going on being available, but, if you don't want it, you don't have to have it.

[120] **Simon Thomas:** In which case, why have it at all on the face of the Bill? Isn't it down to the—. You're more or less saying that individual contracting parties can write their own contracts anyway and ignore this aspect. Therefore, why put on the face of the Bill a clause that allows them to take it into account? We've had evidence from the contractors—. Rates of VAT, for example, change all the time—well, not all the time; they change with some regularity—and every commercial contract takes that into account and says, 'Subject to the rates of VAT applicable at the time'. Therefore, you've got this subsection that allows you to opt out of it, and it kind of makes it irrelevant, really, that you should be having anything to do with contract law on the face of the Bill.

[121] **Mark Drakeford:** Well, I suppose—

[122] **Simon Thomas:** Are you replicating what's elsewhere? But do we really need it? That's what I'm asking, I suppose.

[123] **Mark Drakeford:** I think it is a facility that is useful to landfill operators, given the fact that this tax changes every year—even if it's only to go up in line with inflation, it changes every year. If you don't want to have to go back and redo your contract every year to take account of this, this section will allow that to happen automatically for you.

[124] **Simon Thomas:** It would be a very bad lawyer that drafted a contract that didn't take into account changes in taxation, wouldn't it? You'd have a very good case against them.

[125] **Mark Drakeford:** Emma will defend the legal profession.

[126] **Simon Thomas:** What could you have them under?

[127] **Ms Cordingley:** I think it is just a form of protection for people who haven't fully considered the consequences of the contract, but I suppose, as well as changes to tax rates, you could also have a change to exemptions and reliefs, which would affect whether or not something is taxable that wasn't at the time you entered into a contract. So, that's the rationale behind it.

[128] **Simon Thomas:** Would the earlier discussion we had around ‘small and incidental’—if you were to introduce percentages, which you have the powers to do under that, would that also be captured by this clause?

[129] **Ms Cordingley:** I suppose—. The amount—.

[130] **Simon Thomas:** Because we discussed earlier the concern that, if you had a percentage, then you’d have a filling up to a per cent, and, clearly, that could have an implication for contracts. So, you know—perhaps you’d want to give note, rather than, you know—

[131] **Ms Cordingley:** If it’s moving something from the standard rate to the lower rate, or from the lower rate to the standard rate, it could have that effect if the legislation is making the change. In fact, we’ve narrowed our adjustment of contract provision compared to the UK and Scotland, because, in theirs, they don’t say, ‘if a change has come about as a result of legislation, the contract can be adjusted’; they just say, ‘if a change has come about’. So, there could be something external going on there, and we didn’t think that that was the right approach, so we’ve narrowed ours to just where legislation causes a change to the contract.

[132] **Simon Thomas:** So, clearly, there are lots of facets in this legislation that could impact on a contract. There’s no doubt about that, but I—. Well, it’s a matter for debate, I suppose, but I do still wonder whether this isn’t covered by good commercial practice and whether it’s a matter for Welsh legislation. But you will persuade me, Cabinet Secretary.

[133] **Mark Drakeford:** Chair, I see the point exactly. I suppose, as we’ve said many times, a guiding principle of the legislation has been to provide continuity for operators, not to change the landscape in a way that causes them a lot of need to relearn a different landscape in Wales. This is a facility available now; it’s going to continue to be available elsewhere. If you’ve got a good lawyer, you may not need it, but, in that sense of wanting to offer operators some confidence that the system they’re familiar with now will continue to be available in Wales, we’re going to continue to make this available to them.

[134] **Simon Thomas:** Okay, we’ll move on. David Rees.

[135] **David Rees:** Diolch, Gadeirydd. Cabinet Secretary, first of all, I’d like to

thank you for your letter clarifying the position of opencast mining in relation to section 31 on the refilling of quarries. I'm assuming, therefore, there'll be some amendments to make sure that it's quite clear in the Bill that it applies to both. That's not a question; that's just an assumption, which I'm assuming you will answer at some point.

[136] **Mark Drakeford:** Yes, sure.

[137] **David Rees:** Can I go back to, perhaps, a more simplistic view? Can you give me a clear explanation as to why some exemptions in the current Bill have become reliefs in this Bill? What is the intention of changing exemption to relief? Considering that, from what I understand, they are both applied to a tax return form—. Ah, so, Deloitte are wrong, then. Okay—*[Inaudible.]* So, in that case, have you created a greater bureaucracy by putting more reliefs in than exemptions?

[138] **Mark Drakeford:** Well, Chair, I will have a go. I can't promise that I can offer the sort of clarity that was asked for, so others will help me here.

[139] I think the principle that we have taken is that if you know you would never wish to charge for something, then we provide an exemption, because that means you don't have to, you know, provide paperwork for it, you don't have to—. So, in pet cemeteries, we know we never want pet cemeteries to be captured by landfill legislation, so we give an exemption for that. We've given an exemption in the case where a temporary use has been made of material. So, it's come through the gates of the landfill site, it's been taxed, it's been used temporarily as a road, and then it's going to go into landfill. Now, you could—without an exemption, it could be taxed twice, because it's now been moved and put into landfill. That's not our intention; we give an exemption for that. You need never fill in a form and tell us about it and things, because it's an exemption.

[140] Reliefs are constructed when we think that we need to bring this within the scope of the tax. And my understanding is—Sarah will tell me if I've remembered this wrong—that we have simply taken the four reliefs that exist under the current legislation and rolled them forward into the legislation that we have here. We have not changed that part of the existing legislation.

14:00

[141] **David Rees:** So there were reliefs under the current legislation, but not exemptions.

[142] **Mark Drakeford:** Yes.

[143] **Ms Cordingley:** No, they are categorised as exemptions under the current legislation.

[144] **Mark Drakeford:** Ah, sorry.

[145] **Ms Cordingley:** They are treated in much the same way as our reliefs will be. So, they're all called exemptions under the existing legislation, but some just say, 'These things won't be taxable if' and some say, 'These things won't be taxable if you can satisfy HMRC of the following'. So, we've sort of divided those, basically, and said, 'These things just won't be within the scope of the tax, and won't be taxable disposals, so they'll be exemptions' and 'These things will be taxable, but you'll have to account for them on a tax return, and satisfy certain evidential requirements to claim them as a relief'. So, there's a clear distinction between what's expected of the taxpayer in each scenario.

[146] **Simon Thomas:** Could I just clarify something there? Are you saying that, under the current legislation, there are some things that are called exemptions, but that nevertheless arise to a liability to make a tax return? Albeit it's a nil tax return, there is still a tax return.

[147] **Ms Cordingley:** That's our understanding; that they would still be expected to submit a tax return saying that there was an exemption.

[148] **Simon Thomas:** So, although it's an exemption, you're still making a tax return, so you're not necessarily adding to the bureaucracy by terming them reliefs in this legislation. Is that your point?

[149] **Ms Cordingley:** Yes. I think what we're doing is trying to define quite clearly what we expect of the taxpayer in each circumstance. So, by calling them exemptions, they are outside of the scope of the taxpayer and we expect nothing, whereas with the others, we expect a tax return and certain criteria to be met.

[150] **David Rees:** So, you're clarifying, to an extent, the elements that you would expect more detail, more information and paperwork on, compared to

those where you wouldn't expect it, and you're making it quite distinct between the two.

[151] **Ms Cordingley:** It's worth noting that the exemptions appear in the part of the Bill that applies to unauthorised as well as authorised disposals. So, in theory, you could have an exemption that applies in an unauthorised context—though these two don't—whereas the reliefs only apply in that authorised context, because they're more like filing a tax return and producing evidence, which just couldn't happen in an unauthorised context.

[152] **David Rees:** Well, I noticed the exemptions in this Bill both say 'authorised landfill sites'—

[153] **Ms Cordingley:** Yes. Both of these only apply to authorised, but the power to create new exemptions could apply to unauthorised.

[154] **David Rees:** There's a possibility, therefore, to have new exemptions put into place through this Bill, and also to remove these. So, in other words, an exemption you've currently got, which you think could be there forever, could disappear.

[155] **Ms Cordingley:** It's exactly the same as the UK system, and we've taken the affirmative procedure, whereas I think they've only taken the affirmative procedure if they're making something taxable that isn't at the moment, but not the other way around. Whereas ours is affirmative for everything, whether we are amending, adding or removing.

[156] **Mark Drakeford:** Chair, there is a policy purpose behind it, which is that the things that we classify as reliefs and when a tax return will be needed in the future are areas where, in the past, there has been no real need to distinguish between the way things happen in Wales and the way things happen anywhere else. So, while I've been content to move these reliefs forward into our legislation, I think that a future Minister, and a future committee, would want to know more about the way these reliefs are practically being claimed on the ground in Wales, to make sure that they are being legitimately claimed. Now, at the moment, the data is pretty thin, because there's been no need to have it. Whereas, I can imagine, in two or three years' time, somebody in my position wanting to look at the data and say, 'Is this relief being used for the purpose that it was intended and is the level of not paying tax that's associated with it commensurate with the purpose that's being fulfilled here?' And, therefore, we might want to come

back, in a sense of modifying or amending—we'll be able to do that in the future. And, in order to get the data, you've got to have it as a relief, because that's the way the data—

[157] **Simon Thomas:** That does sort of lead to an inevitable question, which has to be asked: do you have suspicions, therefore, in this area? You may not have evidence, but do you have suspicions?

[158] **Mark Drakeford:** No, no. Well, look, over a quarter of all waste into landfill is currently exempt from taxation. And that seems a very high figure to me. Maybe it's entirely legitimate, but I think the level is such that it's a question that you would want to ask, and you'd want to collect the evidence, and you'd want, in a responsible way, to be confident that the reliefs that you are providing are being properly applied. And I think the Bill is constructed in a way that will allow a sharper insight into that in the future.

[159] **Simon Thomas:** So, you have two policy intentions, in effect, therefore, in delineating reliefs and exemptions. The one policy intention is, as you said, that exemptions are ones that you will never touch, and that's a clear reason for having an exemption versus a relief. But the second policy intention, if I can put words in your mouth, to a certain extent, is that you are not convinced at the moment that the operation of this tax is fully taking into account its overall purpose of reducing landfill, and therefore, you'd like to have a look at this.

[160] **Mark Drakeford:** I probably wouldn't put it exactly that way, Chair. I would have said that the policy purpose behind identifying some of these circumstances as reliefs is to make sure that we have a stronger set of insights into the way that those reliefs are being operated and claimed in the future, so that this Assembly can have oversight over any proposed changes to reliefs that a Government might want to bring forward in future. So, if I was sitting here, you'd be saying to me, 'Well, what evidence do you have?' I am saying to you today that, actually, because of the way the system has been, we don't have enough, but in a few years' time, that would be a question that someone would be better able to answer.

[161] **Simon Thomas:** Thank you. That is a very clear explanation of why you've done it.

[162] **David Rees:** Thank you for that. I will go on now to some of the reliefs. The mining and quarrying materials relief—the local authority recycling

advisory committee highlighted the fact that 8 per cent of household waste goes to landfill, and 20 per cent is quarry—again, you’re shaking your head, so you’re going to challenge those figures. That’s fine; you can tell us in a minute. So, can you just clarify as to what consideration is given to the environmental implications of that decision? Because the policy driver for the provision of landfill tax is working, as we’ve heard. So, is there possibly a consequence of this application?

[163] **Mark Drakeford:** Thank you, Chair. You can see that people who know more about the detail of it than I do were very puzzled when the committee were provided with that figure. And, as a result, Sarah and her colleagues have been back to the data and back to NRW to see what we think the actual figure is. And our understanding, having gone back to look at the data, is that, actually, quarrying and mining waste makes up less than 1 per cent of total waste going to landfill, and there may just have been a confusion over categorisation here. They may just have spotted a different figure relating to something else.

[164] **David Rees:** Is it possible, therefore—I understand that categorisation you just mentioned—that the Bill doesn’t make that classification clear enough?

[165] **Mark Drakeford:** We think the Bill is clear, and that the Bill is clear about what this relief is intended to cover, because the relief only covers natural material extracted as a by-product of mining or quarrying, and that is returned to the earth without being used or chemically altered in any way. So, this is material that must be a necessary by-product of extracting natural materials from the ground, and it is simply being returned to the ground without having been used or processed. So, we think that is clear.

[166] **Simon Thomas:** That includes in situ on a quarry, for example.

[167] **Mark Drakeford:** Yes.

[168] **Simon Thomas:** Some of this confusion might be around what’s waste in situ and what’s going to landfill, which are two separate things.

[169] **Mark Drakeford:** They are.

[170] **Ms Cordingley:** It would only apply to the waste in situ at the quarry if that was a subject to a landfill disposals permit, because otherwise it’s

outside the scope of the tax.

[171] **Simon Thomas:** That might be where this confusion comes from.

[172] **David Rees:** Okay. That's very helpful. Could I also go back to the Bill again? Because I've noticed that section 26 talks about material removed from a bed of a river, sea or other water. I understand the implications here, but, actually, it says, and it says quite clearly, that material is within this subsection if it was removed from the bed of a river in the interests of navigation. Now, I obviously have a deep-water harbour in my area and I understand the dredging and navigation—I fully understand that—but I also see them remove material from the river beds that has gathered. It's not because of navigation purposes—I understand navigation—it's because of flood risk purposes. This clearly does not give us an exemption for that type of situation. Is that actually, therefore, intentional or is it something you need to look at, because the removal of material from riverbeds is sometimes for purposes to ensure the safety of the public?

[173] **Mark Drakeford:** Well, Sarah will—. I've seen a note, which I think I understand, but just to make sure that the committee is getting the most definitive answer to the question, I'll ask Sarah just to talk you through it.

[174] **Ms Tully:** So, again here we've carried over the same sort of relief as existing in the UK legislation at the moment. In this scenario, you're quite right to point to the navigation rule—that is why the relief is there—but where material is removed, the secondary benefit of that that we'd welcome is to minimise that risk of flooding. So, you do get that as a secondary benefit.

[175] **David Rees:** I understand it's a secondary benefit, but this Bill doesn't seem to give them tax relief in it.

[176] **Mark Drakeford:** If it was a primary benefit to—. I'm sorry, if you don't mind, Chair, just so that I can check—.

[177] **Simon Thomas:** I think the question is: is it your intention, although the Bill doesn't seem to at the moment, to give tax relief for the primary reason of removal for flood relief?

[178] **Mark Drakeford:** I think the answer to that question is: as currently constructed, it is if as a secondary benefit of removal of debris for navigation

purposes, you get flood protection benefits. As currently constructed, there is no relief if the primary purpose of the activity is flood prevention. I'm very willing to take that away and discuss it to see why that should be the case.

[179] **Simon Thomas:** Because there may be public interest in allowing such relief, might there not?

[180] **David Rees:** Particularly as navigation in certain areas might be only that there's a canoe going down the river somewhere.

[181] **Mark Drakeford:** I'm very happy to explore why.

[182] **David Rees:** I think it would be helpful. Can I also perhaps clarify something on the pet cemeteries, because in paragraph 11 it says 'dead domestic pet'? Do you have an example of a dead non-domestic pet? It's legal situations—. Are you opening yourself up for legal challenges?

[183] **Ms Cordingley:** Again, this is taken from the—

[184] **David Rees:** Never mind where it's taken from. Let me ask the question: do you have a definition—

[185] **Simon Thomas:** The word 'domestic' is not in Welsh—'*anifail anwes*'.

[186] **Mark Drakeford:** We'll look and see, Chair. The reason for saying that it's taken from the current legislation is because that gives us confidence that this has not been an issue, because had it been an issue there would have been 20 years' worth of experience and more in which the problem could have emerged.

[187] **David Rees:** I don't expect there to be, Cabinet Secretary, but just in case.

[188] **Mark Drakeford:** No, I think—. We're very happy to look at that.

[189] **Simon Thomas:** We want to avoid any political dead cats in the Bill. Mike Hedges.

[190] **Mike Hedges:** Coming back to the point that David Rees was making, the river Tawe is not navigable above Liberty Stadium, but a lot of debris is removed from there and has to be disposed of. Can I just ask you if you

could go back and look at removal for the purpose of dealing with the avoidance of flooding, because a lot has been taken out in the past and I'm sure more will be taken out in the future in order to do that? Can I just ask you to go away and look at it?

[191] **Mark Drakeford:** Of course. As I said, Chair, I'm very happy to look at it to see what the public purpose would be of providing the relief in those circumstances.

[192] **Simon Thomas:** Grateful for that, and we look forward to that coming back. Mark Reckless.

[193] **Mark Reckless:** Cabinet Secretary, in explaining your proposed shift from exemptions to reliefs, you said that any responsible finance Minister would want to move in this way. I just wondered in light of that why you thought the UK Treasury hadn't done anything in this area.

[194] **Mark Drakeford:** Luckily, I'm not answerable for the UK Treasury. I think the point I was making is that there's no disaggregated data. I'm not claiming that the UK Treasury has not been taking any interest in it, but they've not had to take an interest in it in the sense of what happens specifically in Wales. That's what this Bill will frame in the future, and that's why I want to make sure that there is sufficient data available on a Wales-specific basis to make sensible decisions in the future.

[195] **Mark Reckless:** I understand that, to claim relief, that's going to have to be done from a tax return. I wasn't quite sure, though, whether I heard your lawyer, Emma, say that exemptions also, at least in some circumstances, had to be claimed through a tax return.

[196] **Ms Cordingley:** No, they don't. They're just not a taxable disposal.

[197] **Mark Reckless:** Yes, that was my understanding. Thank you for clarifying that. Could I ask you, Minister, what the rationale is for the penalty if people fail to apply a water tax discount? Why do you want to penalise that?

14:15

[198] **Mark Drakeford:** The reason we would want to penalise it, Chair, is that the water discount, we know, is an area that has been open to abuse in

the past, so, in order to be able to claim the discount, you will need to have had an agreement to it. There will be a document that sets out the extent to which you are able to claim a discount for that relief, and we just want to be clear that if that agreement is not sustained, if people try to claim relief beyond what the agreement would allow them to, there will be a penalty for doing so.

[199] **Mark Reckless:** I understand that, but why would you want to penalise someone for not claiming the discount to the full extent that the agreement allowed?

[200] **Mark Drakeford:** Well, I thank Mark Reckless for raising that issue, and I know it's been pursued in earlier discussions in front of the committee. It's not our intention to apply a penalty where an honest customer declares to the landfill site operator that there is less water content in the waste than stated in their water discount agreement. I am happy to say to the committee today that, having looked at the discussions you've already had, I'm willing to consider whether any amendment or other steps should be taken to clarify the position and put beyond any doubt the fact that we don't intend a penalty to apply in the circumstances that have just been identified.

[201] **Mark Reckless:** Good. Thank you. We look forward to seeing that and, potentially, discussing it further at Stage 2. Could I ask on section 20(1),

[202] 'The operator of an authorised landfill site must determine the weight of the material in a taxable disposal before the disposal is made',

[203] the equivalent legislation in Scotland says,

[204] 'at the time of the disposal',

[205] do you have any reason for that differentiation?

[206] **Mark Drakeford:** Our formulation just reflects our view of what normal practice is in the field, and the normal practice is that material, on entering the landfill site, is weighed on a weighbridge prior to it being taken to the void where the taxable disposal is made. Our form of words is designed to reflect that prevailing practice.

[207] **Mark Reckless:** I think that the committee's understanding, at least from our evidence this morning, may be different. When we went past the

weighbridge, we were informed that the usual practice was that a lorry coming into the site laden with rubbish for disposal would be weighed before the disposal, on the way in, and then weighed again, at least following disposal from the lorry of that rubbish, and we would only, therefore, know the weight of the rubbish disposed of once the lorry had come out un-laden and been weighed again. I just wonder if that may cause difficulties through the switch from what they have in Scotland, at least, to what we're proposing in Wales.

[208] **Mark Drakeford:** Chair, I'm aware that, in some sites, some vehicles may be weighed on the way in and on the way out so that the weight of the vehicle is excluded from the calculation of a taxable disposal. I'm willing to ask officials to look at that issue and to see whether or not we need to respond to it in the way that we are currently intending to.

[209] **Simon Thomas:** Certainly, the committee's understanding from this morning's meeting was that you wouldn't know what the taxable disposal was until the lorry was weighed when it left the site, and, therefore, the legislation needs to—

[210] **Mark Drakeford:** Happy to look at that issue to see—

[211] **Ms Cordingley:** I think it's fair to say the material is being weighed before the disposal is made, but perhaps not that the weight has been determined—

[212] **Simon Thomas:** Yes, that's true. It is being weighed, but it's being weighed with a lorry. [*Laughter.*]

[213] **Ms Cordingley:** So, I think that's something—

[214] **Simon Thomas:** Presumably, they're not disposing of the lorry. [*Laughter.*]

[215] **Mark Reckless:** [*Inaudible.*]—phrase, important in legislation, is 'determine the weight' and that's why I raised the concern.

[216] **Mark Drakeford:** We're happy to look at that.

[217] **Mark Reckless:** Can I also ask you just why in the Bill we don't stipulate that a landfill site must use a weighbridge? How, otherwise, might

they determine the weight, or is that just a—

[218] **Mark Drakeford:** I think there are two reasons why we don't have an absolutist position in relation to the weighbridge. Our understanding is that there is a very small number of very small sites in Wales that have only a very limited number of disposals where the provision of a weighbridge would simply, in cost terms, be beyond the capacity of the provider and where it's possible to agree a different way of determining the waste that's being disposed of. Secondly, it's there because weighbridges break down and when they do break down, you need to have some alternative way of coping with that.

[219] We've been a bit influenced by the experience in Scotland, if I remember this correctly, where they started off with a more categorical position where a weighbridge had to be used, and have found loads of waste being taken many miles away to another site in order to be weighed, in order to comply with this part of the law, causing a lot of aggravation in the process. So, we think it's a pragmatic way of addressing a minority set of circumstances, where a weighbridge isn't available. Different approaches: you can calculate based on the minimum permitted weight of a container, or you can calculate on the basis of the maximum cubic capacity of a vehicle and converting that into tonnes.

[220] Chair, I just want to emphasise that the way the Bill is constructed is that, if you're not using a weighbridge, you have to have the agreement of the WRA to that alternative, and that alternative can be carefully caveated. It can be for a time-limited period, so if a weighbridge breaks down, you don't get an unending ability to do something else, you could have an agreement for two days while it's being fixed, and after the two days the permission to use an alternative would lapse. You could have it limited to certain sorts of material, for example. So, it's not a blunt power. It's quite a carefully crafted power here to allow for alternatives in very limited circumstances. The default position is that a weighbridge will be expected.

[221] **Simon Thomas:** Can I just bring in Mike Hedges on this point?

[222] **Mike Hedges:** As I said, we visited Lamby Way this morning; theirs went down for two weeks when a contractor damaged the electrical supply. I don't think anybody would want no waste being disposed of in Cardiff for two weeks, so I think that's a reasonable position when a weighbridge is broken down. I don't know whether you're looking to put in regulation or

somewhere else a definition of how small a site has to be to be allowed to not use a weighbridge, because it's not in the interests of the person collecting the tax, perhaps, sometimes, to have a weighbridge, but it's certainly in the interests of the taxpayer for there to be a weighbridge. So, I would ask if you'd think about a regulation that says that if a site is so small that it can't afford a weighbridge, then it's that small that it can't have too many people visiting it either.

[223] **Mark Drakeford:** Well, Chair, I understand the points being made, and I'll make sure that we discuss that further. I suspect, Mike, that it is a self-solving problem. Given that we're going to go from 25 to 10 landfill sites in the next few years, the ones that will not be surviving that process will be the ones that you're concerned about.

[224] **Mark Reckless:** Cabinet Secretary, when we had a range of witnesses in, I asked several of them about the size of two penalties set out in the Bill: first, £300 for not registering with the Welsh Revenue Authority, and £5,000 for failing to comply with a non-disposal area on a site. There is a range of these, but at least some witnesses felt that that £300 was, potentially, insufficient, and a number of witnesses felt that that £5,000 penalty was a bit on the steep side. What would be your response to that?

[225] **Mark Drakeford:** Thank you. Well, on the first, the £300 for failing to register, I read what I think the NRW said to you on that, Chair, which is that landfill sites do not spring up out of nowhere. The process of getting a landfill site registered, approved and ready to operate is an onerous one, and the idea that, at the end of it, you would fail to register is a pretty remote contingency. We put a penalty in because if you did fail to register, it's right that there should be a penalty. And it's not just £300, because it goes up by £60 a day after that as well, and it's allied to other powers in the Tax Collection and Management (Wales) Act 2016 that would add to that penalty as well. But, in practice, it's very hard to imagine how any company that has gone to all the efforts it would have to make in order to establish a new landfill site would, at the very end of all of that, forget that it had to be registered as well. So, we think it's a proportionate power there.

[226] The £5,000 penalty: I think the point I would make there is just to be clear that it's an 'up to' penalty. It isn't that you'll be guaranteed to be penalised £5,000 for a breach that would be caught up by it. It allows the Welsh Revenue Authority quite a lot of latitude to calibrate the penalty to the nature of the offence. It allows the WRA, for example, to impose no penalty

at all if the landfill site operator were able to provide a different sort of evidence than the one that the WRA was originally looking for in terms of records, for example. So, this is an area of the Bill where we are actually proposing a less draconian penalty than the one that currently operates, because the current penalty is, if you get this wrong, everything becomes taxable, and that's even if it's quite a small breach of something. The result is that that penalty is almost never used, because it is so disproportionate that it's practically not practical to use it, really. So, what we've tried to do is to find a different way that allows the WRA to have a better handle on what is going on on the landfill site, and, if there are breaches, to be able to impose a penalty that is commensurate with the nature of the breach, and £5,000 is the top end of it. Because it's new, we will need to keep it under careful review to see that it is working out in the way that is intended, and the Bill allows for that to happen.

[227] **Mark Reckless:** Cabinet Secretary, I wasn't quite sure if I heard one reference to Natural Resources Wales at any point in what you said. Can I just confirm that the up to £5,000 penalty—is that a matter for the WRA to determine?

[228] **Mark Drakeford:** Yes. My reference to NRW was just the evidence that they'd given to you about the processes that would need to be gone through in order for a new landfill site to be established. I think they said to you that, given what someone would have to do, the idea that the registration at the end would be something that they would forget to do would be maybe unlikely.

[229] **Mark Reckless:** Understood. Thank you.

[230] **Simon Thomas:** A gaf i droi at ran o'r Bil sydd wedi cael—wel, yr unig rhan a gafodd—cyhoedduswydd yn fwy eang, sef y bwriad yn y Bil i ymwneud â gwarediadau sydd heb eu hawdurdodi, sef tipio anghyfreithlon mewn geiriau pob dydd, a'r ffordd rŷch chi wedi ymwneud â hynny yn y Bil. Mae tipyn o dystiolaeth fan hyn wedi bod, a dweud y gwir, gan dystion sydd yn croesawu'r ffaith bod

Simon Thomas: May I turn to a part of the Bill—or the only part—that received publicity more broadly, which was the intention in the Bill to deal with unauthorised disposals, or fly-tipping in everyday language, and the way that you have dealt with that in the Bill. There's been quite a bit of evidence here from witnesses who welcome the fact that these powers are in the Bill, but who question whether sufficient resources are in

y pwerau yma yn y Bil, ond sydd yn gofyn y cwestiwn a oes digon o adnoddau i blismona ac i sicrhau bod y fath o warediadau yn cael eu canfod yn y lle cyntaf. Felly, y pwyntiau cyffredinol sydd wedi cael eu gwneud yw, 'Wel, iawn, mae'n dda bod yna fwy o bwerau, ond mae'n rhaid i chi ddal y bobl hyn yn y lle cyntaf, a dyna ble mae diffyg adnoddau.' A ydych chi'n cyd-fynd â'r dehongliad yna, ac ydych chi felly o'r farn bod y pwerau yma yn mynd i gael eu defnyddio yn helaeth iawn i ymatal a mynd i'r afael â thipio anghyfreithlon?

[231] **Mark Drakeford:** Wel, rydw i'n gweld y pwynt mae pobl yn ei wneud, wrth gwrs. Rydw i'n meddwl bod dau ateb i'w cael i'r pwynt. Yr un gyntaf yw: rŷm ni wedi paratoi y Bil, ac rŷm ni wedi rhoi'r ffigurau i fewn i'r RIA, ac yn y blaen, i gynnwys y gwaith bydd y WRA—a thrwy yr WRA, NRW, ac awdurdodau lleol hefyd—i gynnwys y pwerau newydd sydd gyda nhw yma. So, rŷm ni wedi paratoi am y ffaith bydd mwy o waith i'w wneud.

place to police and to ensure that these kinds of disposals are discovered first of all. So, there's just this general point that's been made: 'Well fine, it's good that there are greater powers, but you have to catch these people in the first place, and that is where there's a lack of resource.' Do you agree with that interpretation, or is it your view that these powers will be used very broadly to prevent and to tackle illegal disposal of waste?

Mark Drakeford: Well, I see the point that people are making, of course. I think there are two answers available to this point. The first is that we've prepared the Bill, and we have put the figures into the RIA, and so forth, to include the work the WRA—and through the WRA, NRW and local authorities as well—to include the new powers that they have. So, we have prepared for the fact that there will be more work to do.

[232] During the passage of the Bill so far, Chair, I've also indicated a willingness to discuss with local authorities and NRW a—I was going to say 'profit sharing', but that wasn't what I meant. But if, as a result of these new powers, a greater tax income is generated as a result of their efforts, then I'm willing to discuss with them a way in which those benefits could be shared with them in order to incentivise them and to allow them to do more in that field. So, I think there are two different ways there in which we can support the work that would be required.

[233] **Simon Thomas:** It's a bit 'chicken and egg', that. I understand the principle that you're setting out, but are there sufficient resources, I think, is the question.

14:30

[234] The other issue that's arisen is how you would actually be sure about who is responsible for this unauthorised disposal. Because landowners, in particular, might be very concerned that they have an unauthorised disposal on their land for which they don't necessarily have any information or knowledge about. We all know and have heard of cases like this in our own areas. So, are you clear that you really can identify, particularly in the case of landowners, who is the person who has—as you say—knowingly caused or permitted a disposal to be made? Because it does seem to, on the face of it, capture people who may be innocent or haven't made sufficient provision not to stop access to their land.

[235] **Mark Drakeford:** Well, I understand that point very much. I have been very keen that we construct the Bill in a way that allows the WRA to pursue people who are knowingly implicated in these unauthorised disposals, but provides adequate defences for people who are themselves victims of this sort of activity. So, as Members will be aware, the Bill proceeds on the basis of a rebuttable presumption. I was pleased to see that the UK Environmental Law Association said to you that they thought that the Bill struck a pragmatic solution to the tensions that there are in this area. I think it's important to be clear that the WRA would have to discharge a series of obligations itself in deciding whether or not to issue a charging notice that relies on the rebuttable presumptions, and that the WRA's actions would be challengeable, both by asking it to review its own decision making and on an appeal to the tribunal. We go further than that, however, by setting out in the information that we have provided a series of ways in which the rebuttable presumption could be rebutted. I think that should provide people who are anxious that they could be penalised through no fault of their own some comfort that we recognise that there will be things that they will be able to demonstrate to show that they were in that position. So, for example, if you can show that you've taken reasonable precautions to prevent waste from being dumped on your land—so, that you've kept your fencing in good order, for example—that will be a way that you could show that you've taken action not to be captured by this; that you've taken reasonable efforts to have the waste removed; that you've contacted a registered waste carrier, and you've acted responsibly in that way; that you've actively assisted in any potential environmental action against the offenders; that you've contacted the police; that you've let NRW know that the waste was there. If you can show that it would not have been reasonable for you to have had knowledge that the

waste was disposed—what if it was, in the circumstances that Emma, I think, described earlier, that it'd been concealed by being dumped in a part of your land where you wouldn't normally be expected to go, or wouldn't have been able to spot it if you had, or if you were ill, incapacitated or otherwise absent? So, we set all those things out in the documentation. I think it's there to demonstrate to people who have the anxiety that you expressed that we understand the anxiety and that we want to be helpful to people who have a proper explanation that they have themselves been victims of illegal waste disposal rather than conniving in it, that they will be able to demonstrate that. If you can't demonstrate it, then you will have to answer to the WRA, or to the tribunal, under the anxiety that you've been caught up in doing something that you shouldn't be doing.

[236] **Simon Thomas:** Pwy, yn ymarferol, a fydd yn penderfynu bod angen mynd i'r afael â sbwriel o'r fath yma, gan ddefnyddio'r rhan yma o'r Bil, sef gwarediadau heb eu hawdurdodi, wrth gymharu â'r *fly-tipping*, os liciwch chi, arferol, lle mae yna rywun jest yn taflu'r bag sbwriel a oedd heb gael ei gasglu, am ryw reswm, o'r tu fas i'r tŷ? Mae'n amlwg nad yw'r Bil yn ceisio mynd i'r afael â'r fath yna o gael gwared ar sbwriel fel yna, ond mae'r ffin braidd yn annelwig rhwng y *fridge* i lawr y lôn a'r *cowboy builder* yn cael gwared ar gegin. Pwy sydd yn penderfynu, yn ymarferol?

Simon Thomas: Practically speaking, who will be responsible for deciding that there is a need to address waste of this type, using this part of the Bill, which is in relation to unauthorised disposals, compared with fly-tipping as we normally find it, where someone just chucks a black bag that hadn't been collected, for some reason, outside their house? It's obvious that the Bill isn't seeking to tackle that kind of waste disposal, but it's quite difficult to say where you draw the line between a fridge at the end of the road or a cowboy builder getting rid of the kitchen that they're working on. Who decides, practically speaking?

[237] **Mark Drakeford:** Wel, yn gyfreithiol, bydd y penderfyniad gyda'r WRA. Maen nhw'n gallu gwneud y gwaith trwy NRW; dyna'r bwriad. Ond, yn y diwedd, ac yn gyfreithiol, bydd y penderfyniad gyda'r WRA.

Mark Drakeford: Well, legally, it will be a decision for the WRA. They can do the work through the NRW; that's the intention. But, ultimately, and legally, the decision will rest with the WRA.

[238] **Simon Thomas:** Achos, yn

Simon Thomas: Because, in legal

gyfreithiol, o dan y Bil, mae hyd yn oed y *fridge* ar ben y lôn yn cael ei gynnwys yn y Bil, onid yw e?

terms, under the Bill, even a fridge at the end of the road is included in the Bill, isn't it?

[239] **Mark Drakeford:** Ydy. Nid oes diffiniad o *fly-tipping* yn y Bil. So, mae'n agored i'r WRA i fynd ar ôl y soffa ar waelod y lawnt, ac yn y blaen. Nid ydym ni'n meddwl bydd hynny'n rhywbeth bydd y WRA eisiau ei wneud, ond mae rhywbeth yn y canol fan hyn, ble maen nhw'n gallu gweld rhywun yn gwneud pethau fel hyn

Mark Drakeford: Yes. There's no definition of fly-tipping in the Bill. So, it's open to the WRA to pursue the sofa at the bottom of somebody's lawn and so forth. We don't believe that that will be something that the WRA will want to do, but there's a middle point here where they can see somebody doing these things

[240] in an organised, systematic fashion, where that would be of interest to the WRA. So, at one end you've got the illegal waste sites, 60 of them in Wales, with 55,000 tonnes worth of illegal waste; that is definitely, we imagine, within the purview of WRA. At the other end of the spectrum, the individual who's left their fridge out and not organised for it to be collected; we don't expect that to be of interest to the WRA. But there is that middle ground of a person who persistently, in an intentional and organised way, does—not on a large scale, but when you've added it all up together—something significant. That is something where the WRA, we imagine, would have a definite interest.

[241] **Simon Thomas:** Ocê. A'r pwynt olaf, jest ar hwn: mae'r cyfrifoldeb yna, os liciwch chi—yr atebolrwydd am y fath yna o warediadau—yn parhau am 20 mlynedd o dan y Bil yma. Felly, mae modd mynd at safle neu rhyw fath o ddefnydd o dipio sbwriel 20 mlynedd ar ôl y digwyddiad a cheisio mynd am gosbau a'r dreth ar hynny. Ond os ych chi'n rhoi, ac os yw'r WRA yn rhoi, hysbyseb rhagarweiniol ar y fath yna o warediadau, hyd at 20 mlynedd ar ôl iddo fe ddigwydd, dim ond 75 diwrnod sydd gan berson wedyn i

Simon Thomas: Okay. And the final point on this: the responsibility—or the accountability, if you prefer—about that kind of disposal remains for 20 years under this Bill. So, it's possible to go to a site or some sort of tip for waste up to 20 years after the event and then to seek some sort of penalties or taxation on that. But if you, or if the WRA, issue a preliminary notice in relation to that kind of disposal, up to 20 years after it happens, there are only 75 days to respond to and to appeal, if you like, against that. So, it does appear to be

ymateb ac i, os liciwch chi, apelio, a bit strange that you have this
mewn ffordd, yn erbyn hynny. Mae'n period of up to 20 years to decide
edrych bach yn rhyfedd bod gyda chi that something has been
hyd at 20 mlynedd i benderfynu bod unauthorised, but only 75 days to
yna rywbeth heb ei awdurdodi, ond seek to find the records or whatever
mae dim ond 75 diwrnod i geisio dod to prove your case, as it were.
o hyd i'r cofnodion neu beth bynnag i
brofi'r holl bethau eraill rŷm ni wedi
bod yn eu trafod.

[242] **Mark Drakeford:** I don't think it's entirely comparing like with like. You didn't imply it was, I know. It's important to be clear that the time afforded to the WRA for bringing a claim is not something that allows it 20 years to investigate an incident. The WRA will be subject to a limit of four years from the point of becoming aware of a disposal to issuing a notice. It's simply that it allows it to return to material that it wasn't aware of over a 20-year period.

[243] As far as the 75 days is concerned, I think it's important to distinguish between a preliminary notice and the charging notice, because they sometimes are conflated in the way that people talk about it. The preliminary notice is about the WRA gathering facts and deciding whether or not to issue a charging notice, so they have time to do that. When they've decided whether or not to go ahead, they then have a separate charging notice, which is a request for tax where the WRA has formed the view that there is a liability to tax. The WRA can issue, too, an extension period if they think that a person needs more time to respond to a preliminary notice, and there are other safeguards then, of the sort I've described already, in terms of asking the WRA to examine its own course of action, then to challenge its course of action in front of a tribunal if the person concerned thinks that they would need to do that. So, I don't think that—. The things are there for different purposes; they're not to be compared in the sense of one's reasonable and one's unreasonable, and the 75 days is mitigated in a number of ways that I've just described.

[244] **Simon Thomas:** Okay. I don't know, Mr Reckless, do you have any more questions or are you content now?

[245] **Mark Reckless:** I just wondered about whether there's a requirement for delegation of criminal powers from the WRA to NRW.

[246] **Mark Drakeford:** Well, thank you, because that's an important question

to set out in front of the committee. At the moment, there are no criminal powers available to the WRA. The Tax Collection and Management (Wales) Act allows for Ministers to bring proposals in front of the Assembly to provide the WRA with those powers, and I do intend to bring some proposals forward through a consultation exercise later this year. I'm by no means decided in my own mind as to whether or not we would want to go ahead with that, because I think it's a serious matter providing criminal powers to any organisation and I want to consult on it properly, and I want to see what the weight of opinion is about that. If the WRA, through regulations that the Assembly would then have to approve and so on, does acquire criminal powers of investigation, there would also need to be regulations to allow the WRA to hand those powers on to any other organisation, and I would have to bring those in front of the Assembly as well. At that point, it would be for the WRA to set out the extent of any delegation they propose to make, and they could delegate those powers onwards to NRW. I hope I've described accurately the position we're in and the safeguards, the checks and balances that there would be, and the oversight there would be for the legislature in agreeing the rulebook that would apply if such powers were to be acquired in the first place, and whether they would be allowed to be delegated in the second place.

[247] **Mark Reckless:** So, given the conditionals, there are no proposals to update the RIA to reflect that at this point.

[248] **Mark Drakeford:** Well, Chair, I will bring forward an updated RIA at the end of Stage 2 and of Stage 3 of this Bill, in the way that Standing Orders require. Because I'm not at the point where I know that I will be bringing forward regulations to allow the WRA to have criminal powers, that won't form part of that RIA, but if I were to decide to put in front of the Assembly regulations to give the WRA those powers, there would have to be a separate RIA provided alongside those regulations. So, there will definitely be an RIA if we ever reach that point, but I'm just trying to be clear with the committee that I'm not anticipating yet that we would be at that point, because it will genuinely need to reflect the weight of opinion that the consultation exercise would reveal.

[249] **Mark Reckless:** And beyond what you've said, and what you've said in previous sessions, do you have anything to add in terms of the set-up and switch-up of costs? Have you given all the information? Or is it in a state that you're able to share, as yet?

[250] **Mark Drakeford:** I've got not further costs information to add. The costs for switch-off from HMRC and what will follow from that are bound up in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill as well as this one. I've given an undertaking to the committee that I would provide an update with information on LTTA as it proceeds through the committee. I'm still intending to do that. Maybe slightly artificially, in the Scottish context HMRC did not charge for turning off LDT arrangements because they were all paper based. They don't do it electronically, so there was nothing to switch off, in that sense, but they still charged them £1 million for LTTA and it's a single figure, even though they sort of distinguish between the two taxes in charging that figure.

[251] **Mark Reckless:** Will this be a matter for you to deploy your negotiating skills to the extent that we saw in the fiscal framework?

[252] **Mark Drakeford:** Thank you. Well, it will be in negotiation with HMRC as to how much they will charge us in the Welsh context, and how much we will then not have to pay them in the future, because of course we pay them for the service now. We will not be paying for the service in the future. So, there is a sort of payback as well as a cost, and we will be negotiating on them both.

[253] **Simon Thomas:** Just to be clear: is it you who does that? Or would it be the new WRA?

[254] **Mark Drakeford:** It will be the WRA, I believe. You're asking me and I'm giving you my immediate answer, Chair, but that was my understanding: it will be for them to do it rather than me.

[255] **Simon Thomas:** Yes. Inform us if it's different. Just one final point on that: I accept what you're saying about how you haven't made a decision on criminal powers and therefore haven't had the consultation and so forth, but it does seem a little awkward and a little strange to be introducing criminal powers to an organisation in Wales by means of regulations, albeit that the regulations are affirmative. That would usually be something you'd see in primary legislation, wouldn't it?

14:45

[256] **Mark Drakeford:** Well, that may be the case, Chair, but all of that is laid to bed by the National Assembly in the TCMA, because that's not a

matter for this Bill. The Assembly's already resolved that.

[257] **Simon Thomas:** But the Assembly hadn't resolved to give criminal powers in that Bill.

[258] **Mark Drakeford:** But it's through that Bill that the regulation-making powers will be brought forward.

[259] **Simon Thomas:** Yes, I see the point you're making. So, you'll be bringing them forward anyway.

[260] **Mark Drakeford:** Yes, under that Bill—under that Act, rather.

[261] **Simon Thomas:** Which we're already amending in these two Bills going forward. Well, the previous Bill, which is general avoidance, is already amending some—

[262] **Mark Drakeford:** And the GAAR will apply to this tax. So, even if we didn't have criminal powers—

[263] **Simon Thomas:** You'd still have the general avoidance.

[264] **Mark Drakeford:** —we'd still have civil powers and we would still have the GAAR.

[265] **Simon Thomas:** Mike Hedges.

[266] **Mike Hedges:** I've a couple of questions on the communities scheme. Afonydd Cymru, in their written evidence, explained that there are river trusts working on cross-border projects. Do you think cross-border projects are adequately covered in the Welsh Government's landfill disposals tax communities scheme? Really what I'm asking is this: if a river cuts in and out of Wales like roads often do, will you fund it only up until we hit the border or will you stick to the five-mile limit?

[267] **Mark Drakeford:** Well, Chair, I hope that we will be able to design the scheme in a way that allows for some common sense at borders: both the five-mile limit inside Wales and in relation to cross-border activity. The map that you will have seen—I think it's on page 11 of the document that we shared with you—shows actually that there is very little landfill-associated activity immediately on the border, other than in the very north-east of

Wales. I understand the point that was being made by Afonydd Cymru. The general principle that I'm sure the committee would endorse is that Welsh taxpayers' money ought primarily to be spent for the benefit of people in Wales. But where an organisation on the other side of the border wanted to put some money on the table to match some money that we were putting on the table to pursue a sensible course of action in relation to it, I don't want our scheme to artificially stand in the way of sensible ways of doing things.

[268] **Mike Hedges:** With orphan closed sites, and we know what's happened with opencast in a number of areas when the money's been needed for remediation, there have been—I'll just describe them as—problems. Would money be available from the communities scheme in order to remediate sites that have no active owner?

[269] **Mark Drakeford:** Sarah may know the answer to that.

[270] **Ms Tully:** I think, to a large extent, that is a matter for Natural Resources Wales in terms of their policies and so on. That's not something that's come up as part of the consultation that we've had on the communities scheme. The focus has been very much on biodiversity and waste minimisation projects really.

[271] **Mike Hedges:** Somebody raised it with us—I can't remember whom—when we were taking evidence about that. Can I just leave it as something to be thought about rather than anything further?

[272] **Mark Drakeford:** Of course. Thank you.

[273] **Mike Hedges:** My last question is on the five-mile limit. At the beginning of this I was trying to work out where was five miles from Lamby Way. It seems to cover most of Cardiff and the 10 miles from Lamby Way takes you down to Barry. I think one of the concerns that I've had—even if I'm in a minority of one on this—is that the people getting the benefit are not the people who have the problems of seagulls, have the problems of flies and all the other problems that can occur occasionally around a landfill site. Will you still keep the change to five miles? I'd change it to give priority to one mile, but I'm not going to get you to agree to that. Will you at least look to reduce it down to five miles, where at least you'll get fewer people who are unaffected gaining the benefits?

[274] **Mark Drakeford:** Well, Chair, the course of action we proposed in our

document of 13 December was to reduce the radius from 10 miles to five miles and I think it was in response to the points that others have raised along the lines that Mike just did. But we also proposed to allow a five-mile radius around waste transfer stations where there was a minimum of 2,000 tonnes of waste being brought to landfill each year. That was to recognise that those people had had no recourse to the scheme in the past whereas they may have experienced much of the same disruption in terms of traffic and smell and all that sort of thing. So, the paper we published tries to narrow in one way and extend in another, so that the shrinking amount of money that's going to be available for this purpose ends up benefiting those people who are most adversely affected by the operation of landfill.

[275] **Mike Hedges:** I'm happy with that.

[276] **Simon Thomas:** Un cwestiwn olaf gen i, os caf i, sy'n deillio, a dweud y gwir, o'n hymweliad ni y bore yma i'r safle ar Ffordd Lamby. Wrth gwrs, mae'r dreth dirlenwi wedi bod ar waith ers 20 mlynedd, efallai, nawr—nid wyf yn gwybod, ond yn agos at 20 mlynedd o bosibl—ac wedi bod yn llwyddiannus. Mae wedi lleihau nifer y pethau sy'n mynd i safleoedd tirlenwi ac sydd nawr yn gallu cael eu hailgylchu a'u defnyddio, ac ati. Ond mae nifer o safleoedd sydd efallai wedi cau ond sy'n cynnwys yr hyn sydd bellach yn wastraff o werth—papur, gwydr, metel—gwastraff sydd nawr wedi'i gladdu o dan y ddaear, ond mae gwerth iddo. Fel rydym ni wedi gweld yr hen domenni glo yn cael eu haildefnyddio, a'r glo yn cael ei ail 'extract-io' ohonynt, ac rydym yn gyfarwydd â hynny fel ffordd o adfer tir yn y Cymoedd, mae'r awgrym wedi cael ei wneud y bydd pobl, cyn bo hir, efallai'n dechrau ailagor hen safleoedd tirlenwi er mwyn ailafael yn **Simon Thomas:** One further question from me, if I may, that stems from the visit that we paid to the landfill site on Lamby Way. Of course, the landfill tax has been in place for about 20 years—I don't know, but close to 20 years—and has been successful. It has reduced the number of things going into landfill and that can now be recycled and reused and so forth. But a number of sites that have closed include what is now valuable waste—paper, glass, metal—waste that is buried underground, but that has value now. As we've seen the old coal tips being reused, and coal being re-extracted out of them, and we are used to that as a way of recovering land in the Valleys, the suggestion has been made that people may soon start reopening old landfill sites in order to take the waste that is now valuable from there and to reuse and reprocess it. If there was a change of policy in that direction, have you looked that the Bill, because taxes

y gwastraff sydd nawr yn werthfawr, er mwyn ei aildddefnyddio a'i ailbroseu. Pe bai newid polisi fel yna'n digwydd, a ydych chi wedi edrych ar y Bil yma, achos fe fydd yna drethi yn dechrau codi o hynny, wrth gwrs? Ond, o bosib, bydd y dreth ar hynny yn rhwystro defnydd da o wastraff sydd wedi'i gladdu yn y gorffennol. Felly, wrth edrych ar *futureproofing*, a ydych yn edrych ar y Bil yma i weld a fydddech chi am ddefnyddio eithriadau neu *reliefs* neu beth bynnag er mwyn ymateb i'r posibilad yna?

[277] **Mark Drakeford:** Wel, rŷm ni wedi bod yn ofalus, Gadeirydd, i drio creu Bil mewn ffordd lle rŷm ni'n gallu cadw digon o hyblygrwydd i wynebu posibiliadau sy'n mynd i godi yn y dyfodol. Nid wyf wedi cael cyfle i siarad â swyddogion am yr enghraifft rydych chi wedi'i chodi y prynhawn yma am ailagor safleoedd—

Mark Drakeford: Well, we have been careful, Chair, in seeking to draw up the Bill in a way that meant that we could keep sufficient flexibility to face the possibilities that may arise in the future. I haven't had an opportunity to speak to officials about the example that you just gave this afternoon of reopening sites—

[278] **Simon Thomas:** Mae'n wir i ddweud nad oedd wedi dod ar draws fy meddwl i tan heddiw, chwaith.

Simon Thomas: Well, it's true to say that it hadn't crossed my mind until today either.

[279] **Nick Ramsay:** That's the advantage of our visit.

[280] **Mark Drakeford:** Indeed. You are well equipped with the latest possibilities. Chair, I think there have been a number of points during the afternoon when I promised that we would look further at them, once or twice to provide more information to the committee. I'm very happy that what we would do is that we would, in short order, provide a list of those to make sure we have covered them all. Then, we will pursue them, and some of them will take longer to resolve than others, no doubt. If the first thing we do is just make a list of the things we have agreed to follow up, then I will make sure that we can come back to the committee with whatever thoughts we

have. On this final point, if there are thoughts that we know of and can contribute, I'm happy to do that.

[281] **Simon Thomas:** Diolch am hynny, a bydd trawsgrifiad o'r pwyllgor yn eich helpu chi wneud hynny, wrth gwrs. Diolch am hynny a diolch am eich tystiolaeth.

Simon Thomas: Thank you for that, and a transcript of the committee will help you to do that, of course. Thank you for that and thank you for your evidence.

14:53

Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y cyhoedd o Weddill y Cyfarfod

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

Cynnig:

Motion:

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

accordance with Standing Order 17.42(vi).

Cynigiwyd y cynnig.

Motion moved.

[282] **Simon Thomas:** A ydy'r pwyllgor yn hapus, felly, os wyf yn cynnig o dan Reol Sefydlog 17.42 ein bod ni yn awr yn mynd i mewn i gyfarfod preifat?

Simon Thomas: Is the committee content, therefore, that I propose, under Standing Order 17.42, that we go into a private session?

[283] Pawb yn hapus. Diolch yn fawr iawn.

Everyone is content. Okay, thank you very much.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 14:53.

The public part of the meeting ended at 14:53.