



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

Y Pwyllgor Iechyd a Gofal Cymdeithasol **The Health and Social Care Committee**

Dydd Mercher, 24 Ebrill 2013
Wednesday, 24 April 2013

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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.

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Rebecca Evans	Llafur Labour
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Ann Jones	Llafur (yn dirprwyo ar ran Mick Antoniw) Labour (substitute for Mick Antoniw)
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Lynne Neagle	Llafur Labour
Gwyn R. Price	Llafur Labour
Jenny Rathbone	Llafur (yn dirprwyo ar ran Vaughan Gething) Labour (substitutue for Vaughan Gething)
Lindsay Whittle	Plaid Cymru The Party of Wales
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Mick Antoniw	Aelod Cynulliad, Llafur, yr Aelod sy'n gyfrifol am y Bil Adennill Costau Meddygol ar gyfer Clefydau Asbestos (Cymru) Assembly Member, Labour, Member in charge of the Recovery
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of Medical Costs for Asbestos Diseases (Wales) Bill

Fiona Davies	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Mark Drakeford	Aelod Cynulliad, Llafur (y Gweinidog Iechyd a Gwasanaethau Cymdeithasol) Assembly Member, Labour (the Minister for Health and Social Services)
Joanest Jackson	Uwch-gynghorydd Cyfreithiol, Cynulliad Cenedlaethol Cymru Senior Legal Adviser, National Assembly for Wales

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Steve George	Clerc Clerk
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 9.30 a.m.
The meeting began at 9.30 a.m.

Ethol Cadeirydd Dros Dro
Election of the Temporary Chair

[1] **Mr George:** Good morning. I declare this meeting of the Health and Social Care Committee open. The committee Chair, Vaughan Gething AM, has submitted his apologies for today's meeting; therefore, the first item of business is the election of a temporary Chair. Therefore, I would like to invite nominations from committee members for a temporary Chair to be elected under Standing Order No. 17.22.

[2] **William Graham:** I nominate Lynne Neagle.

[3] **Gwyn R. Price:** I second that nomination.

[4] **Mr George:** I see that there are no other nominations and I declare Lynne Neagle elected and invite her to take the chair.

Penodwyd Lynne Neagle yn Gadeirydd dros dro.
Lynne Neagle was appointed temporary Chair.

9.31 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

[5] **Lynne Neagle:** Thank you, everyone. Let us proceed with today's business. We have received apologies from Vaughan Gething and Mick Antoniw, which is rather confusing, as he is present. Jenny Rathbone is attending as a substitute for Vaughan and Ann Jones is attending as a substitute for Mick. I welcome Mark Drakeford, the Minister for Health and Social Services, and the officials who are accompanying him, and Mick Antoniw, the Member in charge of the Bill and his accompanying lawyer.

[6] I will make some housekeeping remarks. In the event of a fire alarm, Members should leave the room by the marked fire exits and follow instructions from the ushers and staff. No fire alarm test has been forecast for today. All mobile phones, pagers and BlackBerrys should be switched off, as they interfere with the broadcasting equipment. As you know, the Assembly operates through the media of Welsh and English, and headphones are provided for simultaneous translation, or amplification. I ask that you do not touch any of the buttons on the microphones, as this can disable the system, and please ensure that the red light is showing before speaking.

9.32 a.m.

**Bil Adennill Costau Meddygol ar gyfer Clefydau Asbestos (Cymru): Cyfnod
2—Ystyried Gwelliannau
Recovery of Medical Costs for Asbestos Diseases (Wales) Bill: Stage 2—
Consideration of Amendments**

[7] **Lynne Neagle:** I will run through how we will handle this morning's session. In relation to this item, Members should have before them a copy of the Bill, the marshalled list of amendments and the grouping of the amendments for debate. For our meeting, the order in which we consider amendments will be sections 1 to 21, followed by Schedule 1. You will see from the groupings list that amendments have been grouped to facilitate debate, but the order in which they are called and moved for decision is decided by the marshalled list. There will be one debate on each group of amendments. I will call the proposer of the first amendment in the group who should speak to and move their first amendment and speak to the other amendments in that group. I will then call other speakers, including any proposers of amendments in that group, but they should not move their amendments at that stage. Members who do not have an amendment in the group, but who wish to speak, should indicate their wish to speak in the usual way. I will call on the Member in charge, Mick Antoniw, and the Minister to speak on each group.

[8] For the record and for the purpose of today's proceedings, Mick Antoniw is not considered to be a member of the committee. As only members of the committee may move amendments, it is my intention to move all the amendments in Mick and the Minister's names at the appropriate point in the meeting, unless they indicate that they do not want a particular amendment to be moved. To conclude each debate, I will call the proposer of the first amendment in the group to wind up. Following the debate on a group, I will clarify whether the Member who moved the first amendment still wishes to press it to a decision. If not, he or she may seek the agreement of the committee to withdraw it. If it is not withdrawn, I will put the question on the first amendment to the group that the amendment be agreed to and I will ask whether any Member objects. If no Member objects, the amendment is agreed; if a Member does object, I will call for a vote by show of hands and that vote will be recorded in the minutes.

[9] I will call the proposers of other amendments in each group to move their amendments at the appropriate time in accordance with the marshalled list. If you do not wish to move your amendment, please say so clearly when the amendment is called. Members will be aware that the only way to debate a section of the Bill is to have tabled an amendment to it. Any sections that do not have amendments tabled to them will be deemed agreed, as will any sections where tabled amendments are not agreed to. I will announce which sections have been agreed to at the end of the meeting. Are there any questions? I see that there are none. We will now move to the consideration of the amendments.

Grŵp 1: Gwasanaethau a Eithrir (Gwelliannau 9, 10, 3 a 7)
Group 1: Excluded Services (Amendments 9, 10, 3 and 7)

[10] **Lynne Neagle:** The first group that we must consider is in relation to excluded services. The lead amendment in the group is amendment 9. I call on Darren Millar to move the amendment and to speak to the other amendments in the group.

[11] **Darren Millar:** I move amendment 9 in my name.

[12] First, I reiterate my party's support for the principles behind this Bill; that is, to ensure that the costs to the public purse associated with industrial disease are recovered. Members will know, from the Stage 1 debate in Plenary, that we wish these principles to be applied more broadly, and on that basis we have objected to the continued progress of this Bill, wanting the Government to bring its own Bill forward. That said, given that this Bill is at Stage 2, we have tabled a number of amendments for today that seek to improve the Bill as it makes its progress through the Assembly.

[13] Amendments 9 and 10 deal with excluded services. The Bill, of course, is based on the recovery of the costs of in-patient treatment in the secondary care setting only. Many witnesses to the Health and Social Care Committee Stage 1 part of the legislative process made it quite clear that they would like to see the provisions of the Bill extended to other forms of care. Marie Curie Cancer Care, for example, which provides a lot of palliative care across Wales, confirmed that half of the costs of the care that it provides is borne by the NHS in Wales, but only half. In 2011-12, the cost to the Welsh NHS of Marie Curie's community nursing services for patients with asbestos-related diseases was around £13,500. It says that this legislation has the potential to recover that and release those funds back into the healthcare system in Wales. As Welsh Conservatives, we believe that the current drafting makes it very unlikely that the costs of palliative care could be recovered. That is why we have tabled amendment 9.

[14] Amendment 10 deals with the costs of primary and community care so that these can be recovered through the proposed scheme immediately. Although they may form, at present, only a very small part of the cost of treatment associated with asbestos-related diseases, we know that, through service reconfiguration and service modernisation programmes, a lot more care will be delivered in primary and community settings in the future. So, our amendment makes it very clear on the face of the Bill that these costs can be recovered. It is slightly stronger than the amendments tabled by the Welsh Government. We see these as preferable because they will be on the face of the Bill rather than this simply being addressed through regulations, which is the intention of the Minister's amendment. I look forward to hearing the Minister speak to his amendment.

[15] As I say, I believe that our amendments are superior because they place these matters on the face of the Bill rather than dealing with them through regulations. I urge Members to support them.

[16] **Lynne Neagle:** Thank you, Darren. Would any members of the committee like to speak? If not, I will call on the Minister to speak.

[17] **The Minister for Health and Social Services (Mark Drakeford):** The Government resists amendments 9 and 10 in the name of Darren Millar. As far as amendment 9 is concerned, the Government's clear position is that the Bill provides already for the situation where palliative care is either provided or funded by local health boards or NHS trusts in Wales. If palliative care is provided or funded by the NHS in that way, the costs are recoverable through the Bill as currently drafted. The Bill is intended to recover costs incurred by the NHS. It does that in relation to palliative care. While the amendment probes

that properly, and puts that up for proper scrutiny, our view is that the Bill already provides for that and the amendment is therefore unnecessary.

[18] As far as amendment 10 is concerned, the amendment actually would change the scope of relevant Welsh NHS services because it would bring primary care within the Bill's ambit from the outset. The Government's position is the one rehearsed in front of the committee previously, which is that as services change and as more is done in primary care, the time may well come when it will be sensible to extend the scope of the Bill so that those costs can be recovered. At present, a very small fraction of costs incurred through these diseases are incurred in primary care. The effect of amendment 10 will be to expose the Bill to increased costs immediately in pursuing those very minor extra recoverable costs. For that reason, we resist it.

[19] However, the Government accepts the general point that the mover made. That is why we have brought forward amendment 7, which will allow the Government, by regulation, to extend the scope of the Bill to primary care at a point when that becomes a sensible thing to do. That is a commitment that the Government has already made as a result of hearing the committee's earlier Stage 1 work.

[20] Amendment 3 requires that any new regulations made as a consequence of amendment 7 will be brought about through the affirmative procedure. That is to say that they would have to be laid in draft and approved by the Assembly before they could be made.

[21] On those grounds, I ask the committee to reject amendments 9 and 10 and to support amendments 3 and 7 in my name.

[22] **Lynne Neagle:** Thank you, Minister. I call on the Member in charge of the Bill, Mick Antoniw.

[23] **Mick Antoniw:** Again, I welcome the support in principle that the Member gave at the outset of his introduction to the amendments. I am opposed to amendments 9 and 10, and I am supportive of amendments 3 and 7 for reasons similar to those given by the Minister. I believe that palliative care is already covered in the draft legislation, and I would refer the committee to the evidence of Paul Davies when he described the tariff system. He said that because it is a broad-brush approach, it would enable the Welsh Government in any event to recover close to, if not wholly, the full cost. That would cover the tertiary and primary care sections.

[24] I agree with the comments in respect of amendment 10. The evidence is that, at this stage, the recovery of primary care costs would be very expensive to achieve and would outweigh the benefits. I prefer the sensible amendment that is amendment 3, which extends the power to the Minister to make amendments that may be necessary to ensure proper recovery of costs incurred by the Welsh Government. Amendment 7 puts that into the affirmative procedure.

[25] **Lynne Neagle:** Thank you, Mick. I ask Darren to reply to the debate.

[26] **Darren Millar:** I am very grateful for the Minister's contribution to this debate, and I am grateful to the Member in charge. The reason I wanted to move amendment 9 was to put beyond doubt that palliative care was included within the scope of the Bill. From what I have heard, I am comfortable that that is absolutely clear, therefore I would be prepared to withdraw amendment 9.

[27] However, I think that amendment 10 is absolutely necessary to ensure that primary care costs are on the face of the Bill with immediate effect. It is important that we do not wait

for this to be dealt with via regulation alone, given the length of time that that might take. We know that increasing provision is taking place in primary and community care settings. The Minister used the term 'at present' in referring to the fact that these reflect a small proportion of the overall costs of care to the NHS for those with asbestos-related disease. That is true. The committee heard evidence that, at present, only up to around 5% of the total costs associated with dealing with asbestos-related disease are dealt with within primary and community care settings. However, there is no doubt in my mind that that percentage will rapidly increase as a result of NHS modernisation programmes in the near future. On that basis, I still wish to progress to a vote on amendment 10. I will say, however, that if amendment 10 is not accepted, we will reluctantly support the Minister's amendments, as they at least go some way to addressing our concerns.

9.45 a.m.

[28] **Lynne Neagle:** Does any Member object to Darren Millar withdrawing amendment 9?

[29] **Elin Jones:** Yes.

[30] **Lynne Neagle:** The question, therefore, is that amendment 9 be agreed to. Are there any objections? I see that there are, so we will move to a vote on amendment 9.

*Gwelliant 9: O blaid 3, Ymatal 2, Yn erbyn 5.
Amendment 9: For 3, Abstain 2, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Jones, Elin
Whittle, Lindsay
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Evans, Rebecca
Jones, Ann
Neagle, Lynne
Price, Gwyn R.
Rathbone, Jenny

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Graham, William
Millar, Darren

*Gwrthodwyd gwelliant 9.
Amendment 9 not agreed.*

[31] **Lynne Neagle:** Darren has indicated that he would like to move amendment 10.

[32] **Darren Millar:** I move amendment 10 in my name.

[33] **Lynne Neagle:** The question is that amendment 10 be agreed to. Does any Member object? I see that there is objection. We will therefore move to a vote on amendment 10.

*Gwelliant 10: O blaid 2, Ymatal 1, Yn erbyn 7.
Amendment 10: For 2, Abstain 1, Against 7.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Graham, William
Millar, Darren

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Evans, Rebecca
Jones, Ann

Jones, Elin
 Neagle, Lynne
 Price, Gwyn R.
 Rathbone, Jenny
 Whittle, Lindsay

Ymataliodd yr Aelodau canlynol:
 The following Members abstained:

Williams, Kirsty

Gwrthodwyd gwelliant 10.
Amendment 10 not agreed.

[34] **Lynne Neagle:** I move amendment 3 in the name of the Minister. Before we proceed to a vote, I remind Members that if amendment 3 is not agreed, amendment 7 will fall. The question is that amendment 3 be agreed to. Does any Member object? I see that there is no objection, therefore amendment 3 is agreed to in accordance with Standing Order No. 17.34.

Derbyniwyd gwelliant 3.
Amendment 3 agreed.

[35] We will dispose of the remaining amendment in this group, amendment 7, later in proceedings, in accordance with the marshalled list.

Grŵp 2: Y Cyfnod Amser ar gyfer Adennill Costau (Gwelliant 11)
Group 2: Timescale for Recovering Costs (Amendment 11)

[36] **Lynne Neagle:** The only amendment in this group is amendment 11 in the name of Darren Millar. I call on Darren to move his amendment.

[37] **Darren Millar:** I move amendment 11 in my name.

[38] This amendment is designed to deal with the stop-the-clock process, which was debated at some length during the Stage 1 committee work. The intention of the Bill is to recover the costs for treatment, and it seems inconsistent to recover the costs only until the date of the compensation that is made. We know from the evidence that the committee received that treatment for asbestos-related disease can be prolonged and that costs can rack up. There was some debate about the distribution of costs and whether they were more significant towards the end of somebody's life or in the early parts of treatment after diagnosis. However, we heard from Simon Cradick from the Forum of Insurance Lawyers that where a diagnosis is made at an early stage, claims are settled within a six to nine-month period, and that would, on average, be well before the terminal stages of an asbestos-related disease, when the majority of costs are likely to be incurred. So, while stop-the-clock might be appropriate for some asbestos-related diseases, it is not appropriate for all, and the committee report alluded to the fact that it would like to see the maximum costs recovered by the NHS, if the Bill were to proceed. Amendment 11 is designed to achieve that and to allow Welsh Ministers to arrange for additional certificates to be published and to maximise the costs that can be recovered to the public purse right up until death, where appropriate.

[39] **Lynne Neagle:** Are there any other Members who would like to speak to this amendment?

[40] **Jenny Rathbone:** As with the previous lead amendment, amendment 9, this would overly complicate the situation. As we heard during Stage 1, the majority of the costs incurred are in secondary care, and, at this point in time, it is much simpler to have the stop-the-clock

mechanism for the costs incurred up to that point. We have already agreed the regulation to allow the Minister for Health and Social Services to amend that in future circumstances.

[41] **Lynne Neagle:** Thank you, Jenny. If there are no other Members who would like to speak, I call on the Minister.

[42] **Mark Drakeford:** I have listened carefully to the points made by Darren Millar in moving the amendment and, in many ways, I am sympathetic to the intention behind what he is trying to achieve here. I am afraid that there are two reasons why the amendment has to be resisted. First, the stop-the-clock mechanism provides for certainty, simplicity, clarity and proportionality, and, in the end, the claims of that mechanism outweigh the complexities that would be introduced were the amendment to be accepted. It has never been the intention of the Bill that we would recover every single penny spent on asbestos-related diseases within the NHS. There is a sense in which the Bill needs to be supported by a set of administrative measures that are proportionate to the whole intention. We think that stop the clock does that.

[43] I have a second anxiety about the amendment, which is that, in an unintended way, it would open up a difficulty that I think Kirsty Williams regularly pointed to during Stage 1 proceedings, which is that, if it were possible to issue a certificate to recover costs right up to the point of death, there really is no incentive at all for the industry to settle claims early. There has been an anxiety that the Bill might, in any case, cause delays in the settlement of claims because of the extra costs that are now incurred as a result of settlement. The evidence on that was ambiguous and was capable of being argued both ways. The effect of this amendment would be to tip the balance of that argument much more in the direction of insurance companies hanging on and on, and making life more difficult for claimants, because there is nothing in it for those companies to settle early, and allow the stop-the-clock mechanism to set a known limit on their liabilities.

[44] **Lynne Neagle:** I call on Mick Antoniw to speak as the Member in charge.

[45] **Mick Antoniw:** I, too, oppose the amendment although I am sympathetic to the intention, which is similar to the intention with which I started the process for this particular legislation. The first point I would make is that the Bill already makes provision whereby, after settlement at an early stage, if there is a provisional damages award, which is very common, there can be a further certificate later on. The problem is really with the practicality of the amendment, because it breaks the link between the triggering judgment or settlement and the recovery itself. Death could be a very long time after the actual settlement, and it would be necessary then to re-establish causation quite some time after the initial settlement, and the establishment of causation could be an expensive, complicated and costly exercise. It would create a high degree of uncertainty for the insurance industry, and it is an important industry because of the legal requirement for companies to have public liability and employer's liability insurance. So, it is a fair point in terms of the business interest. Ultimately, to take the example of someone with asbestosis, they might die 20 years after the settlement of the case, and it would be necessary to establish whether that death was caused by the asbestosis or whether it contributed to it. This would require a mechanism for the Welsh Government to continue to keep the files open to monitor and ensure that, at some unpredicted time in the future, there was a mechanism for issuing a further certificate. So, on the grounds of impracticality, I oppose the amendment, although I sympathise with the intention.

[46] **Lynne Neagle:** Thank you, Mick. I call on Darren Millar to reply to the debate.

[47] **Darren Millar:** I want to continue to press this matter to a vote. I am not impressed, really, that neither the Minister nor the Member in charge of this Bill wants to recover the maximum cost to the public purse. We heard clearly in evidence at Stage 1 that significant

costs could be incurred way after the compensation claims for industrial disease have been settled by the insurance industry. It seems to me something of a misnomer, in that those significant costs would not be recoverable by the NHS. If this is not an appropriate mechanism to recover them, then I would challenge the Minister and the Member in charge to bring forward further amendments at Stage 3. However, in the absence of any other amendments, I want to continue to press this matter at this point in time.

[48] **Lynne Neagle:** Thank you, Darren. So, the question is that amendment 11 be agreed to. Does any Member object? There is an objection, so we will now proceed to a vote on amendment 11.

Gwelliant 11: O blaid 2, Ymatal 0, Yn erbyn 8.

Amendment 11: For 2, Abstain 0, Against 8.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Graham, William
Millar, Darren

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Evans, Rebecca
Jones, Ann
Jones, Elin
Neagle, Lynne
Price, Gwyn R.
Rathbone, Jenny
Williams, Kirsty
Whittle, Lindsay

Gwrthodwyd gwelliant 11.
Amendment 11 not agreed.

Grŵp 3: Apelau a Hawliadau (Gwelliannau 4 a 2) **Group 3: Appeals and Waivers (Amendments 4 and 2)**

[49] **Lynne Neagle:** The lead amendment in this group is amendment 4 in the name of the Minister. I formally move amendment 4 in the name of the Minister and call on him to speak to this and the other amendment in the group.

[50] **Mark Drakeford:** Thank you, Chair. Amendment 4 is a relatively technical amendment that brings the matter of waivers in line with the way that appeals are currently dealt with in the Bill. When an application for an appeal against a certificate is made, Welsh Ministers may waive the requirement for a payment of the amount due before the appeal is considered. They may only do this if the person to whom the certificate is issued applies for a payment to be waived. The grounds for waiving the payment are set out in section 10(5) of the Bill. However, as currently drafted, the Bill does not provide powers to Welsh Ministers to prescribe the manner in which an application to waive the payment may be made. Amendment 4 will enable Welsh Ministers to make regulations to prescribe these matters, and I ask for the committee's support in allowing that to take place.

[51] I would just make Members aware of the fact that if amendment 2—which is about to be moved in the name of the Member in charge—were to be passed and, as a result, the affirmative resolution procedure be applied to the first use of the Welsh Ministers' power to make regulations in relation to appeals, the same procedure would apply to waivers.

[52] **Lynne Neagle:** Thank you, Minister. Are there any other members of the committee who would like to speak on this amendment? I see that none do. I call on Mick Antoniw, the Member in charge.

[53] **Mick Antoniw:** I am supportive of both amendments. I think that both follow on

from recommendations by the Constitutional and Legislative Affairs Committee, and both put these procedures under the affirmative process. So, I am supportive of them.

[54] **Lynne Neagle:** Thanks, Mick. I call on the Minister to reply to the debate—well, it is not really a debate at all.

[55] **Mark Drakeford:** I have no reply, other than to ask Members to support both amendments.

[56] **Lynne Neagle:** Thank you. The question is that amendment 4 be agreed to. Does any Member object? There are no objections. Amendment 4 has therefore been agreed to in accordance with Standing Order No. 17.34.

*Derbyniwyd gwelliant 4
Amendment 4 agreed.*

[57] **Lynne Neagle:** We shall return to vote on the other amendment in this group later in proceedings in accordance with the marshalled list.

**Grŵp 4: Defnyddio Arian a Adenillir (Gwelliannau 12 ac 1)
Group 4: Use of Recovered Funds (Amendments 12 and 1)**

[58] **Lynne Neagle:** The lead amendment in this group is amendment 12. I call on Darren Millar to move the amendment in his name and to speak to this and the other amendment in the group.

[59] **Darren Millar:** Thank you, Chair. I move amendment 12 tabled in my name.

[60] These amendments are very important, in our opinion. The Bill states that Ministers should give regard to the use of funds equal to those recovered for the treatment of, or services relating to, asbestos-related diseases. Amendment 12 would ensure that an amount equal to the recovered amount would be used for those purposes—that is, the same amount would be spent as would be received. The Law Society commented that without a duty to provide resources equivalent to the amounts raised, there is a danger that the benefits would be lost from the NHS budget, which would be reduced by the amount that is gained, or within NHS bureaucracy. We believe that it is very important that this is confirmed on the face of the Bill to avoid instances where funds may be provided for the treatment of, or research into, diseases that are lower than the amount originally recovered.

[61] The current wording of the Bill does not make it mandatory that the amount received is the same as the amount spent on treatment, research et cetera. We believe that our amendment will rectify this issue.

[62] I can also confirm that we will be supporting amendment 1 in this group, which has been tabled by the Member in charge.

10.00 a.m.

[63] **Lynne Neagle:** Thank you, Darren. Would any other Members like to speak?

[64] **Kirsty Williams:** My comments refer to amendment 1, namely the explicit inclusion on the face of the Bill of the fact that the money raised by this scheme could be used for the purpose of research. Members will be aware that I have been somewhat sceptical about the legislation. We are all aware that the amounts raised will not be particularly large in relation to the NHS as a whole. It seems to me that the best way for us to assist asbestos-related

disease sufferers is by investing in research. There is a paucity of research in this field as things currently stand. Given the complexities of organising services for individuals, who would be located across the whole of Wales, I believe that research might be the most appropriate use of the spend and I would like it made explicit on the face of the Bill. I am glad that the Member in charge has listened to the recommendations made by the committee at Stage 1 and has brought forward his own amendment in this case.

[65] I will also be supporting the Minister's amendment, amendment 5, which requires the Minister to produce an annual report to account for the amounts of money raised and what that money has been spent on. It is important, when legislating, to be able to make that legislation applicable to the general public. The understanding of this legislation would be greatly enhanced by the publication of a report.

[66] **Lynne Neagle:** Would any other member of the committee like to speak? I see not. Therefore, I call on the Minister to speak.

[67] **Mark Drakeford:** As Kirsty Williams has just suggested, amendment 5, which will be discussed later in the meeting, covers much the same ground as amendment 12 and, obviously, the Government prefers amendment 5 to amendment 12. We are opposed to amendment 12 not because of the sentiments that lie behind it, but because its practical effect is to take funds raised as a result of this Bill outside the normal budget procedures, both of the Welsh Government and the National Assembly. It would, in effect, be a form of hypothecation. The Government and the Assembly have an open and transparent budget process in which the whole of the Welsh Government's budget is available for scrutiny by Members and can be subject to amendment and votes on the floor of the Chamber. Were this amendment to be passed, it would take the sums of money raised through this Bill outside that process altogether. It would mean that, in future, there would not be the same level of scrutiny and accountability that exists within current procedures. We will propose an alternative amendment later that we think has much the same effect as amendment 12 without that disadvantage.

[68] I would also like to say that the Government is very happy to support amendment 1 in relation to research.

[69] **Mick Antoniw:** I also oppose amendment 12 and obviously support my own amendment, amendment 1. The first additional reason that I would raise is that it imposes too high a degree of strictness and rigidity. Secondly, the annual reporting system is the correct mechanism. Thirdly, this would impose an obligation on the Welsh Government to pay the administrative costs of the system in addition to the amounts that it recovers. So, effectively, the amounts that are secured would have to be paid in respect of asbestos-related disease without allowance of the administrative costs being deducted from it. That is my interpretation of it. However, ultimately, the correct way of ensuring accountability is through national reporting and debate, challenge and scrutiny on the floor of the Chamber.

[70] **Lynne Neagle:** I call on Darren Millar to reply to the debate.

[71] **Darren Millar:** I have listened very carefully to what has been said and I totally concur with the comments made by Kirsty Williams in respect of the need to allow for expenditure on research from the amount recovered by the Bill. I am very disappointed after listening to the Minister and the Member in charge that they do not support amendment 12. All of the evidence that we received suggested that a direct link is needed between the amounts recovered under the Bill and the expenditure in relation to asbestos. If we do not move forward with this particular amendment, the resources recovered could potentially be spent in completely different parts of the NHS. The Minister says that he does not like hypothecation, but we already have hypothecation within the NHS. For example, with regard

to mental health services, there are ring-fenced funds and expectations for health boards to meet. That is something that I support, and it would be interesting to hear whether the Minister still supports that policy decision as well.

[72] So, I want to press forward with a vote on this amendment. It is really important for the sake of clarity that it is on the face of the Bill, given that everyone is aiming to deliver a link between the funds raised through the recovery of costs in relation to asbestos-related diseases, and expenditure on asbestos research and improvements in treatment. It is really important that this is very clearly stated on the face of the Bill, notwithstanding the production of an annual report, which is, of course, something that we will also support.

[73] **Lynne Neagle:** Thank you, Darren. The question is that amendment 12 be agreed to. Does any Member object? I see that there is objection. We will therefore take a vote on amendment 12.

Gwelliant 12: O blaid 4, Ymatal 0, Yn erbyn 6.

Amendment 12: For 4, Abstain 0, Against 6.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Graham, William
Jones, Elin
Millar, Darren
Whittle, Lindsay

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Evans, Rebecca
Jones, Ann
Neagle, Lynne
Price, Gwyn R.
Rathbone, Jenny
Williams, Kirsty

*Gwrthodwyd gwelliant 12.
Amendment 12 not agreed.*

[74] **Lynne Neagle:** I move amendment 1 in the name of Mick Antoniw with the name of Kirsty Williams in support. The question is that amendment 1 be agreed to. Does any Member object? I see that there is no objection, therefore amendment 1 is agreed in accordance with Standing Order No. 17.34.

*Derbyniwyd gwelliant 1.
Amendment 1 agreed.*

Grŵp 5: Cywiriadau Drafftio (Cymraeg yn Unig) (Gwelliannau 6 ac 8) **Group 5: Drafting Corrections (Welsh Only) (Amendments 6 and 8)**

[75] **Lynne Neagle:** The fifth group of amendments is in relation to drafting corrections in the Welsh version of the Bill. The lead amendment in the group is amendment 6 in the name of the Minister. Therefore, I move amendment 6 and call on the Minister to speak to amendment 6 and the other amendment in the group.

[76] **Mark Drakeford:** Diolch, Gadeirydd. Mae'r gwelliannau hyn yn gymwys i'r fersiwn Gymraeg o'r Bil yn unig. Mae gwelliant 6 yn mewnosod y gair 'eraill' mewn perthynas â gwasanaethau er mwyn cyfateb i eiriad y fersiwn Saesneg o'r Bil.

Mark Drakeford: Thank you, Chair. These amendments apply only to the Welsh version of the Bill. Amendment 6 inserts the word 'eraill' in relation to services in order to correspond to the wording of the English version of the Bill.

[77] Mae gwelliant 8 yn newid y diwrnod y daw adran 1, adran 20, adran 21 a'r pwerau
Amendment 8 changes the day on which section 1, section 20, section 21 and the

a roddir gan y Bil hwn i wneud rheoliadau i rym drannoeth y diwrnod y caiff y Bil hwn y Cydsyniad Brenhinol. Oherwydd gwall drafftio, mae fersiwn Gymraeg y Bil yn datgan ar hyn o bryd y daw'r pwerau hyn i rym ddau ddiwrnod ar ôl i'r Bil gael Cydsyniad Brenhinol.

powers conferred by this Bill to make regulations come into force to the day after the day on which this Bill receives Royal Assent. As a result of a drafting error, the Welsh version of the Bill states at present that these powers will come into force two days after the Bill receives Royal Assent.

[78] Bwriedir i'r gwelliannau hyn sicrhau cysondeb rhwng y fersiynau Cymraeg a Saesneg o'r Bil. Hoffwn ofyn i chi gefnogi'r gwelliannau hyn.

It is intended that all of these amendments ensure consistency between the English and Welsh versions of the Bill. I wish to ask you to support these amendments.

[79] **Lynne Neagle:** Thank you, Minister. Do any other Members wish to speak to these amendments? I see not. Therefore, I call on Mick Antoniw, the Member in charge, to reply to the debate.

[80] **Mick Antoniw:** I support both of those amendments.

[81] **Lynne Neagle:** Minister, I assume there is nothing that you want to add.

[82] **Mark Drakeford:** Dim diolch. **Mark Drakeford:** No, thank you.

[83] **Lynne Neagle:** The question is that amendment 6 be agreed to. Does any Member object? I see that there is no objection, therefore amendment 6 is agreed in accordance with Standing Order No. 17.34.

*Derbyniwyd gwelliant 6.
Amendment 6 agreed.*

[84] **Lynne Neagle:** We will return to a vote on the remaining amendment in this group later in proceedings, in accordance with the marshalled list.

Grŵp 6: Adroddiad Blynyddol (Gwelliant 5) Group 6: Annual Report (Amendment 5)

[85] **Lynne Neagle:** The sixth group of amendments is in relation to an annual reporting requirement. There is only one amendment in the group, which is amendment 5 in the name of the Minister. I move amendment 5 and call on the Minister to speak to the amendment.

[86] **Mark Drakeford:** This amendment has been brought forward by the Government in response to recommendations made by this committee in its Stage 1 scrutiny, and, as was mentioned by the Government during the Plenary debate on the general principles of the Bill, the effect of amendment 5 is to place a duty on Welsh Ministers to make an annual report to the Assembly on the disbursement of funds recovered under the Bill. It will go a long way—although not all of the way, as I am sure Darren Miller would have wished through his amendment—to securing some of the objectives that he set out when he spoke to an earlier amendment. In other words, it will require Welsh Ministers to be completely clear as to what they have spent the money raised under this Bill on. They will then be able to be scrutinised and questioned by Assembly Members and by groups beyond the Assembly that have an interest in the Bill. It will add to the clarity and transparency of the process, and I am very pleased to be able to bring forward the amendment.

[87] **Lynne Neagle:** Thank you, Minister. Are there any other Members who would like to speak to this amendment? I see that there are not. I therefore call on the Member in charge,

Mick Antoniw.

[88] **Mick Antoniw:** I very much welcome the amendment. If there was one consistent message that came through all of the scrutiny proceedings, it was that there should be scrutiny of, and debate on, how the money is used. I also welcome it because it provides a welcome focus on an annual basis on the issue of asbestos disease.

[89] **Lynne Neagle:** Thank you, Mick. Minister, would you like to add anything? I see that you would not. I therefore assume that you would like to take this to a vote. I remind Members that, if this amendment is not agreed, amendment 14 in group 8 will fall. The question is that amendment 5 be agreed to. Does any Member object? I see that there is no objection. Amendment 5 is therefore agreed in accordance with Standing Order No. 17.34.

*Derbyniwyd gwelliant 5.
Amendment 5 agreed.*

[90] **Lynne Neagle:** We have disposed of all amendments in group 6, and we now move on to group 7.

**Grŵp 7: Adroddiad ar Gymhwysio Darpariaethau'r Ddeddf i Glefydau Eraill
(Gwelliant 13)
Group 7: Report on Application of Act's Provisions to Other Diseases (Amendment
13)**

[91] **Lynne Neagle:** There is just one amendment in this group, amendment 13, and I ask Darren Millar to move it.

[92] **Darren Millar:** I move amendment 13 in my name, and I wish to speak to it.

[93] This amendment seeks to address the concerns that were raised and the discussions that were had, during Stage 1 committee proceedings, whereby Members were persuaded that the principle that the polluter should pay for the harm caused could be applied more widely to other industrial diseases in the future. This amendment is designed to achieve a clear indication from the Government, within three years of the date on which the Bill receives Royal Assent—it could be a simple part of the annual report, for example—that it has considered how the provisions could be applied to other diseases, and any actions that it might want to take forward as a result of that. I hope that Members will see this as a valuable addition to the Bill, and a sensible way of ensuring that we do not lose sight of the fact that there are other industrial diseases for which the NHS ought to be able to recover costs in the future.

[94] **Lynne Neagle:** Thank you, Darren. Kirsty Williams is next, then Elin.

[95] **Kirsty Williams:** The amendment, as drafted, does not mention industrial diseases, but is a catch-all for all diseases. While I appreciate that this principle could be applied, as I said in the Stage 1 debate on the floor of the Chamber, this potentially has a massive policy impact, which has not been debated or discussed at any length whatsoever. We have to proceed carefully before we have a load of unintended consequences arising out of this. In time, perhaps, I believe that there will be discussions about this. However, the amendment does not relate simply to industrial diseases; it is much wider than that. I think it should be resisted, because it operates in the vacuum of a policy debate that is yet to be had.

10.15 p.m.

[96] **Elin Jones:** I would also like to speak against this amendment, even though I believe

that there has been an opportunity during the progress of this Bill for the Government and the lead Member to have had a discussion as to whether the Government could have taken this Bill on board, included it within wider legislation and have made it relevant to all industrial diseases. However, I think that that point has now passed for this particular Bill and I do not think that this Bill should be encumbered by the requirement to address this at the time of a future Government—three years is just about the time of the next Assembly election and this would trigger that debate. That is an issue for the next Government. It could well be an issue for the manifestos of all the political parties around this table to address, but I do not think that it is an issue for this particular Bill to address.

[97] **Jenny Rathbone:** I understand what the amendment is trying to achieve, but I do not think that legislation is the way to achieve it. We have not properly analysed the implications of this and there will be lots of opportunities for arguments to be put forward around the application of this process to other diseases when we debate how well the Act is working when we debate the annual report. That is the moment to say, ‘It is working so wonderfully that we ought to be able to apply it to X, Y or Z’. I do not think that it is appropriate to put it into legislation; we want to see how the Act is going to work first.

[98] **Lynne Neagle:** If there are no other Members who wish to speak, I call on the Minister to respond.

[99] **Mark Drakeford:** Thank you, Chair. The basic principle that we should learn from the experience gained in implementing this Bill, should it become an Act, and make an assessment of the wider applicability of the principle underlying it, is one that the Government accepts and is keen to reinforce. The specifics of the amendment, however, are premature and imprecise and we must resist it as a result. I am prepared to give this commitment on the record this morning, however. In the explanatory memorandum to the Bill, there is a commitment to provide an evaluation of its working. I am happy to give a commitment that we can include, within that evaluation, a separate and specific item that will require the evaluators to make an assessment of whether the experience of this Bill leads to a conclusion that it has a more general applicability to a wider range of industrial diseases. We want to learn from the experience, and we will make that learning an explicit part of the evaluation that would follow from the Bill. Then, it will be for any Government at that time to decide whether it wishes to take the general principle forward to a wider range of potential applicabilities.

[100] **Mick Antoniw:** I acknowledge the sentiments and the views that have been expressed with regard to the principle. I also acknowledge the comments that the Minister has just made, which reiterate some commitments that were given during the Stage 1 debate in Plenary. As the Member in charge of the Bill, I have a duty to confine the Bill to the parameters within which I was given leave to bring the Bill forward, which are strictly in respect of the asbestos issue. Therefore, in my view, it is not appropriate for the legislation to seek to achieve other objectives. There are other mechanisms and ways in which that can be done, if it is the desire of the Government or Members. So, I will oppose this amendment.

[101] **Lynne Neagle:** Thank you, Mick. I call Darren Millar to reply.

[102] **Darren Millar:** I was very interested to listen to the response of the Minister to this proposal. I am very pleased that he has given a clear commitment to include within the evaluation work the opportunity for this matter to be addressed. On that basis, I am very happy to withdraw the amendment.

[103] **Lynne Neagle:** Does any Member object to Darren Millar withdrawing amendment 13? I see that there are no objections.

*Tynnwyd gwelliant 13 yn ôl drwy ganiatâd y pwyllgor.
Amendment 13 withdrawn by leave of the committee.*

[104] **Lynne Neagle:** In accordance with the marshalled list, we now move to dispose of amendment 7, which was debated in group 1.

[105] I move amendment 7 in the name of the Minister. The question is that amendment 7 be agreed to. Does any Member object? I see that there are no objections. Therefore, amendment 7 is agreed in accordance with Standing Order No. 17.34.

*Derbyniwyd gwelliant 7.
Amendment 7 agreed.*

[106] **Lynne Neagle:** I move amendment 2 in the name of Mick Antoniw. The question is that amendment 2 be agreed to. Does any Member object? I see that there are no objections. Therefore, amendment 2 is agreed in accordance with Standing Order No. 17.34.

*Derbyniwyd gwelliant 2.
Amendment 2 agreed.*

[107] **Lynne Neagle:** In accordance with the marshalled list, we now move to dispose of amendment 8, which was debated in group 5.

[108] I move amendment 8 in the name of the Minister. The question is that amendment 8 be agreed to. Does any Member object? I see that there are no objections. Therefore, amendment 8 is agreed in accordance with Standing Order No. 17.34.

*Derbyniwyd gwelliant 8.
Amendment 8 agreed.*

[109] **Lynne Neagle:** We have now considered, and disposed of, all the amendments in groups 1, 3, 5 and 7. Therefore, we now move to the final group, which is group 8.

Grŵp 8: Darpariaeth ‘Machlud’ (Gwelliant 14) Group 8: ‘Sunset’ Provision (Amendment 14)

[110] **Lynne Neagle:** The final group relates to a sunset provision. There is just one amendment in the group, which is amendment 14, and I ask Darren Millar to move the amendment.

[111] **Darren Millar:** I move amendment 14 in my name.

[112] There was a great deal of discussion during Stage 1 of the committee’s work about the cost-benefit analysis in the Bill. I think that everybody around this table would agree that we should always ensure that any piece of legislation has greater benefits than costs, particularly a piece of legislation such as this.

[113] The committee has heard evidence of how asbestos-related diseases may not yet have reached their peak, but they are likely to reach their peak around 2016. With the reduction in the use of asbestos and increasing health and safety measures, it seems clear that the rate of cases will begin to fall over time. The Association of British Insurers said that the costs and administrative burdens borne by health bodies to recover asbestos-related disease charges incurred by the NHS are likely, in its opinion, to outweigh the estimated £2 million per annum of benefits. We did not accept that as a committee, but there may come a point at which the balance shifts, in terms of the costs of recovery being greater than the amounts

recovered. This sunset provision allows for the opportunity to stop running the scheme if it is clearly demonstrated in an annual report that the sums that are being recovered are lower than the costs of recovery. I hope that Members will be able to give the amendment their support.

[114] **Elin Jones:** I understand the purpose of the amendment, and we have had considerable discussion in this committee on the cost-benefit analysis of the legislation. However, I cannot support this amendment as drafted, because we could conceivably have a year, say in four or five years' time, in which there would be no costs recovered, and then, obviously, this amendment would trigger an annual report that would lead to a sunset clause being enacted. However, the following year could see 10 or 15 cases, just because it works on that arbitrary basis. So, I do not think that the way this amendment is designed will capture the intent of what Darren is proposing. Therefore, I cannot support the amendment as drafted.

[115] **Lynne Neagle:** Would any other Members like to speak to this amendment? If not, I call the Minister to respond.

[116] **Mark Drakeford:** Thank you, Chair. As I have said several times this morning, the intention of the amendment is not objectionable. However, I think that it is unnecessary. I cannot imagine any Minister wishing to operate a cost-recovery scheme that recovers less than it costs to administer. In that sense, the amendment is otiose. However, it also has an internal difficulty, which Elin Jones has just mentioned, in that it is overly restrictive in the way that it is drafted. It takes no account, for example, of fluctuations year by year in receipts, and could, as an unintended consequence, bring the Act to an end just at a point when significant costs were about to be recovered. So, it is both unnecessary and unworkable and to be resisted on both those grounds.

[117] **Mick Antoniw:** In the early days of legislation drafting after the Magna Carta, lawyers were paid by the word, and consequently legislation was often much more verbose than it needed to be. The point I would make is that I think that this is otiose, and I do not think that it is necessary. Given the desirability of keeping legislation as short and simple as possible, that there is agreement for annual scrutiny, and the points that Elin Jones made, which are very valid, I think that this an amendment with which one has sympathy, but which is unnecessary in the overall scheme of the legislation.

[118] **Lynne Neagle:** Thank you, Mick. I call Darren Millar to reply.

[119] **Darren Millar:** I am grateful to the Minister for expanding my vocabulary today with that particular word. Little did I expect that the Magna Carta would be mentioned in response to one of my amendments. [*Laughter.*] I appreciate the issue that Elin Jones raised regarding the possibility of a challenging year as regards recovery costs and therefore the costs of recovery outweighing the amount being recovered. That is, potentially, a very real possibility. I will give that some further thought. I will withdraw the amendment for now, but I think that we need a clear mechanism that will bring the scheme to an end at some point if it is clear that running the scheme means a consistent additional cost to the taxpayer above the amount that is being recovered. I urge the Minister and the Member in charge to look at how that can be reflected somewhere in the Bill and to bring forward an amendment at Stage 3.

[120] **Lynne Neagle:** Does any Member object to the withdrawal of that amendment? I see that they do not.

*Tynnwyd gwelliant 14 yn ôl drwy ganiatâd y pwyllgor.
Amendment 14 withdrawn by leave of the committee.*

[121] **Lynne Neagle:** For the record, all sections of the Bill have been agreed by the committee. As we have disposed of all the amendments, Stage 3 begins tomorrow. The

deadline for tabling amendments will be notified to Members in due course.

[122] Under Standing Order No. 26.27, if a Bill is amended during Stage 2 proceedings so as to insert a section or Schedule, or substantially alter any existing provision, the committee considering Stage 2 proceedings may request that the Member in charge prepare a revised explanatory memorandum. As such, do Members agree that the Member in charge should prepare such a revised explanatory memorandum? I see that they do. That is agreed. That concludes Stage 3 proceedings of the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill.

10.27 a.m.

Papurau i'w Nodi Papers to Note

[123] **Lynne Neagle:** We have one final item to consider, which is a paper to note, asking the committee to note for the record the letter from Mick Antoniw to Vaughan Gething providing a supplementary note in response to recommendation 5 of the committee's Stage 1 report on the Bill. May I take it that the committee is content to note that letter? I see that you are content.

[124] That concludes our business for today and I declare the meeting closed. Thank you very much.

*Daeth y cyfarfod i ben am 10.28 a.m.
The meeting ended at 10.28 a.m.*