



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

15/5/2017

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Meeting Agenda

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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 mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, 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

Yr Arglwydd / Lord Dafydd Elis-Thomas Bywgraffiad Biography	Annibynnol Independent
Nathan Gill Bywgraffiad Biography	Annibynnol Independent
Huw Irranca-Davies Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Dai Lloyd Bywgraffiad Biography	Plaid Cymru The Party of Wales
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Syr / Sir Derek Jones	Cyn-ysgrifennydd Parhaol Llywodraeth Cymru Former Permanent Secretary to the Welsh Government
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Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Ruth Hatton	Dirprwy Glerc Deputy Clerk
Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
Tanwen Summers	Ail Glerc Second Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service

Gareth Williams Clerc
 Clerk

*Dechreuodd y cyfarfod am 14:30.
 The meeting began at 14:30.*

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

[1] **Huw Irranca–Davies:** Good afternoon. Welcome to today’s session of the Constitutional and Legislative Affairs Committee. We have a busy but small session compared to last week, committee members will be pleased to know. We won’t be going all the way through the day and into the afternoon. But it’s an important session today, and we don’t have any apologies to report. We’ve got a full set of committee members here. Some brief housekeeping remarks: we’re not expecting a fire alarm, but, if there is a fire alarm, follow the clerk’s direction to the fire exits. There are, as you know, full bilingual translation facilities. You don’t need to touch the microphones; they’ll come on for you. And interpretation is available on channel 1 and verbatim on channel 2.

Ymchwiliad Llais Cryfach i Gymru: Sesiwn Dystiolaeth 9 A Stronger Voice for Wales Inquiry: Evidence Session 9

[2] **Huw Irranca–Davies:** If we move to item 2 on the agenda, which is the substantive piece of business for this afternoon and part of our ‘A Stronger Voice for Wales’ inquiry. We are on evidence session No. 9, and we’re delighted to have with us this afternoon Sir Derek Jones, former permanent secretary in the Welsh Government, now retired from that role, but pursuing other roles—equally challenging—in different fields, as well.

[3] **Sir Derek Jones:** I don’t know about the ‘equally challenging’
 [*Laughter.*]

[4] **Huw Irranca–Davies:** But we’re very glad to have you with us, so thank you for spending the time with us. Fellow colleagues here will chip in as we go along, but perhaps, in line with this inquiry that we’ve been pursuing for some time now, I could just ask you, as an opening question, how you think the interface between the Welsh Government and the UK Government has evolved, has changed, over the time that you were in post and perhaps your

observations since, as well.

[5] **Sir Derek Jones:** Diolch, Chair.

[6] Prynawn da, bawb. Good afternoon, everybody.

[7] Good afternoon, everybody. Before I try and answer that question specifically, Chair, can I just say a couple of words by way of context to it? There's an awful lot of work that goes on in the warp and weft of inter-governmental relations that never makes a headline, never gets talked about and goes off, most of the time, pretty well. Some of it is also very important. I'm thinking of security, for example, and civil contingencies work, counter-terror, the relationships between professionals in Government—medical professionals, economists and statisticians, vets, lawyers; well, lawyers may be more argumentative. There's a lot of inter-governmental interaction, which you tend not to hear about, largely because, as I say, it all goes off okay. It's when it's politics and high policy that you do tend to hear about it, and, over the time that I've been permanent secretary, there's been plenty of the former in more or less steady state, and, as a permanent secretary, good and close relationships with other permanent secretaries in other Governments and frequent meetings, with plenty of frank discussion, but invariably professional and productive. But I expect what you want to hear about is the other set.

[8] **Huw Irranca-Davies:** Well, it's quite reassuring that you say, in the context, that a lot of the regular, routine things go on, and go on well, but you never see them. But, yes, it is interesting—when things don't quite go so well, why is that?

[9] **Sir Derek Jones:** Well, sometimes they go well in a highly publicised way, but, over the time I was in the role, there was a tremendous amount of the latter—high policy and politics. I go back to 2012, and there were three things that affected the dynamics of inter-governmental relationships over that period of time. The Silk commission was the first, the referendum on Scottish independence was the second, and then the referendum on membership of the European Union was the third. On Silk, you had the first of the commission's reports in 2012—that was the year I started in the job—and take-up of those recommendations led to the Wales Act 2014. Part 2 of Silk was around St David's Day 2014, and that eventually led to the Wales Act that completed its passage earlier this year.

[10] All of that led to significant intensification of inter-governmental relationships between the Welsh Government and the UK Government and—no question of it—a lot of discussion, negotiation, argument about what should be devolved and, if so, how. A lot of quite intense technical and legal work as well. But then, overlapping with that period was the run-up to, and the aftermath of, the Scottish independence referendum, which was an absolute jolt of adrenaline in Westminster and Whitehall as far as devolution was concerned. Actually, it helped me a lot in terms of getting some traction and an audience, where necessary, for devolution issues for Wales. And then, of course, the EU referendum last year, which opened up a whole new front for negotiation and discussion and argument between the Welsh Government and the UK Government and the other Governments of the UK. So, four and a half or five years in constitutional terms may not be all that long a time, but it felt like a fairly packed period to me, and at each stage, an increase in the dynamic and the intensification of the inter-governmental relations, and it's in those areas where most of the Sturm und Drang in the debate and disagreement that you hear in the media took place.

[11] **Huw Irranca-Davies:** And in that period, I assume, we have to accept, to some extent, that high politics and high policy will lead to things boiling over very publicly, whilst there's a lot of paddling going on furiously behind the scenes to try and work through the mechanics of how things work. Do you think it has changed at all over the course either of that period you were describing, or prior to that, having discussed it with predecessors and so on? Has the interface between the UK and the Welsh Governments changed in any way, or do the same trials and tribulations and the same good working practices go on? Is it pretty much identical to what we might have seen a decade ago?

[12] **Sir Derek Jones:** Well, if you're going right back, it's a really difficult question to answer. I think the period that I've been talking about so far is probably the most dynamic period that I can recall since devolution, although there were other high points, obviously: the referendum here leading to the adoption of primary legislative powers; separation of Parliament and Executive in Wales; the introduction of new powers before the primary legislative powers. So, there have been dynamic periods in devolution in Wales, but I think the last four or five years has been by far the greatest, and it has led to greater interest in Whitehall and Westminster in devolved issues, better understanding—I think you're probably going to ask me about that level of understanding later—and some improvements in what you might call machinery of Government and either more or less formal meetings at official

or ministerial level. But I don't think—and arguably, this is a fault—I don't think the inter-governmental relations or the machinery for it has transformed out of all recognition, whereas, arguably, the circumstances might have demanded greater adaptation, and that is probably yet to come.

[13] **Huw Irranca-Davies:** So, winding all the way back, our original First Minister—well, Alun Michael or Rhodri Morgan—Rhodri Morgan would have probably recognised, pretty much, the same configuration of mechanisms behind the scenes to facilitate inter-governmental dialogue, inter-governmental work. Not much would have changed for the mechanics of what goes on.

[14] **Sir Derek Jones:** No, and I think for political leaders, I'd be surprised if they didn't stress the fundamental importance of political will and interpersonal relationships and face-to-face exchanges and things like that. I'm an administrator, Chair, so I like to see a good bit of Government administration and machinery for it, but, fundamentally, what drives and manages these situations is the interaction between political leadership.

[15] **Huw Irranca-Davies:** Thank you very much, just with those opening questions, but, Dafydd, do you want to take us on?

[16] **Lord Elis-Thomas:** Yes. Having lived through most of these times with you, Derek, what would you consider to be the most significant development within the civil service of Welsh Government, and also—if you may comment as well in your position now—the development of the democratic services within the Assembly Commission during that period?

[17] **Sir Derek Jones:** Well, can I put in a good word for the civil service while I'm at it? Because I think the big challenge for the civil service during my time has been to adapt to these changes. I was asked about this, actually, by people within the civil service as I was coming up to the end of my time. You know, you get asked to do valedictory this or that, and it does make you feel quite reflective. What I found myself saying was that the concept of transformational change is often misused. I think people bandy the idea of transformational change around quite frequently, and usually they mean something well short of transformational change, or well short of transforming things out of all recognition.

[18] But the change from Wales governed by a Secretary of State for Wales and two junior Ministers, which is where I started off when I came back from

Whitehall, to where we are now, with a Parliament, a separate Executive led by a First Minister and a Cabinet—again, you know, if you'd asked me at the time, I would not have anticipated the pace of the increasing autonomy of the democratic institutions in Wales that we've seen, although I know there's a big argument about 'Why not more?' and 'Why not faster?'. I think if I take my mind back to then, I wouldn't have anticipated that rate of change. The job for the service has been to be able to adapt to that change, and I think it's been a kind of quiet revolution, really, in the way that the civil service has to work, completely accountable as I was to political leadership elected here, and the same in Scotland, Northern Ireland and Whitehall, whilst maintaining a sense of a UK professional service, the individuals in which could still deal with each other on equal terms, with a shared set of values, in high-trust relationships—that we could share training and development and so on.

[19] I think, again, it's probably not heard about very much, but I think it was a significant achievement and it had to be done here. There were no guarantees around at the time that this would be successful. Some of my then colleagues actually didn't adapt very well to the change; to the enormous increase in the political interface and the need to work in committee. It was a very different way to conduct business for a civil servant in those days, to come to a committee, either a scrutiny committee or, as they were rather more in the early days, an element of the policy-making process. It was very difficult for some people, but it was all done, the wheels didn't fall off, and we find ourselves now, as I say, in a transformed arrangement.

[20] **Lord Elis-Thomas:** Can I tempt you now to comment on the other part of my question, the one about the Assembly Commission?

[21] **Sir Derek Jones:** Yes, well, it has worked very well—

[22] **Lord Elis-Thomas:** Unexpectedly so, wouldn't you say?

[23] **Sir Derek Jones:** It was a difficult transition, as I recall, part of a difficult transition from a single corporate body—who thought of that?—through to where we are now. But all of the staff supporting elected Members and Secretaries, I think, as they were called at the time, rather than Ministers—all part of the same civil service organisation: an uncomfortable arrangement that had to change. But it seems to me we have an independent Commission supporting the Assembly here, quite separate leadership, but with good and collaborative relationships and secondments with the civil

service team in Cathays Park and elsewhere. So, I think another success from that dynamic process.

[24] **Lord Elis-Thomas:** And then the last question I have is to ask you where you think those lessons are relevant for the future, particularly as we face the difficult changes in our relationships with the European Union. Are there lessons to be learned for that situation from what we went through 18 years ago and onwards?

14:45

[25] **Sir Derek Jones:** Well, I bet there are. Whether I know what they are, I'm not so sure. But I think the respect for different constitutional roles, and the ability to accept disagreement, political disagreement and different political objectives, but also, at the same time, respecting the constitutional roles that governments and parliaments have, so that the relationships don't get their complexions solely from the political context, but from, to a large extent, a respect for different constitutional roles.

[26] **Lord Elis-Thomas:** That was very thoughtful, thank you.

[27] **Sir Derek Jones:** We will need that with the European Union and—I expect we'll come on to it—we'll need it within the United Kingdom.

[28] **Huw Irranca-Davies:** Thank you, Dafydd. Dai.

[29] **Dai Lloyd:** Diolch, Gadeirydd. **Dai Lloyd:** Thank you, Chair. We have heard a great deal of evidence in previous meetings with regard to how aware the civil service in London is of devolution, and how much attention different departments here receive from different departments in Whitehall. So, in the first instance, from your experience, do you agree with that position: that awareness of devolution could be improved in terms of the civil service in London? And what's your opinion then about what needs to happen to raise awareness of devolution in London—

Rydym wedi derbyn cryn dipyn o dystiolaeth mewn cyfarfodydd blaenorol ynglŷn â pha mor ymwybodol y mae'r gwasanaeth sifil yn Llundain o ddatganoli, a faint o sylw y mae gwahanol adrannau yn y fan hon yn ei gael gan wahanol adrannau i fyny yn Whitehall. Yn y lle cyntaf, o'ch profiad chi, a ydych chi'n cytuno efo'r gosodiad yna: y gallai ymwybyddiaeth o ddatganoli fod yn well o ran y gwasanaeth sifil yn Llundain? A beth yw'ch barn, wedi hynny, ynglŷn â beth sydd wedi

gorfod digwydd er mwyn codi training and so on? I know that, in ymwybyddiaeth o ddatganoli yn the past, you've talked about the Llundain—hyfforddiant ac ati? Rydw Devolution and You programme and i'n gwybod, yn y gorffennol, eich bod so on. So, what is the level of chi wedi sôn am raglen Datganoli a awareness—in London and in this Chi—*Devolution and You*—ac ati. place—and what needs to happen to Beth yw'r ymwybyddiaeth—yn improve things? Llundain a'r fan hon—a beth sydd wedi gorfod digwydd i wella pethau?

[30] **Syr Derek Jones:** Mae'n ddrwg **Sir Derek Jones:** My apologies; I'm gen i; nid wyf yn siarad Cymraeg yn not a fluent Welsh speaker—certainly rhugl—wel, ddim yn ddigon da i'r not fluent enough for this committee. pwyllgor.

[31] You said that awareness of devolution in Whitehall, it had been suggested, could be improved. Modestly put, I think, and it isn't always as modestly put. You might well hear people say, 'It's hopeless, diabolical, really poor'. I understand why people will say that from time to time, but it is an oversimplification. It depends hugely on who and where you're talking about. So, if you take the Cabinet Office, for example, there's a team there focused on constitution and devolution who have a very, very good understanding and finely tuned antennae for devolution issues. In the Treasury, there are teams that routinely negotiate with the devolved governments on everything from the annual budget or spending reviews, through to renegotiating the Barnett formula to the devolution of tax. So, again, that team—very high levels of knowledge and understanding of devolved issues. Within all the Whitehall departments there'll be a devolution liaison officer or team that will also be well informed—*dim problem*.

[32] At the same time, there are large numbers of officials in Whitehall that have very little understanding and sometimes no experience of devolution, and that's what can lead to the sort of dead-nerve problem that some commentators flag up, either because it's been their only experience of it or it's been their main experience, or it is an experience and feels like a bad one, and so that's prominent. But it is a very, very mixed picture in reality. I think it's important to understand that. But having said that, and taking account of all of that, on balance, my view—and I'm pretty much on the record already about this—is that knowledge and understanding of devolution in Whitehall departments is not good enough, and is not good enough after 17 years of experience. Now, in their defence, the sort of

people that I might criticise would say that they've got enough knowledge and understanding of devolution to do 90 per cent of their job 90 per cent of the time. But my argument—as Permanent Secretary in particular—around Whitehall was that we call it devolution, but it's actually the constitution of the United Kingdom that we're talking about. So, what place could there be for an ambitious civil servant aiming to reach the senior civil service of the civil service of the United Kingdom if they didn't have a good knowledge and understanding of the constitution of the United Kingdom and, preferably, some hands on experience of its operation in all of its variety, rather than just in one area?

[33] So, that was the view that I promoted during my time in the role, with modest success. We made progress and it wasn't all hard work in the sense that I would have allies in Whitehall who understood what I was trying to achieve in pressing for greater awareness, and one or two of my former perm sec colleagues, only partly in jest, said that one of my great achievements was adding the letter 's' to the word 'Government' in civil service communications.

[34] But you mentioned 'Devolution and You', established by the Cabinet Office, actually, and, I think, the first systematic attempt at awareness raising across Whitehall, but it is mutual awareness raising as well. So, Welsh Government officials would spend time in Whitehall or in other Governments as well as Whitehall officials coming here, seminars, training programmes, longer or shorter secondments, and the—. I was also a member of the civil service board, which is the governing body for the civil service at UK level, and that body, by the time I'd left, had a very much more vigorous focus on the need to keep making progress on this.

[35] **Dai Lloyd:** Diolch yn fawr am hynny ac ateb cynhwysfawr. A allaf i jest ofyn ar gefn hynny—? Yn naturiol, mae yna rhan o Lywodraeth Prydain yn Swyddfa Cymru yma. Y cwestiwn atodol sydd gyda fi yw: o'ch profiad chi, sut oedd Llywodraeth Cymru yn y fan hyn yn gweithio gyda Swyddfa Cymru hefyd?

Dai Lloyd: Thank you very much for that response, and that very comprehensive response. Can I just ask, following on from that—? Naturally, there's a part of the UK Government represented at the Wales Office here. My supplementary question is: from your experience, how did the Welsh Government here work with the Wales Office?

[36] **Sir Derek Jones:** You were saying, Chair, that you'd had evidence from

First Ministers past and present, and so you've probably heard a good bit about this already. I think the relationship between the Welsh Government and the Wales Office at political level has had its ups and downs, inevitably affected by the political contest, and I think that's inevitable up to a point. The Wales Office has got a difficult job, actually, so it's seen sometimes by Whitehall, and invited to be, the link with the devolved Government in Wales, but, actually, the Welsh Government also has many, many bilateral relationships with Whitehall departments. As I mentioned earlier, there's a whole warp and weft of intergovernmental relations that go on that are not channelled in that way, so that's quite challenging for the Wales Office. Sometimes they're asked to project a UK Government view, as it were, to the Welsh Government; other times they're seeking to influence UK Government or individual Whitehall departments, influence their thinking on a devolved issue—not easy when you're dealing with some of the major departments of state. So, it's not an easy job, nor an easy relationship always, particularly at political level. I think, at civil service level, I always made a point of keeping in touch with the head of the Wales Office so we would be able to pick up the phone to each other and that, you know—in a way, the more difficult or tense the political situation is getting, the more important it is, I think, for some lines of communication at official level to be kept open. So, I would always aim to do that, and my teams would have many meetings with Wales Office officials as part of that normal flow—much of it absolutely fine, sometimes some pretty frank and difficult meetings, but always professional. And that was the case, where, basically, you had the two Governments disagreeing on an important matter, and, as with any two Governments anywhere on the planet, I would think, when that happens, the officials go in to bat and it can be quite difficult, but, if it's done with enough skill and professionalism, it'll offer political leadership some options, anyway, for either reaching an agreement, or agreeing that they're not going to reach an agreement.

[37] **Dai Lloyd:** Okay. Thank you.

[38] **Huw Irranca-Davies:** Thank you, Dai. Could I just follow up on that and ask where you think progress could be made further on this issue of understanding? I fully accept that it's a constant chase to develop that, as you said, understanding of the constitution, not simply devolution. But what more do you think should be being done? Is there a role for more training within the civil service? Is there a role for Welsh universities here developing modules so they could train civil servants in—? How do we break the back of this issue? It seems to be perennial.

[39] **Sir Derek Jones:** Well, probably it will be perennial. I think it needs more effort and focus. That was part of my parting message. It's not all doom and gloom. As I say, we've had the first systematic attempts coming out of a greater recognition of the need for civil servants everywhere to have a better grasp of the constitutional make-up of their nations. I just think you just need to push harder and do more in those areas, whilst accepting that it's probably not a task that you'll ever complete. But I don't think constitutional issues are sufficiently factored into the fundamental training programmes, yet, for officials in Whitehall departments. They are in the Welsh Government. So, part of the induction training for officials will include constitutional affairs—you can imagine why. But, mostly, knowledge and awareness of devolution in the Welsh Government civil service is absorbed through the skin, really, in the day-to-day conduct of business. So, the push on training is probably needed more in Whitehall. That's going to take time, probably some money, determination, and I think, given the way things are going, there will be a growing political and senior civil service awareness of the need for that.

[40] **Welsh unis:** well, they do play a role, actually. The most obvious example is the Wales Governance Centre at Cardiff University, which publishes, organises seminars and conferences. One of these 'Devolution and You' seminars for senior civil servants set up by the Cabinet Office in Whitehall only some—I don't know, probably within the last six months; I spoke at it, but so did the head of the Wales Governance Centre. But—

[41] **Huw Irranca-Davies:** Sorry. Who would your audience have been then?

[42] **Sir Derek Jones:** Well, senior civil servants, primarily from Whitehall, but some of my own team were there as well, and from Scotland and Northern Ireland.

[43] My own view is that there is a stronger role for the academic community in this area, and to help professionalise some of this by having formal academic qualifications created through a combination of study and practice in Government. Now, in Whitehall, a fairly recent development over the last year or so, anyway, is the creation of a Master's in public policy, which is delivered by the London School of Economics. I've been meaning, actually, to have a look and see what I can find about devolution and constitution in the curriculum for that qualification.

[44] **Lord Elis-Thomas:** Not a lot, I've noticed.

[45] **Sir Derek Jones:** You've looked, have you, Dafydd? Okay, well, you're ahead of me then. [*Laughter.*] And there's no reason why Welsh Government officials shouldn't bid for places on that. There used to be a Master's in public policy taught in at least one Welsh university, but the demand for it wasn't huge and I feel slightly disappointed about what I've been able to do over four or five years to help to change that, because I think that if you, first of all, establish the concept of a policy profession working in the Governments with academic qualifications—good solid academic qualifications—that would help you through a career related to that work, then some of these things would flow quite naturally, because you'd easily realise what modules had to be put into the study.

15:00

[46] **Huw Irranca-Davies:** So, excuse my ignorance on this—and, David, I'm going to bring you in in a moment—but if you were on the fast-track civil service scheme—you're a bright young thing who's come in with a top-class degree—and you're launched into some department in Whitehall there, do you know what knowledge they have, or what study they have, or what instruction they have on how the constitution works, as opposed to going into the local housing and community sector and just getting on with their little furrow?

[47] **Sir Derek Jones:** The fast stream wouldn't be at the top of my worry list, actually, on this.

[48] **Huw Irranca-Davies:** Ah, right.

[49] **Sir Derek Jones:** So, in my private office, for example, we always had a fast-streamer. One of those recently was on their first fast-stream placement. This is UK fast stream, but their first job was in my private office and they went from there, with a very good knowledge of devolution, to their next role, which was in Whitehall. So, I think it's more generally, rather than in the fast stream, that I would focus.

[50] **Huw Irranca-Davies:** Thank you very much. David.

[51] **David Melding:** Thank you, Chair. Sir Derek, I think you said in an interview that appeared in *Civil Service World*, which I think you'll see copies of in the Dog and Duck—

[52] **Sir Derek Jones:** That's two of us who read *Civil Service World* now.

[53] **Dai Lloyd:** We read it all the time. [*Laughter.*]

[54] **David Melding:** Anyway, you commended a four-nation conference you'd recently chaired, made up of policy professionals from the four administrations, the four Governments, that that was a very good way of working and examining innovation and best practice. I think the quote is something like you thought it was so successful you hope it will become an annual event. But, you know, reading that, I thought, 'Good God, what have they been doing all these years?' This is not exactly innovative, is it? Well, it is, when it's running, but I mean the fact it's taken 18 years to get here.

[55] **Sir Derek Jones:** Can you have late innovation? Because that's what it is. If that's a criticism, I accept it, but I think I'm in pretty good company, because I can remember, actually, right at the beginning of devolution—core purpose, obviously, to reflect the needs and wishes of the nations, but, as a side benefit, there was discussion about the ability to compare and contrast different policy processes and different policy outcomes. The reality was, for 16 years, whatever, that very little was done systematically about that. I think that the differences were there, but they tended to be dominated, again, by the political contest rather than by what you might call professional analysis. The academics were doing some of it, but there wasn't a lot. There was some ad hoc work that would go on, or, if there was a really good finely-tuned policy unit somewhere that was particularly good and sensitive to what was going on elsewhere in their policy field, things might be learned, and advice given on the basis of comparing and contrasting, but not much that I would call systematic or which had the backing of all of the Governments until we decided, about a year ago—a bit more than a year ago; I think we had the conference in April. It was in purdah, actually, prior to the Assembly elections. It was valuable. It did seem to create a safe space where officials could say things on the basis of the Chatham House rule and know that they were safe to do so, which is fundamentally important if you're going to have that kind of conversation usefully, because it's no good everybody coming along to boast about what they think they've done really well.

[56] You need people talking about their problems and their disappointments and failures as well, from which you can learn so much. But we did that, and it worked, and I think everybody felt comfortable, and there were no difficulties subsequently that I'm aware of. It was agreed amongst

the policy profession leads and the permanent secretaries involved that it would become an annual event. Having said that, I think the next one was due to be in Belfast and it would be around about now, but I don't know, actually, whether it's happened, or whether the circumstances there might have made it more difficult. You'd have to ask my successor for an update. But, proposition: was it a good thing? Yes. Proposition: was it really, really late and representing, therefore, some wasted opportunities over the years? Yes.

[57] **David Melding:** You made reference, when you started, in terms of the administrative and planning type of work that you do and comparisons that you make at officer level, and you talked about vets and all the various other specialities getting together, and picking up the phone presumably, saying, 'If we have a problem, we'll just see if that's been encountered elsewhere.' So, that's been going on very informally, has it? Whereas a more considered structure, like an annual conference or perhaps some papers that could be circulated, and some bank of accepted best practice—I don't know. I mean, if you read a classic book, a study of federalism, it's packed full of, that you have these little laboratories and you can test things and all get together, and it's very exciting. But it seems rather dull what's happened in Britain, and I wonder culturally why that's so, even if amongst the civil servants themselves, there have perhaps been a few more lively exchanges.

[58] **Sir Derek Jones:** I think perhaps I gave too much of an impression of informality in the interchanges between officials of Governments on a day-to-day basis. Some of them are relatively formal; you know, what you might call a proper meeting with an agenda.

[59] **David Melding:** So, all the vets would get together.

[60] **Sir Derek Jones:** All the vets. This is really serious because, as we all know, animal diseases don't observe any administrative or national boundaries, so the ability to collaborate effectively on operational matters is really important, and it's the same in a number of other areas, and having confidence in each other's data and so on is really important. There's a degree of formality about some of those iterations. The four nations conference that I've described was different just because it reflected a commitment by Governments, as it were, to try to share and learn from best practice across the whole of their responsibilities.

[61] **David Melding:** If I was to be very rude and say it's part of a cultural

problem: you're prepared to see the advantages of the capacity and long experience that is in Whitehall, but Whitehall—some departments excepted—are not always so keen to look at the smaller laboratories for best practice. Is that part of the issue?

[62] **Sir Derek Jones:** Probably. On that occasion, no. There was a genuine willingness for everybody to be willing to learn from everybody else. I wouldn't need to explain to you why, but the devolved Governments actually have some of the best stories to tell in terms of policy innovation—everything from a children's commissioner to 5p for a single-use plastic bag, where, I think, the Whitehall Government was probably the last of the four to legislate for it. So, on that occasion, no, but then it was, up to a point, a self-selected group, I suppose, of policy profession leads who were, arguably, not going to be typical of every policy division within Whitehall. We're talking about where—I guess it's human nature—there might be a tendency to think, 'Well, because we're big Government then we've got all of the answers,' and that is not true.

[63] **David Melding:** If we enter the more explicitly political side of things, the Joint Ministerial Committee is the main way that things, I suppose, formally operate. And, you know, that's had a remarkably sort of varied operation over 18 years, from being part of the heart—in the early years anyway—of the great move in the British constitution, then practically not meeting for years, and now kind of getting back on track. But we have heard—some gave evidence—that it's turn up and formally agree the communiqué, and pretty much led by the UK end. Is that fair? Has it found its role yet? In your observations of it, what would you say have been the high points and the low points, if there have been any of either?

[64] **Sir Derek Jones:** As a summary, I think perhaps it doesn't quite do the Joint Ministerial Committee justice—at least not in recent years. It did not meet, I think, for quite a while although I wasn't in—

[65] **David Melding:** I think it was three or four years, which is astonishing, really.

[66] **Sir Derek Jones:** I don't think I was in Government during that time. During my time as Permanent Secretary, it has met, and with more intensity, actually, particularly since the EU referendum result. And it is the heads of the Governments sitting around the table, which seems to me has got to be good in the context that we've been talking about, but it's not a decision—

making body and it is a place where those political leaders make clear their own positions and priorities. On some things, they'll note that those priorities are shared and on others they are not, and there is indeed a communiqué at the end.

[67] **Lord Elis-Thomas:** At the beginning or the end?

[68] **Sir Derek Jones:** I couldn't possibly comment. [*Laughter.*]

[69] **Lord Elis-Thomas:** It's released at the end, of course.

[70] **Sir Derek Jones:** There is a communiqué. So, that is, I think, a good thing, but that's the JMC plenary that we're talking about; it also has sub-committees that—. So, during the period of time when plenary wouldn't have met very frequently, I think the JMC for Europe would have met much more frequently, looking at European policy issues and trying to agree positions for forthcoming council or other meetings. There was a JMC domestic that could meet if plenary didn't, and a presumption that the finance Ministers' quadrilateral would also meet. And, again, that's had its ups and downs in terms of frequency of meetings. So, there's probably rather more activity under the JMC banner. There is a joint secretariat with officials from the four Governments, and so that's the heart of the network for official level discussions as well, supporting the political ones. But—

[71] **David Melding:** So, some of your—

[72] **Sir Derek Jones:** I was going to say that it's not a decision-making body. My own view is that it won't be sufficient by way of machinery of Government for what lies ahead in the UK.

[73] **David Melding:** So, some Welsh Government civil servants would be part of the JMC secretariat. And how senior would they have been? How high a priority would it get?

[74] **Sir Derek Jones:** People seconded to the secretariat are probably middle management, but bringing in senior level colleagues for the sherpa meetings to prepare agenda items, agree draft papers where necessary, and so on. So, it was not routine low-level business. Its limitations came from the format really, I think. As I say, I don't think the JMC, neither plenary nor its sub-committee modes, will be sufficient machinery—this is a personal view—to manage what lies ahead after the UK leaves the EU.

[75] **David Melding:** Though it is interesting that most people who've had experience in this area do pick out JMC Europe, oddly enough, as the one that really did work. It had a reasonable basis of equality between the Governments and—

[76] **Sir Derek Jones:** There's a JMC not Europe—

[77] **David Melding:** I'm not sure if that was because the Foreign Office ran it, and had a cultural acceptance and experience of other Governments; who knows?

[78] The First Minister suggested that the JMC evolve into a sort of council of Ministers that would, at least in part, be a decision-making body. In particular, he's mentioned what are probably desirable UK frameworks, like environmental policy and agricultural policy. Is that the only way we could get that type of UK-wide governance now, which some argue is going to have to replace the European governance we had, as I said, in areas like the environment, for instance?

15:15

[79] **Sir Derek Jones:** I would argue that I can't see, really, any practical alternative in some of those areas, which have, for a long time, been dominated by an EU framework, and agriculture and fisheries is usually the area that's quoted. But it's not just that area; so, regional policy, state aid subsidy and support for business, and possibly areas of employment and consumer protection. So, I can't really see any practical alternative to UK frameworks in those areas, which, with increasingly autonomous devolved Governments, would need to be UK frameworks arrived at through negotiation, or at least they should be. And that machinery doesn't exist at the moment. 'A council of Ministers approach' is sometimes the phrase that's used to describe something more like a ministerial level decision-making body, rather than an exchange-of-views body. Whether it's a great idea to give it a European-sounding title, if you're trying to sell it, I don't know. But, yes, those could exist again at a very general, senior level, but really the business would be done at portfolio Minister level, and by official groups supporting them as decision-making bodies. I don't know. I can't tell you that that will happen; I think it should.

[80] **David Melding:** Thank you.

[81] **Huw Irranca-Davies:** Thank you, David. Could I just ask, subsequent to David's questions, would it be right to say that there have been times when, at the JMC, the main JMC itself, particularly those times when it met very sporadically, or not at all for long periods, the whip hand on deciding when the meetings took place and what was on the agenda was always with the UK Government?

[82] **Sir Derek Jones:** Yes. I'm not sure I'd describe it as 'the whip hand', but the meetings would be convened by the UK Government to all intents and purposes.

[83] **Huw Irranca-Davies:** The reason I ask that is if it were to evolve to a council of Ministers, there'd have to be some substantial changes in the way the agenda was set, the regularity of meetings, the calling of those meetings, so that it wasn't in the hands of any—perhaps 'whip hand' is too strong a phrase—so that it wasn't in the gift of one member of that JMC to say, 'We don't need to meet, we'll come back in six months' time.'

[84] **Sir Derek Jones:** Well, I don't think things were ever quite that cut and dried, even short of describing it as the 'whip hand'. There was a joint secretariat, so it was perfectly possible for the other Governments to make proposals for when meetings should take place, and what the agenda items should be, to contribute to papers, to circulate papers. But, the Prime Minister was in the chair, so that was obviously a lead role. The JMC, it's already been agreed, will move geographically, as a first step. So, unless I've missed a meeting, I think the last meeting was in Cardiff, last time I was at it, in January. And the intention is that it should meet in the other capitals. You could draw up terms of reference for a council of Ministers that said things not just about rotation of geography, but rotation of the chair, that would describe what the decision-making processes would be and that could prescribe a timetable of meetings. All of those things would be administratively possible, but the absolutely crucial, inescapable thing is that there needs to be common political will for that to happen. And if there is, then I think it would be perfectly possible to pick what were thought to be the best of a range of possibilities for how Ministers would get together to address the need for these UK frameworks, and how groups of officials from the Governments would come together to support them.

[85] **Huw Irranca-Davies:** Thank you. Nathan.

[86] **Nathan Gill:** Thank you, Chair. Sir Derek, you've discussed the way in which Governments tend to work through the personal level, through relationships, and these kinds of meetings that happen very informally. I just wondered, on a formal basis, what kinds of discussions or meetings did you have before you retired regarding Brexit, Britain leaving the EU.

[87] **Sir Derek Jones:** We realised pretty quickly that we would need some new forms of iteration. So, I think, on the morning of the result, I had a telephone conversation with the Permanent Secretary in the Cabinet Office about what we were going to do. And before very long, we established a high-level group between the Permanent Secretary at the Department for Exiting the European Union, the Permanent Secretary at the Cabinet Office with responsibility for constitution and devolution, myself, and my opposite numbers from Northern Ireland and Scotland, and, sometimes, with the Treasury and/or the Foreign Office attending as well. And that was what you might call the senior-level group for discussing plans for Brexit, and also, actually, for issues like how the JMC might discuss the issue. And there were also working-level groups, with a sort of similar composition, but at director level, or director general level, supporting that work, and also, again, the work of the JMC sub-committee on exiting the EU. So, not a massive amount of machinery, but set up quite quickly in the aftermath of the referendum result, and doing effective work. And at first, I was very reassured, actually, about the assurances that we were getting about sharing information and discussing issues before they were decided. By the time I was leaving, I was getting more disappointed with that process, and it was proving difficult, actually, for the exchanges and discussions of options for negotiating positions and so on to be shared between the Governments. No doubt, a lot has happened now, since I've left—I'm not up to date.

[88] **Nathan Gill:** Why do you think there may have been a breakdown there? Do you think it was just because of the confidentiality needed, or just—?

[89] **Sir Derek Jones:** I wouldn't call it a breakdown. And, again, at perm sec level we met, discussed very frankly, but, ultimately, these are decisions for political leadership, the extent to which negotiating positions will be shared or retained for a bit longer, or the extent to which a piece of analysis is or isn't ready to be shared. And I was becoming concerned at the pace of that, given that two years will be a vanishingly short period of time.

[90] **Nathan Gill:** Do you feel that there is a danger that Wales will be

marginalised in many of these discussions, or the voice of Wales will be marginalised now?

[91] **Sir Derek Jones:** I think there's always a danger of that, and it's partly up to us to make sure it doesn't happen.

[92] **Nathan Gill:** Okay. I'd agree with that, actually. And just going on to the JMC—and you've had quite a bit of discussion with my colleague David Melding about this—you mention that the JMC won't be sufficient for what lies ahead. What do you think we should replace the JMC with, possibly, or how can we strengthen the JMC to make it sufficient for what we do need? And I know the First Minister has mentioned several times about the need for a UK single market in order for this levelling of the playing field; how do you think that that could actually happen, and do you think it's necessary for that to happen?

[93] **Sir Derek Jones:** I'm not sure there's an awful lot I can add to what I've said. There could well still be a role for something that strongly resembled the JMC, in that it would be a getting together of the First Ministers of all of the Governments. And that being so, then you can assume that you're not going to have an awful lot of time, and it'll be high-level strategic discussion. What I think doesn't exist, and will need to exist, is something that is more like decision-making bodies at ministerial and official level, looking at the particular areas of policy and Government business that will need to be addressed. I mean, on something like agriculture, which is devolved, you could say, 'Well, everybody can get on with their own thing'. But I think the reality is that all the UK Governments will see, not just benefit—there'll be a sort of an essential need for some agreements about cross-border activity when it comes to agriculture and fisheries, but similarly in those other areas I mentioned of regional employment and industrial policy. They used to exist, before the EU frameworks took them over. So, those sorts of things, in my view, will need to be recreated.

[94] **Nathan Gill:** That's very good. Thank you very much.

[95] **Lord Elis-Thomas:** Can I just come in very quickly there?

[96] **Huw Irranca-Davies:** Dafydd, please.

[97] **Lord Elis-Thomas:** Thank you very much for reminding me that they existed before, because I do remember them and I think it's important that

we should understand that there is a UK history of a common UK market in policy terms, which did operate previously. I don't know how we restore that.

[98] **Sir Derek Jones:** They did. They didn't operate free of rows and arguments. I can well remember, having come back from Whitehall to Wales, if I was pursuing what I perceived to be the Welsh interest in terms of an inward investment proposal or whatever, half of the time what I was trying to do was get ahead of the opposition from across the border. So, you know, these things are not ever going to be simple and straightforward, but I think that to create the machinery to devise guidance and rulebooks, and then have political leadership and civil service back-up in implementing them—I can't see any alternative to that being done.

[99] **Lord Elis-Thomas:** Very quickly, what concerns me is that sentence—I think it's paragraph 4.2 in the UK Government White Paper, with the blue cover—which talks about the transferring of the frameworks from the EU to the UK Government. I get the impression that there is a wish to retain them at that level as defined by the UK Government, rather than negotiated between the administrations across the UK.

[100] **Sir Derek Jones:** Well, step forward argument the first, I think, which will be in that area, as it were, in principle. That's before even looking at some of the specific cases. I think Welsh Government position, when I was in it, was that where matters are devolved, they are devolved. The fact that policy or operations have been taking place in Brussels but no longer will be means that they will then be part of the devolved competence. Not everybody shares that view, so I think there will be argument and debate about that.

[101] **Huw Irranca-Davies:** Sir Derek, we've just got a couple of minutes here, I wonder if we can ask you: we've spent a lot of time looking at the JMC—for us, this is fascinating—how it works and how it works best. In the sort of changes that you've described towards—let's call it for a moment a 'council of Ministers', but whatever name it goes under, with a rotating chair, with more agreed agenda setting, perhaps more proactive and long-sighted rather than purely reactive or declamatory—. To do that, would you see that—and I know that you're eminently diplomatic in your language, but is that just a natural evolution? You've already said that you probably think it's essential, bearing in mind where we are now with the constitution and with Brexit, but is it just a natural progression or is it something radical?

[102] **Sir Derek Jones:** I don't think it's either, in that I don't think it's a

natural progression in the sense that everybody can relax and it'll more or less happen automatically. I don't think that's the case. Everybody is so busy and, if I were part of the UK Whitehall civil service, or if I were a Permanent Secretary in a Whitehall department, I might be thinking, 'Oh, Derek, come on, really? Look at what we've got to do—that is quite enough, thank you very much, without having to invent a whole load of new meetings for our Ministers, who haven't got time for it anyway, not that we've got time for it ourselves.'

[103] So, I don't think it's a natural evolution in the sense that it is bound to happen or it will be easy to do. On the other hand, I genuinely think it's inevitable. I think, as time goes on, it will become common to see that we can't really govern the UK effectively in some of these areas, unless we introduce some new mechanisms that just don't exist at the moment.

15:30

[104] **Huw Irranca-Davies:** You disarmed me very well then by saying that it was neither of the two propositions I was putting forward. My final question: we talked about the issue of the change within Whitehall in terms of awareness of where we are with the constitution and devolution, do you give any merit to the idea of some sort of auditing of how well the performance of engagement between Governments and civil service actually works? Is it possible to do? Is it desirable to do such a thing, either in qualitative terms to report annually on how it is working, or some quantitative way? Do you think there's any merit in that, to reflect, to look back and say—.

[105] **Lord Elis-Thomas:** I think you could do this directly and you'd be very good.

[106] **Sir Derek Jones:** Thank you very much, Dafydd, for the vote of confidence. I'm not sure 'audit' as a word would capture it in that it implies, sort of, counting up numbers, precision, maybe a degree of challenge. So, I'm not sure about that as a descriptor, but, on the other hand, it's unarguable, I would have thought, that this committee, for example, would want to keep a very close watch on the developments in these areas and be able to satisfy itself and not just this committee. I would have thought, actually, there would be similar considerations in committees in Parliament. So, given what you're talking about is inter-governmental relations moving through an unprecedented period in the UK's history, that might be a basis for collaborative work between parliamentary committees in all of the

Parliaments, or at least in some of them, depending if there was agreement. I'm not sure that—. I suppose the other consideration I'd have as an administrator is cost: cost and time and opportunity costs. So, in times of shrinking resources within civil service departments, it's always going to be, 'Well, if we do this we're not going to do something else.' So, I'd also be asking the question, 'What is the most economical way in which this committee or Parliament could keep up with development and satisfy themselves about the development of inter-governmental relations?'

[107] **Huw Irranca-Davies:** David, you wanted to—

[108] **David Melding:** I was going to say that at an European level what we've had over important areas of public policy is shared Government and it is a challenge to see how that's going to be replicated at a British level, so that shared government can go on. It seems to me there are some lessons in the JMC in the way things have been done but we need to really improve the game. And if we don't have robust governance of, you know, shared Government then it's difficult to see how we're not going to have a bumpy ride in the UK with all Governments, really, and the legislatures getting a bit more caustic, perhaps, sometimes, in how all this is operating.

[109] **Sir Derek Jones:** I'm trying to think if there's a bit of that I can disagree with, but—. [*Laughter.*]

[110] **David Melding:** Because shared Government in the British mind is not an awfully easy concept, is it? We devolve—there's the line. That's your responsibility.

[111] **Sir Derek Jones:** Even that is from here to there and involves a sort of presumption of hierarchy despite equal democratic legitimacy and so on. I agree—the concept of sharing decision making isn't hugely at large but I'm sticking to my proposition that I find it very difficult to think of how, in practical terms, over time we would get by without some significant improvement in that kind of machinery of government.

[112] **Huw Irranca-Davies:** Sir Derek, you've been very generous with your time and we've run over as we've taken your evidence. Are there any other issues that you think we haven't covered that you'd like to add to?

[113] **Sir Derek Jones:** No, thank you. [*Laughter.*] It seems like a pretty good and comprehensive coverage of the ground, Chair. It's been a pleasure to

come and try and contribute something to your programme.

[114] **Huw Irranca–Davies:** Well, thank you, Sir Derek, on behalf of the committee. It's been very useful, I'm sure, and we'll discuss it afterwards in private session. But thank you very much for giving us evidence. We'll send the transcript to you as per normal so you can check for accuracy in case we misconstrue any words that you've said.

[115] **Sir Derek Jones:** Just like the old days.

[116] **Huw Irranca–Davies:** Not that it ever happens.

[117] **Sir Derek Jones:** I'll have to do it myself on this occasion.

[118] **Huw Irranca–Davies:** Thank you very much indeed.

[119] **Sir Derek Jones:** Croeso—you're welcome. Thank you.

15:35

**Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad
arnynt o dan Reol Sefydlog 21.2 na 21.3
Instruments that Raise no Reporting Issues under Standing Order 21.2
or 21.3**

[120] **Huw Irranca–Davies:** For the committee's purposes, having closed that part of our deliberations this afternoon, we'll move on now straight away to item No. 3.

[121] **Huw Irranca Davies:** Wyt ti'n mynd? Diolch, Dai. **Huw Irranca–Davies:** Are you leaving? Thank you, Dai.

[122] **Huw Irranca–Davies:** We move on to item No. 3, instruments that raise no reporting issues under Standing Order 21.2 or 21.3. We have, under paper 1, a statutory instrument with a clear report—the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. Do we have any comments from committee members or are we happy to note? Happy to note. Thank you and agreed. Thank you.

15:36

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

[123] **Huw Irranca-Davies:** We move on to item No. 4, instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3. We have there one negative instrument—SL(5)090, the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017. These regulations provide for the making of loans to students who are ordinarily resident in Wales for postgraduate Master's degree courses that begin on or after 1 August 2017. To qualify for a loan, a student must be an eligible student. Broadly, an 'eligible student' is if that person falls within one of the categories listed in Part 2 of Schedule 1 and also satisfies the eligibility provisions in Part 2 of the regulations. These apply to students ordinarily resident in Wales, wherever they study on a designated course in the UK. Now, our lawyers have highlighted some technical and merits points for reporting to the Assembly in relation to human rights and equalities issues. Gareth, are you going to say a few words on this for us?

[124] **Mr Howells:** Diolch. I'll just summarise the main issues that arise in the draft report you've received. So, these regulations set out the rules on loans for Master's degree courses. The regulations tell you who can apply for a loan and who cannot apply for a loan, and one of the groups of people who cannot apply for a loan are those aged 60 years and over. So, all of our subordinate legislation must comply with human rights law and we scrutinise these to secure compliance with the European convention on human rights. As Huw said, we've identified one possible issue. Article 2 of protocol 1 to the convention sets out the right to education. It's one of the human rights in the convention. Firstly, there's no breach of that right to education here. There is no human right to a Master's degree loan. But, there is article 14 to the convention, and article 14 says that human rights must be enjoyed 'without discrimination'. Although there's no breach of the right to education here, this whole issue is within the field of education and that's enough to bring article 14 into play.

[125] So, the upshot of this is that, once the Welsh Ministers have decided to provide for these Master's degree loans, they cannot discriminate when actually providing the loans. So, the question is: do these regulations discriminate against people aged 60 and over by denying them Master's

degree loans? The answer to that question depends on whether you can justify denying the loans to people aged 60 and over. If the rule can be justified, there's no discrimination under article 14. So, we've simply asked the Welsh Government to set out why it feels it can justify this cut-off age of 60.

[126] Just to note, the explanatory memorandum that goes with the regulation says,

[127] 'A person aged 60 years at repayment can be expected to repay 87 per cent of the loan'.

[128] Now, 87 per cent sounds like quite a reasonable repayment rate, so it's difficult to see how you can justify a cut-off point of 60. I accept there may have to be a cut-off point somewhere, but I think the committee needs a bit more information around that 87 per cent repayment rate to see if 60 is a reasonable cut-off point.

[129] **Huw Irranca-Davies:** And, Gareth, I assume we haven't heard yet from the Cabinet Secretary as to the explanation and justification.

[130] **Mr Howells:** No. The Government is working on a response.

[131] **Huw Irranca-Davies:** Okay. So, if we haven't got it now, we hope to have it next week.

[132] **Mr Howells:** Yes.

[133] **Huw Irranca-Davies:** There we are. Were you able to identify what the timescale is on this?

[134] **Mr Howells:** I think we are halfway through the 40-day period at the moment. These are negative instruments.

[135] **Huw Irranca-Davies:** Okay, there we are. Thank you very much for that explanation, Gareth. So, if the committee is content, we will await the response from the Government as to their justification on how this complies with article 14 on no discrimination against the actual provision of this postgraduate Master's loan. Thank you, Gareth. Are there any other comments or are you happy with that?

[136] **David Melding:** I think it's a very clear report, which someone could see on our website and would have a chance of understanding it. So, I think it's very helpful that we are maintaining those clear English standards.

[137] **Huw Irranca-Davies:** There we are. Thank you very much.

[138] **Mr Howells:** And there's a second point as well on the same revelation—a different point. So, the default rule is that you can apply for a loan up to £10,280. But there's a sub-rule if you are an eligible prisoner applying for a loan to carry out a Master's degree course. The regulations say the maximum loan for an eligible prisoner is the lower of (a) the course fee, or £10,280. So, if the course fees are £11,000, the maximum is £10,280—so far, so good. But the explanatory memorandum and the explanatory note that come with the regulations say that the maximum loan for an eligible prisoner is the amount of the fee for the course. So, that conflicts, because that says if the fee is £11,000, the eligible prisoner can apply for a fee up to £11,000.

[139] **Huw Irranca-Davies:** So, it's contradicting itself.

[140] **Mr Howells:** There's an inconsistency between what the regulations say and what the explanatory memorandum and explanatory note say around eligible prisoners and the maximum amount of the loan. And, again, we've asked the Welsh Government to clarify that inconsistency.

[141] **Huw Irranca-Davies:** Very good. Dafydd.

[142] **Lord Elis-Thomas:** I met an MA student on Friday. So, I think it's extremely important that we always have a—

[143] Pam oeddwn i'n siarad Why was I speaking English? I do
Saesneg? Mae'n ddrwg gen i. Mae'n apologise. I think it is very important
bwysig ein bod yn gallu cadw golwg that we can keep a close eye on these
ar y materion hyn ac ar ddiogelu issues and seek to safeguard equality
hawliau cyfartal i bobl, beth bynnag for people whatever their situation is
yw eu sefyllfa nhw ynglŷn a ffioedd. in terms of fees. Thank you. I just am
Diolch yn fawr. Jest cefnogi ydw i. just supporting that point.

[144] **Huw Irranca-Davies:** Thank you very much. Now, very importantly, from our committee's deliberations on this point of view, whilst we can wait for the response from the Government and discuss that next week, we do

actually need to formally note the report that we have on this particular negative instrument—it's a 'formally note'. So, if you are content, we formally note the report that we have in here, and we await the Government's response, hopefully next week, on both items. Thank you, Gareth, very much.

15:43

SL(5)102—Rheoliadau Asesu'r Effeithiau Amgylcheddol (Gwaith Gwella Draenio Tir) (Diwygio) 2017

SL(5)102—The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017

[145] **Huw Irranca-Davies:** We move, then, on to the next item, which is a joint negative instrument, SL(5)102—the Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017. These regulations implement directive 2014/52/EU of the European Parliament and of the European Council amending directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment in respect of the land drainage works in England and Wales. Now, Assembly lawyers have identified one issue for report under Standing Order 21.2, which is that the regulations are made in English only. And I think we've been here before. So, Gareth, do you want to comment on this, please? Sorry, just to point out, Members will recall the committee agreed to write to parliamentary committees in Westminster responsible for the scrutiny of subordinate legislation following previous issues about joint and composite instruments being in English only. But this has been put on hold, until after the election and the establishment of new committees. At the moment, we don't have anybody to write to, in effect. But, Gareth, please.

[146] **Mr Howells:** Not much to add to that. These are regulations made jointly by the Welsh Ministers and the Secretary of State. They are laid before the Assembly and the Westminster Parliament and, as has become usual practice, they are in English only. So, there is no Welsh version of these regulations.

[147] **Huw Irranca-Davies:** Any other comments? Dafydd.

[148] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** [*Inaudible.*] we [*Anhyglyw.*] i ni eu cyfieithu nhw. translate them.

[149] **Mr Howells:** Na, nid oes **Mr Howells:** No, there is no Welsh
fersiwn Gymraeg version

[150] 15:45

[151] **Yr Arglwydd Elis–Thomas:** Ac **Lord Elis–Thomas:** And there is no
nid oes modd i ni eu cyfieithu nhw yn way for us to translate them here for
y fan hyn ar gyfer eu hystyried nhw consideration in this place.
yn y fan hyn.

[152] **Mr Howells:** Fydden nhw ddim **Mr Howells:** They wouldn't be
yn ddeddfwriaeth wedyn. Rwy'n legislation, then. For them to be
credu, iddynt fod yn ddeddfwriaeth, legislation, the same regulations
byddai'n rhaid i'r un rheoliadau fynd would have to go before Westminster
o flaen San Steffan a'r Cynulliad yma. and the Assembly.

[153] **Yr Arglwydd Elis–Thomas:** **Lord Elis–Thomas:** In all the years, I
Wyddost ti beth, yr holl flynyddoedd, hadn't realised that.
nid oeddwn i'n sylweddoli hynny?

[154] **Mr Howells:** Rwy'n credu mai **Mr Howells:** It would be a courtesy
cyfieithiad cwrtais byddai hynny pe translation if we were to translate it,
bai ni'n eu cyfieithu, yn lle rather than legislation.
deddfwriaeth.

[155] **Yr Arglwydd Elis–Thomas:** Wel, **Lord Elis–Thomas:** Well, Chair, I think
Mr Cadeirydd, rwy'n credu y dylem ni we should go to war on this issue,
fynd i ryfel ar y mater hwn, a starting today.
chychwyn heddiw.

[156] **David Melding:** Perhaps not today.

[157] **Lord Elis–Thomas:** Well, tomorrow then—after the election. [*Laughter.*]

[158] **David Melding:** It is a troubling issue.

[159] **Huw Irranca–Davies:** Yes, indeed. Well, I think we've already agreed
the approach we'll take on this at a previous meeting, so we'll couple this to
our previous inquiry. Once those committees are set up after the general
election, we're there ready to go. So, please take that forward if you will, in
the light of our previous discussions as well. Thank you for that, and for that

clear explanation as well, Gareth.

15:46

**Papurau i'w Nodi
Papers to Note**

[160] **Huw Irranca-Davies:** So, we move on to item 5, papers to note. In front of us, we have paper 9—correspondence from the Cabinet Secretary for Finance and Local Government to the Finance Committee on 5 May 2017. I would simply invite Members to note the correspondence from the Cabinet Secretary addressed to the Chair of the Finance Committee but copied to this committee. It provides an update on making regulations under section 53 of the Bill, as well as outlining some amendments to be brought forward at Stage 3. Are we happy to note that? Thank you.

15:46

**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.

[161] **Huw Irranca-Davies:** Item 6, a motion under Standing Order 17.42 to resolve to meet in private. Are we content to meet in private? Thank you. We move to private session and we'll clear the gallery, please.

Derbyniwyd y cynnig.

Motion agreed.

*Daeth rhan gyhoeddus y cyfarfod i ben am 15:46.
The public part of the meeting ended at 15:46.*