



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

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

**Dydd Llun, 28 Ebrill 2014
Monday, 28 April 2014**

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir
trawsgrifad 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

Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales
Joyce Watson	Llafur (Yn dirprwyo ar ran Julie James) Labour (Substitute for Julie James)

**Eraill yn bresennol
Others in attendance**

Stephen Brooks	Cyfarwyddwr, Cymdeithas Diwygio Etholiadol Cymru Director, Electoral Reform Society Wales
Kay Jenkins	Pennaeth Swyddfa'r Comisiwn Etholiadol yng Nghymru Head of Wales Office, Electoral Commission

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

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 14:31.
The meeting began at 14:31.*

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

[1] **David Melding:** Good afternoon everyone and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I hope that you had a pleasant recess. I have received apologies from Julie James and I am delighted to welcome Joyce Watson as a substitute this afternoon. Thank you, Joyce; you are a regular attender when called upon and we appreciate your contribution. I will just go through the usual housekeeping announcements. We do not expect a routine fire alarm, so if we do hear one, please follow the instructions of the ushers, who will help us leave the building safely. Please switch off all mobile phones and other electronic equipment completely, as even on silent mode they can interfere with our broadcasting equipment. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there is a translation available on channel 1; channel 0 will amplify our proceedings.

14:32

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

[2] **David Melding:** These are instruments that raise no reporting issues, but they are, however, listed. If no Member catches my eye, I know that Gwyn wishes to make a comment on the Welfare of Animals at the Time of Killing (Wales) Regulations 2014, which is a truly terrifying concept in terms of its title, but I am sure that when we know what it refers to, it will be less daunting.

[3] **Mr Griffiths:** Diolch, Gadeirydd. Mae gennyf ddau sylw byr i'w gwneud. Efallai fod y rhai ohonoch chi sydd wedi darllen y ddeddfwriaeth hon yn fanwl wedi dod ar draws Rhan 4 o Atodlen 3, sydd yn cyfeirio at y Comisiwn Rabinaid, ac efallai eich bod wedi eich synnu gweld cyfeiriad yno at wahanol synagogau yn Llundain sy'n rhan o'r corff hwnnw. Felly, cysylltais â'r Llywodraeth i ddarganfod pam nad oes cyfeiriad at Gymru yn yr adran hon. Fe ymddengys mai'r esboniad yw nad oes corff cyffelyb yng Nghymru, nac yn wir gynrychiolydd o Gymru ar y corff hwn, ac felly dyma'r unig ffordd y gellid sefydlu beth yw'r rheolau ar gyfer lladd anifeiliaid i'w bwyta gan bobl Iddewig. Felly, dyna pam fod y cyfeiriad braidd yn anghyffredin hwn at gyrff yn Llundain yn benodol yn y ddeddfwriaeth.

Mr Griffiths: Thank you, Chair. I have two brief comments to make. Perhaps some of you who have read this legislation in detail will have noticed Part 4 of Schedule 3, which refers to the Rabbinical Commission, and you may have been surprised to see a reference there to different synagogues in London that constitute this body. So, I contacted the Government to ask why there is no reference to Wales in this section. The explanation, it appears, is that there is no similar body in Wales, or indeed a representative from Wales on this body, and therefore that was the only way to establish what the rules are in terms of slaughtering animals for consumption by Jewish people. Therefore, that is why there is this rather unusual reference to bodies in London specifically in the legislation.

[4] Yr ail beth rwyf am dynnu at eich sylw yw ein bod yn deall bod yna gynnis cydsyniad deddfwriaethol ar gyfer offeryn statudol sy'n gysylltiedig â hyn ar y ffordd i ni. Mae hynny, rwy'n deall, oherwydd bod diwygiadau i'w gwneud i Ddeddf Lladd-dai 1974. Edrychais ar y Gorchymyn trosglwyddo swyddogaethau yn 1999 ac, mewn perthynas â'r Ddeddf honno, roedd pwerau wedi eu cadw gan y Gweinidog amaeth ar y pryd. Felly, er bod rhan fwyaf o'r pwerau mewn cysylltiad ag amaeth wedi'u trosglwyddo i Ysgrifennydd Gwladol Cymru yn ôl yn 1978, daliwyd pwerau penodol yn ymwneud â lladd-dai yn ôl, ac fe ymddengys nad yw'r rheini erioed wedi cael eu trosglwyddo i Weinidogion Cymru, er bod gan y Cynulliad gymhwysedd deddfwriaethol mewn perthynas â hynny. Felly, fe fydd y memorandwm, a'r cynnig hwnnw, sy'n gysylltiedig â'r rheoliadau hyn ar ei ffordd atom ni yn weddol fuan, rwy'n deall.

The second thing that I want to draw to your attention is that we understand that a legislative consent motion for a statutory instrument that is related to this is on its way to us. That, I understand, is because amendments are to be made to the Slaughterhouses Act 1974. I looked at the transfer of functions Order in 1999 and, in relation to that particular Act, powers were retained by the Minister for agriculture at that time. So, although most of the powers in relation to agriculture were devolved to the Secretary of State for Wales back in 1978, specific powers referring to abattoirs were retained, and it appears that they have never been transferred to Welsh Ministers, although the Assembly does have legislative competence in relation to that. Therefore, the memorandum, and that motion, which is linked to these regulations, will be on its way to us relatively soon, as I understand it.

[5] **David Melding:** Thank you, Gwyn. There are not many areas where our legislative competence fazes the Executive, but there we are. Are there any queries? No. Okay, I see that we are content with those items.

14:35

Papurau i'w Nodi Papers to Note

[6] **David Melding:** We have several papers to note. The first is the National Assembly for Wales (Remuneration) Measure 2010 (Disqualification from Remuneration Board) Order 2014. The Order is not subject to a procedure, but it is there for your information.

[7] The next paper is correspondence in relation to the Leasehold Valuation Tribunals (Fees) (Wales) (Amendment) Regulations 2013. There has been an exchange of correspondence, and you will note the undertaking of the Minister regarding further checks on bilingual legislation. Are Members content? I see that you are.

[8] The next paper is correspondence in relation to the draft Wales Bill. You will see the letter from the Secretary of State for Wales. I think that the penultimate paragraph is probably the one that you may be interested in, to reflect on, because there is this issue of where National Assembly consent would be sought through an LCM process. That, of course, does not create a legal obligation for the UK administration to abide by a decision that has been taken by the Assembly as regards a statutory requirement for consent to be provided. I think that we have said our bit, and the UK Government has said its bit. However, I think that it is still an important issue; that is clearly outlined there in the various correspondence.

[9] The next paper is a letter from the Chair of the Petitions Committee. Members will recall that we discussed this petition, and the issue of double-jobbing, and whether we could do any work on it. We did not think that it was appropriate when we looked at it last year, but, of course, we now intend to start our inquiry on the disqualification Order, and I would say that it clearly falls within our terms of reference. So, I would welcome your views and agreement that we look at this issue of the office of councillor as well as Assembly Member, while we look at the other issues that are involved in double-jobbing. Legislation will take out the issue of Members of Parliament and Assembly Members being compatible, but there is the issue of the House of Lords, and Members of the European Parliament—I am not quite sure, I think that they are taken out by European legislation, but anyway. It would therefore seem odd not to look at councillors in the same sort of package. So, I suggest that we just note that we intend to cover this point, to some extent, in our inquiry, even though this petition, obviously, was a specific call for an examination of that specific issue between councillors and AMs.

[10] **Simon Thomas:** A gaf i godi un pwynt ar y mater hwn? Rwy'n derbyn yn llwyr ei fod yn gwneud synnwyr ein bod yn edrych ar hyn, yn ogystal ag ar feysydd eraill. Gwelaf fod y deisebwr wedi cychwyn o safbwynt edrych ar y ffaith bod modd cael eich talu i fod yn aelod o'r awdurdod unedol, a chael eich talu fel Aelod Cynulliad. Nid wyf yn meddwl mai'r talu yw'r egwyddor fan hyn; yr egwyddor yma yw a ddylech chi fod yn ymwneud â dyletswyddau sydd, o bosibl, **Simon Thomas:** May I raise one point on this issue? I accept entirely that it makes sense that we do look at this, as well as at other areas. I see that the petitioner has started from the point of view of looking at the fact that one can be paid to be a member of the unitary authority, and also to be paid as an Assembly Member. I do not think that it is the payment that is the issue here; the principle here is whether you should be involved in duties that, perhaps, conflict with

yn torri ar draws ei gilydd—bod yn gyfrifol am rywbeth statudol mewn un maes, ac yn gyfrifol am rywbeth statudol mewn maes arall. Felly, os ydym am edrych ar hyn, nid wyf yn meddwl y dylem edrych arno o safbwynt a yw pobl yn cael eu talu ai peidio—dylem edrych arno o safbwynt yr egwyddor sylfaenol o gynrychioli un corff yn unig, os mai dyna yw barn pobl.

each other—being responsible for something statutory in one area, and being responsible for something statutory in another area. So, if we are to look at this, I do not think that we should look at it from the point of view of whether people are being paid or not—we should be looking at it from the fundamental principle of representing one body alone, if that is people's opinion.

[11] **David Melding:** In my view, we are not considering the petition as part of this inquiry, but we are considering the issue of whether people should be able to hold the office of councillor and AM simultaneously. That is what we are looking at and I propose that we write to tell the proposer of this petition that that is what we are going to do. I would suggest that, if the petitioner wants to add any further written evidence to what is already in the package that has been produced to support the petition, then we will receive that, even though—. Are we beyond the actual technical time for written evidence? We will extend it to a reasonable time so that the petitioner can respond if they want to do so. However, yes, we will cover the issue, but we are not addressing the petition in the terms that it has been submitted.

[12] The next item relates to the Education (Student Loans) (Repayment) (Amendment) Regulations 2014. We reported on the instrument on 8 April and now the Government has responded to our committee's report. Are Members content just to note that? I see that you are.

[13] The next item is the supplementary legislative consent memorandum on the Deregulation Bill. This is likely to come to us. I think that it will be discussed by the Business Committee tomorrow. As it stands, we would have a very tight reporting schedule. I do not think that there is a great problem asking for more time, because we will only have two meetings—Gareth will remind me—on 12 and 19 May, as it presently stands, because of bank holidays. So, it might be worth us indicating to the Government, as it seems to be flexible on when we could report, that we might ask for an extension of a couple of weeks, just so that, in effect, we have the same number of meetings to spread the work that we need to do. Is that okay? I see that it is.

[14] Finally, there has been correspondence from the House of Lords Select Committee on the European Union, chaired by Lord Boswell. You can see the report looking into the issue of scrutiny of European legislation by national Parliaments, by which it means state Parliaments, and there is this whole issue of what you do in terms of lots of devolved issues that fall to sub-state Parliaments, or whatever we call the tier below the state. It is not specifically addressed by this report, but we have established, as a committee, a very good working relationship with Lord Boswell and his committee, so I am sure that we can follow up some of these issues. They are very open to our contributions when we feel that there are issues relating to subsidiarity in particular. So, it is there for your information. It is the tradition of the House of Lords not to have vast reports, so it does not cover every aspect of a particular question, but it just gives us a general flavour of its response and then there is wider evidence behind that. However, it is there to be noted. Are there any further comments? No. It is ongoing work, basically.

[15] Item 4 will be our first evidence—. We are a little ahead of ourselves, so the next item will be our first evidence session. We have told the public that that will be at 3.00 p.m. so we will have to have a short recess until 3.00 p.m. The alternative is to use the time to have a private session, as we have a couple of items to discuss.

14:44

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

[16] **David Melding:** I move that

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

[17] I see that no-one objects, so please switch off the broadcasting equipment and clear the public gallery.

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:44.
The public part of the meeting ended at 14:44.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 15:01.
The committee reconvened in public at 15:01.*

**Tystiolaeth yn Ymwneud â'r Ymchwiliad i Anghymhwyso Person rhag bod yn
Aelod o Gynulliad Cenedlaethol Cymru**
**Evidence in Relation to the Inquiry on the Disqualification of Members from the
National Assembly for Wales**

[18] **David Melding:** The Constitutional and Legislative Affairs Committee is back in public session, and we move to evidence in relation to the inquiry on the disqualification of membership of the National Assembly for Wales. This will be the first oral evidence session, so I will read out the terms of reference of our inquiry so that they are read into the Record. They are: the principles underpinning the disqualifying posts and employments contained in the National Assembly for Wales (Disqualification) Order 2010, and, so far as is possible, to recommend a new list of disqualifying posts and employments, the timing of when disqualifications take effect, whether disqualification Orders should be made by the Privy Council in bilingual form, and any other matters relating to disqualification from being an Assembly Member. I am delighted to welcome Kay Jenkins, who is the head of office at the Electoral Commission, as our first witness in this important inquiry. We have received your written evidence, Kay, and have read it. So, unless you wish to add anything that is not in that evidence as an initial statement, I suggest that we move directly to questions, if you are comfortable with that.

[19] **Ms Jenkins:** Yes, absolutely.

[20] **David Melding:** Very helpfully, your evidence clearly sets out key criteria that you think should be followed in terms of an Order. I want to start by asking why you think that it is so important to distinguish between disqualification from candidature and disqualification from holding office.

[21] **Ms Jenkins:** Disqualifications are a limit on people's freedom to stand for election and indeed limit voters' choice of as many candidates as possible. So, for that reason, disqualification should be justified and proportionate. We thought that it would be useful to look at the principles behind that. At the moment, all disqualifications take effect at the same time: when a candidate is nominated for election. We thought that by distinguishing between when a disqualification might bite it might be possible to look at different times when

disqualification could take effect, so, looking at whether the disqualification should bite at the time of candidacy, because there is an issue about standing and campaigning for election that potentially undermines the electoral process or the integrity of the organisation that they are representing, and that which is really only a conflict of interest between holding office of a body and being an Assembly Member. So, for example, an individual might be a member of a body that meets relatively rarely, which, if they were elected, would be inappropriate for them as an Assembly Member, but there is nothing wrong, really, with them campaigning for election. That is why we tried to distinguish between the two so that each body listed in the Order could potentially be looked at in terms of those criteria.

[22] **David Melding:** Clearly, disqualification from candidature throws a much wider net.

[23] **Ms Jenkins:** Indeed.

[24] **David Melding:** We will drill down to some specifics in terms of teasing out these general principles. You did say that rules should be justified and proportionate. Again, I think that that is a useful test. What is your feeling about the current set of regulations? Do they comfortably pass that test, or do they stand in some urgent need of review?

[25] **Ms Jenkins:** It is difficult to know, to be honest, not being familiar with all of the organisations in the Order. However, what I would comment on is that the current Order is long, and it tends to get longer, because the list of bodies tends to be added to. They are usually removed only if the organisation no longer exists. So, it tends to be added to and, therefore, potentially, the net is quite wide. Also, it is not clear what criteria have been applied. I am sure that the committee has applied criteria in the past, but someone simply looking at the Order could not tell what the criteria are. It is not particularly transparent. All organisations are equal, as it were, when you look at the Order as it currently is. So, again, if there were some way of distinguishing between the two levels, you would, potentially, have a sort of two-stage Order.

[26] **David Melding:** Okay. I will ask Suzy Davies to take us forward.

[27] **Suzy Davies:** Thank you. You have alluded to the fact that there is certainly a perception of complexity out there at the moment, and I want to ask you something about that in a minute, but, in view of what you have just said about having different biting times for candidature and holding office, do you think that that is likely to add complexity rather than simplify it?

[28] **Ms Jenkins:** That is a risk, and what I am suggesting is not without risk because, at the moment, all disqualification for Assembly election bites at the time of nomination, and that is very clear to everybody. The question is, 'Do you know whether or not you are on the list?' Once you are on the list, you know that you are disqualified at the time of nomination. Adding that additional layer potentially adds a layer of complexity and we are, at the same time, saying that the rules should be clear and straightforward. So, I think that, however the Order was drafted, it would have to be done in a very clear way. The Electoral Commission gives guidance to candidates and agents, which we publish and which are universally used by returning officers across Wales. We obviously explain all of that in our guidance, but it would have to be done in a straightforward way, as you say, to avoid further complexity.

[29] **Suzy Davies:** Are you in a position to suggest some ideas about how that complexity might be simplified at the moment or perhaps the way in which potential candidates get the information? I appreciate that your body provides that information, but, still, mistakes get made. So, are you thinking about how that could be more transparent and clearer, as you said yourself?

[30] **Ms Jenkins:** Yes. We are publishing our guidance earlier and earlier. We used to publish candidates' and agents' guidance in January before any election being held in May. This year, for the European parliamentary elections, we published in November. The earlier you can get guidance out there and returning officers doing briefing sessions for candidates and agents, the better. We also work with the political parties, and the parties, of course, do briefing sessions. It would be essential that any change that the committee was going to consider for the Order in terms of doing it in two stages was done as early as possible so that, for the 2016 elections, if there were to be a change, briefings could be done well in advance as well as having the published guidance.

[31] **Suzy Davies:** Do potential candidates have someone else to go to to find this information apart from you or do you tend to be the go-to body for that information?

[32] **Ms Jenkins:** We tend to be the go-to body for that information. Obviously, the four big parties in Wales give their own advice to candidates. The ones who do not have anywhere to go for advice are usually independent candidates or those from the very smallest parties that do not have full-time permanent officials giving advice. They tend to rely on our guidance very much.

[33] **Suzy Davies:** Right, okay. Thank you. I have just one other question, and I appreciate that this is quite a difficult one as you have indicated that the existing list is very long and you do not know every body on it, but are there some glaring examples in there of inconsistency or bodies that perhaps should not be included or that are not included that should be? Do you have a view on that?

[34] **Ms Jenkins:** I think that the commission does not have enough knowledge about the different bodies on there to be able to comment on that really, which, I guess, goes back to the issue that it is not entirely clear why they are all on there. So, if there is a way of explaining that somehow it would be helpful to people. So, I am sorry but I cannot really answer that.

[35] **Suzy Davies:** Would the commission be happy to help with the explanation of that were it made apparent to you?

[36] **Ms Jenkins:** Definitely.

[37] **David Melding:** Your assumption is that some of the organisations may be listed in a way that restricts the rights of citizens to stand for election. You are not giving further detail, which I understand, but I think that your assumption is that it may be quite a long list. Also, offering a criterion between nomination—which is the current situation—and actually holding office would imply that there may be quite a number there who could be in that second category and, again, it would lighten the restrictive element on the citizen's right to stand for office.

[38] **Ms Jenkins:** Yes, indeed. They are probably not all equal. If I could give an example that might be less controversial, it is that of judges, which are not in the Order, but in section 16 of the Government of Wales Act 2006. Probably, there would be universal agreement that judges should not be standing for election and campaigning for election, and people like that would go into the one category, whereas you might have bodies on there where an individual on one of those bodies is getting their expenses paid by the Welsh Government or by the Assembly, but, actually, the bodies meet only a couple of times a year. It is quite a different level of disqualification.

[39] **David Melding:** Yes, and it is only, potentially, when you are holding the two offices that the conflict arises, rather than when running for election. Okay. Simon is next.

[40] **Simon Thomas:** Diolch. Os caf ddilyn i fyny pwynt y Cadeirydd, a Suzy hefyd, i ddechrau, ynglŷn â'r potensial am ddryswch yn y system ac felly ei fod yn mynd i fod yn anodd iawn i bobl wybod yn iawn yn lle maen nhw'n sefyll fel ymgeiswyr neu hyd yn oed fel darpar Aelodau, roeddech chi wedi dweud wrth Suzy Davies mai chi fel comisiwn yw'r ffynhonnell, i bob pwrpas, ar gyfer y wybodaeth am hyn. Roedd camgymeriad wedi cael ei wneud yn y Gymraeg yn benodol tair blynedd yn ôl nawr. Roeddech chi wedi ymddiheuro i'r Cynulliad ac i'r person ar y pryd. Dros y penwythnos, mae camgymeriad dybryd arall wedi cael ei wneud gan y comisiwn ynglŷn â rhestru plaid yng Nghymru. A ydych chi'n meddwl bod gennych yr hygredded i fod yn gyfrifol, neu a ddylai corff arall fod yn gyfrifol am sicrhau cymhwysedd fel hyn?

Simon Thomas: Thank you. If I may follow up on the point made by the Chair, and Suzy also, to start with, on the potential for confusion within the system and therefore that it will be very difficult for people to fully understand where they stand as candidates or even as prospective Members, you said in response to Suzy Davies that you as a commission are the source for information on these issues. An error was made in the Welsh-language version of the document some three years ago. You apologised to the Assembly and to the individual involved at that time. Over the weekend, another serious mistake has been made by the commission in terms of listing a party for election in Wales. Do you think that you have the credibility to be responsible, or should another body be responsible for ensuring eligibility in this area?

[41] **Ms Jenkins:** If I could distinguish between the two issues concerned, and respond to the first one that you raised in terms of what happened in 2011, we learned lessons from that in terms of the way that our guidance was managed, as I think is well known. There was a link embedded within the Welsh-language version of the guidance that was not updated in a timely way when the link to the English version was, and that was the issue. We reported on that fully, and we have learned lessons. In fact, our website has been redesigned since then. We have a fully mirrored Welsh-language version of the website.

[42] What has happened this weekend is a very different instance, and I would take this opportunity to say that the commission very sincerely apologises for the registration of the description 'Remember Lee Rigby' for the party Britain First. Our chair, Jenny Watson, has apologised to Lee Rigby's family for the offence caused and, as you know, there is going to be an investigation into that. They are very different sets of circumstances is all that I can say. I hope that that would not go to the credibility of the commission. I think that our guidance is widely used and relied upon, and I hope that that will continue to be the case. I can only apologise on behalf of the commission for what has happened. The registration was taken by the commission on a UK-wide basis, and the party concerned has fielded candidates in Wales and Scotland only and has chosen to use that description in Wales only.

[43] **David Melding:** I have allowed that question-and-answer exchange, but I think that we now need to get back to the specific focus of the inquiry, although I accept that there are issues of public interest, and that is why the question was put. I think we will now move on and back to the focus of the inquiry. The questioning is still with you. Simon.

[44] **Simon Thomas:** Diolch, Gadeirydd, a diolch am hynny. Roedd yn bwysig, rwy'n meddwl, i gael yr eglurhad hwnnw achos mae hygredded yn y system, beth bynnag yw'r system, yn bwysig. Mae'n rhaid i bobl ymddiried yn y wybodaeth sy'n cael ei rhoi iddynt, ac, os nad yw'r comisiwn yn dilyn ei reolau ei hun, mae angen gofyn sut mae ymgeiswyr yn mynd i ddilyn rheolau'r comisiwn. Yn y cyd-destun hwnnw, felly, pa

Simon Thomas: Thank you, Chair, and thank you for that. I think that it was important that we did get that clarification, because credibility in the system, whatever the system is, is important. People must have trust in the information that is provided to them, and, if the commission is not following its own rules, there are questions as to how candidates are to follow the rules of the commission. In that context, therefore, how

mor ymarferol a fyddai i gael yr hyn rydych chi'n awgrymu yn eich tystiolaeth, sef bod rhywun yn gallu ymddiswyddo o swydd sy'n ei wneud yn anghymwys i fod yn Aelod o'r Cynulliad ar y diwrnod gwaith cyntaf ar ôl etholiad? Mae pob math o gwestiynau yn codi ynglŷn â chytundebau gwaith ac ati yn y cyd-destun hwnnw; felly, pa mor ymarferol yw cael rhyw fath o glo neu opsiwn fel hynny?

15:15

[45] **Ms Jenkins:** Again, I would not try to diminish the complexity of that. We have put that forward as an option that operates in Scotland at the moment.

[46] **Simon Thomas:** It is only in local government—is that correct?

[47] **Ms Jenkins:** Yes. The position in Scotland, which has been the case since the local elections of 2004, is that candidates who are local authority employees—council employees—can stand for election in local elections provided they are not in a politically restricted post. The statutory position takes precedence over their contracted terms of employment, such that, because they are employed by the council and the elections are local elections, resignation is deemed to take effect the day after the election by virtue of statute.

[48] **Simon Thomas:** That is, Scottish law is above employment law, as it were.

[49] **Ms Jenkins:** Yes. They have been able to do that because they are talking about council employees. It would be much more complex—you are absolutely right—in terms of other sorts of employees, and it might not be practicable for employees for that reason. However, it might be practicable for people who are members of other bodies; it could be some sort of statutory resignation that takes effect and then takes precedence over the normal requirement to give notice, which is how it works in Scotland. However, I would not diminish the complexity of that, and I think that there is a particular circumstance in local elections. I just thought that it was useful to draw your attention to that as a possibility to look at.

[50] **Simon Thomas:** Mae'n ddefnyddiol cael gwybod hynny. Wedi dweud hynny, mae'n ymddangos i mi ein bod mewn perygl—roeddem yn sôn am ddwy haen gyda Suzy Davies, ond mae perygl yn awr o gael tair haen. Mae cyrff na fedrwch fod yn aelod ohonynt i hyd yn oed fod yn ymgeisydd. Mae cyrff wedyn y gallwch fod yn aelod ohonynt i fod yn ymgeisydd, ond bod rhaid i chi beidio â bod yn aelod ohonynt i fod yn Aelod Cynulliad. Wedyn, mae *subset* arall lle mae'n rhaid i chi ymddiswyddo o ryw swydd neu swyddogaeth y telir amdano mewn rhyw ffordd, hyd yn oed os taw treuliau yw'r tâl. Beth bynnag am hynny, mae'n dechrau edrych yn ddyrys iawn, ac felly, os caf, af yn ôl. Mae'r cwestiwn wedi cael ei ofyn i chi, ac rwy'n derbyn hynny, ond os caf fynd yn ôl ato un cam eto, oni fyddai'n haws i drio

practicable would it be to implement what you suggest in your evidence, namely that an individual could resign from a post or office that disqualifies them from being an Assembly Member on the first working day after the election? All sorts of questions arise to do with contracts of employment and so on; so, how practical is it to have some sort of lock, or an option of that sort?

Simon Thomas: It is useful to hear that. Having said that, however, it appears to me that we are at risk—we were talking about having two layers in response to Suzy Davies, but there is a danger now of having three layers. There are bodies that you are disqualified from being a member of even to be a candidate. Then, there are other bodies that you can be a member of and be a candidate, but you must then cease your membership in order to take up membership of the Assembly. Then there is perhaps another subset where you have to resign from some sort of post or function that is remunerated in some way, even if it is just expenses. It is starting to look extremely complicated, and therefore, if I may, I will return to an earlier point. This question has been put to you, and I accept that, but if I

ailedrych ar y rhestr honno? Roeddech chi wedi dweud nad oedd yn glir i'r person lleyg pam y mae rhai o'r cyrff yno ac eraill heb fod yno, a beth yw'r meini prawf ar gyfer dod i'r cyrff yno, a rhaid cyfaddef nad wyf i'n gwybod ychwaith, achos nid yw'n glir i mi pam y mae rhai yno ac eraill heb fod yno, nac ym mha ffordd y mae'r peth wedi cael ei roi at ei gilydd. Felly, oni fyddai'n haws cael unrheol, ond llai o gyrff? A yw hynny'n gwbl anymarferol? A oes enghreifftiau o hynny'n digwydd mewn llefydd eraill yn ynysoedd Prydain—Gogledd Iwerddon, yr Alban, lle bynnag?

may return to it and take one step further back, would it not be simpler just to review that list? You have said that it was not clear to the layperson why some of those bodies had been included and others had not, or what the criteria were for that, and I have to admit that I do not know either, because it is not clear to me why some of these bodies are included while others are excluded, or how it has been put together. Would it therefore not be better to have one rule, but fewer organisations and bodies? Is that entirely impractical? Are there examples of that happening elsewhere in the UK, in Northern Ireland, Scotland, or wherever?

[51] **Ms Jenkins:** You could certainly simply do that, and you could certainly use the criteria that we have suggested to try to distinguish and narrow down that list. In terms of other examples across the UK, to my knowledge, all the disqualifications bite at the time of nomination, other than the one example in Scotland. However, as I mentioned in my evidence, the commission has itself just conducted a consultation on standing for election, and this is an issue that has been raised across the UK by parties and candidates, for the very same reasons that the committee is looking at it today, because people are concerned that the disqualifications are too wide. It is burdensome, there is no doubt, for candidates who are standing for election, because if you are an employee, not only do you need to have resigned, but you need to have served your notice, and for somebody who is on three months' notice, for example, that is a long period of time, and, ultimately, you may have given up your job and not get elected—

[52] **David Melding:** Or even nominated.

[53] **Ms Jenkins:** Indeed. We know that is the case at every election. We always hear of two or three cases of that happening.

[54] **Simon Thomas:** Has anyone ever made an estimate of how many people are excluded from standing for candidature by this long list of public bodies in quango Wales?

[55] **Ms Jenkins:** Not to my knowledge.

[56] **Simon Thomas:** That is interesting. Diolch yn fawr.

[57] **David Melding:** Eluned is next.

[58] **Eluned Parrott:** Thank you, Chair. Before I move into questions, I just wanted to state on the record that, as Members may be aware, I was elected to this Assembly as a result of this disqualification Order being used. I have taken advice from the Chair and from Legal Services and have been assured that I do not have a conflict of interest in taking part in this inquiry. However, if such a conflict does arise during the course of this inquiry, I will of course absent myself from those particular discussions.

[59] May I ask how proportionate our list is here for the Assembly by comparison with, for example, the Scottish Parliament, the Northern Ireland Assembly, and also MPs? Do we have a much longer list seeing as, obviously, we have a basis of, 'Oh well, this is what MPs have, plus, oh yes, these additional Welsh things', or has it been more thoroughly thought out in that way, do you think?

[60] **Ms Jenkins:** I do not think that it has been more thoroughly thought out elsewhere, to be honest. I think the problem is common with other organisations, and in Scotland too, which is why of course it has been changed for local elections in Scotland. The problem is even greater for local elections because of the nature of local authority employment, being contracted out, with different sorts of agency employment. People are not quite sure who their employer is and whether or not they are disqualified. It is much more of an issue in local elections. I do not think it is a particular problem of greater proportion for the Assembly elections, no.

[61] **Eluned Parrott:** As you say, it is a particular problem in local elections and the devolved institutions because we have all our local authority elections at the same time, so all parties have to find 60 or 75 candidates at one go. We want to encourage as broad a pool of candidates as we can possibly get so that the public has a reasonable choice between candidates, and obviously it is a symbol of a lively democracy, but do you think that there is an issue here where the people who are likely to be involved in some of these disqualifying posts are the ones who have an interest in public life? Therefore, it is not so much about how many people as a proportion of our population as a whole are disqualified, but how many of those who are of the kind of calibre and have the experience that we would want to see in public life who are disqualified from one part by being involved in another part.

[62] **Ms Jenkins:** ‘Yes’ is the short answer to that. That is absolutely right. I know from discussions that we have with parties that all parties struggle to find enough candidates, especially at local elections, and for just the reasons that you describe.

[63] **Eluned Parrott:** I want to go back to this issue of giving notice to employers, because while there is a risk inherent in the idea of having two different sets of disqualification periods, as in on nomination and on election, it does have the benefit of opening the possibility of candidature to people who are not expecting get elected, even, and to a wider pool of people. Here in Wales we do not have the powers, I think, to override employment law. How is it working in Scotland? How many people have been affected by having to suddenly resign on election?

[64] **Ms Jenkins:** I have asked my counterpart in Scotland for information on that, and they do not have exact figures, but it has been used a number of times. It has been used, for example, in Glasgow, Dundee, Highland and—sorry, I cannot find it in my notes; in another local authority. There are a number of instances where it has been used successfully, and without difficulty.

[65] **Eluned Parrott:** Obviously, a sudden resignation is a difficulty for an employer to manage. However, the ones who have to resign immediately because of disqualification are, by definition, likely to be employed by public bodies, are they not?

[66] **Ms Jenkins:** Indeed.

[67] **Eluned Parrott:** There ought perhaps to be processes within their employment contracts to take account of those kinds of issues.

[68] **Ms Jenkins:** That is right. I understand that the position in Scotland has come about because in parts of Scotland, as in Wales, the local authority is the largest employer, so the pool of candidates is limited.

[69] **Eluned Parrott:** Great; thank you.

[70] I would like to move on to a couple of slightly different issues. Obviously,

bilingualism has been an issue with this, but what is your view on whether disqualification Orders should be made by the Privy Council in the first place in bilingual form?

[71] **Ms Jenkins:** That would be ideal. We have not given a view on that in our evidence, but that would be ideal. As I said, we produce our guidance bilingually—notwithstanding the issues in 2011—and we would include the appropriate link to the relevant guidance. So, everything is then available in both languages.

[72] **Eluned Parrott:** Moving on to a slightly different issue, you mentioned a little earlier the importance of communication and making sure that you have enough time to get across any changes to the Order. You have recommended that the Order should be in place six months before nominations open, as opposed to six months before the election, but surely that in itself is probably inadequate as well, is it not? If you are talking about attending party conferences, going to training events and giving briefings, then six months will not be adequate from that point either, is it?

[73] **Ms Jenkins:** The earlier the better is all I can say in relation to that. We say that legislation should be in place a minimum of six months before the election, but in the case of the disqualification Order, ideally, it should be in place six months before nomination in order to give people plenty of time. As you said, the earlier the better, to allow for all of those things—the party conferences in the autumn, the selection processes, and so on. The clearer things are for people as far in advance as possible, the better. As I said, we normally publish our guidance in November, ahead of any election the following May, and then the appropriate links to the Order can be included.

[74] **Eluned Parrott:** However, for many candidates, of course, the process of selection by the party is often done a long time in advance of that. So, would you prefer to see a normal minimum of a year, for example, for a disqualification Order?

[75] **Ms Jenkins:** Well, as early as it can be done is the best situation to arrive at.

[76] **Eluned Parrott:** Thank you.

[77] **David Melding:** I call on Joyce.

[78] **Joyce Watson:** We have talked a lot about revised rules and disqualification, but how will we effectively communicate those to all those people and the bodies that need to know? What do you think is the best way of doing that?

[79] **Ms Jenkins:** Any changes, ideally, would be communicated to us so that we can ensure that they are included in our guidance to the political parties—to the main parties. That is not covering everybody, because, as we have said, there are lots of small parties and small parties pop up each time, new parties register, and there are independent candidates. So, they should get into our published guidance as early as possible. One way would be to communicate to the organisations that are listed in the Order, which I am not sure is done at the moment. So, once they are listed, they should be notified, because then those bodies, or employers, can let their own employees or representatives know that they are listed.

[80] **Joyce Watson:** The follow-up question was on the lessons that could be learned from the disqualification of the two candidates, which you have partly answered. I do not know whether you want to add any more to what you have already said.

[81] **Ms Jenkins:** No, not a lot more than I have already said, really. We have reported on that fully and there was an investigation by the Welsh Language Board at the time. It has effectively signed off the changes that we have made and we have a full Welsh-language

mirror site now.

[82] **Joyce Watson:** Okay. You have had a recent UK-wide consultation on aspects of standing for election and the case for reforming electoral law. Do you have any further information about that that you want to share with us today?

[83] **Ms Jenkins:** We will publish that report in June, or possibly July at the latest. However, what I would say on that is that it looks at all aspects of standing for election, nominations, deposits, subscribers, and so on, and there is one universal message that comes through all of it, namely the need for the rules to be as simple as they can be, as consistent as they can be, and as straightforward as possible. I am sure that candidates, especially those who do not have access to professional quality advice, think that they are doing something marvellous in standing for election, and it must be like a minefield with lots of things to trip them up along the way. So, hopefully, all of us between us can make that as simple and straightforward as it can be.

15:30

[84] **Joyce Watson:** Thank you.

[85] **David Melding:** May I just take us on to a topic that has not been discussed so far, as there is a lot of discussion on the issue of double-jobbing, which could get covered in an Order like this to some extent? Some of this will be taken out of our hands because the Wales Bill, if it is enacted, will prevent AMs and MPs holding those offices simultaneously. It leaves the question of membership of the House of Lords and being an Assembly Member, and simultaneously holding the office of councillor and Assembly Member. Do you have any views on that issue?

[86] **Ms Jenkins:** We do not. We have given evidence to the Welsh Affairs Committee on the question of dual candidacy, but not on the issue of double-jobbing as such. What we did say is that it is ideal to look at the whole situation in the round and, as you say, at all of those offices together, so that there is a consistent approach rather than looking at just one aspect. However, the commission would not have a particular view on that.

[87] **David Melding:** Okay. Are there any further questions? I see that there are not. I would like to thank Kay Jenkins for her attendance this afternoon.

[88] **Ms Jenkins:** Thank you.

[89] **David Melding:** I am delighted to welcome our next witness, Mr Stephen Brooks, who is the director of the Electoral Reform Society Wales. Welcome to our proceedings this afternoon. If you want to make an initial, very short oral statement, that is fine, as you have not submitted written evidence, but have kindly agreed to come and be a witness this afternoon. However, if you are content for us to jump straight into questions, that is probably the best way for us to run this session. Are you okay with that?

[90] **Mr Brooks:** Yes.

[91] **David Melding:** I wonder if you have given any thought to any general principles that ought to apply in terms of rules that disqualify people from membership of the Assembly.

[92] **Mr Brooks:** Sure. I will probably echo quite a bit of what the Electoral Commission has already said and, I think, the note that the Welsh Government wrote to committee members. We would view any kind of restriction on people's ability to stand for the National Assembly and be Assembly Members as a restriction on their democratic freedom, so keeping

those sets of restrictions to an absolute minimum would seem to be the guiding principle, to make it as light touch as possible. However, I am also conscious of the need to balance that, on the other hand, with the Nolan principles of standards in public life, to make sure that there is not an actual or perceived conflict of interest that may occur from people either standing or being elected to this place.

[93] **David Melding:** Before we drill down to the various details, looking at the current disqualification Order, are there any general points you want to make about its adequacy or otherwise?

[94] **Mr Brooks:** Again, I will probably echo what the previous speaker said. People have asked whether it is too long and too complex. I think it just needs to be as long as it needs to be. That seems to be a slightly curious question. However, in terms of complexity, I struggle with the rationale for which organisations are on those two separate lists. There are instances where it appears, particularly in the second list, that it is members' public appointments that are restricted in some form, and others where it is senior staff members in those bodies, and, for others, it is all staff members. Again, I do not really derive from the rules what the logic is for that. If a body is engaged in an area of work that would cause controversy or potential conflict of interest, then why should there be some kind of differential between public-appointed members and staff?

[95] So, it is around those kinds of issues, and, of course, one of the reflections that I would make, in terms of encouraging as many people to stand for this place as is possible, is that Wales has quite a small capacity in terms of civic society, and also in terms of the public sector and Assembly-sponsored public bodies and people who would be very good Assembly Members who would be assets to this place. So, having a system that makes sure that all of those Nolan principles were not compromised but, at the same time, encouraged as many people as possible to come forward, would seem sensible. So, I think that that list of organisations needs thorough revision, because there are some for which I completely see the logic of their being on the list, particularly those bodies that perhaps have some kind of inspection role, or a role in which they are advising Ministers. That would seem to be completely in the territory of being restricted. There appear to be other organisations that are perhaps more administrative in what they do, and I would question whether they should be placed under quite as heavy restrictions.

[96] **David Melding:** Okay, that is quite helpful. Simon has the next questions.

[97] **Simon Thomas:** Gofynnaf fy nghwestiynau yn Gymraeg. Fel Cymdeithas Diwygio Etholiadol Cymru a chorff sydd, fel rydych newydd ddweud, yn poeni am unrhyw gyfyngiadau ar bobl wrth sefyll mewn etholiad, a ydych wedi edrych ar y rhestr hon a thrio gweithio mas faint o bobl nad ydynt yn gallu sefyll etholiad oherwydd eu bod yn anghymwys?

Simon Thomas: I will ask my questions in Welsh. As the Electoral Reform Society Wales and as a body, as you have just said, that is concerned about any restrictions on people standing for election, have you looked at this list and tried to figure out how many people cannot stand in elections because they are disqualified from doing so?

[98] **Mr Brooks:** Not as a vigorous scientific exercise to try to quantify the number of people that I think would be caught out. However, anecdotally, I know just from the small community that is the bubble, if you like—the people who surround this place and try to influence it or work in the public sector at that level—that there are a lot of talented people who I think would probably be candidates but are restricted in some way. So, the idea of them ever standing for public office is completely closed off as an option. Politicians tend to get quite a bad press. People who want to be politicians probably get an even worse press, but we need to be thinking about whether we are placing false barriers in the way of people who,

potentially, could have one go at throwing their hat into the ring to see how they do. However, in terms of an actual figure, I would be plucking it out of the air, I think.

[99] **Simon Thomas:** O safbwynt yr hyn yr oeddech yn ei ddweud wrth y Cadeirydd ynglŷn â natur wahanol y cyrff hyn, mae rhai pethau sy'n fy nharo i yn syth bin. Er enghraifft, mae Channel Four Television Corporation ar y rhestr. Nid yw darlledu wedi ei ddatganoli i'r Cynulliad mewn unrhyw ffordd. Nid ydym yn gyfrifol am ddarlledu, ac nid ydym yn sicr yn gyfrifol am Channel 4. Ai dyna'r math o beth yr ydych yn sôn amdano, lle mae'r rhestr wedi tyfu fel Topsy ac yn cynnwys pobl pan nad oes efallai gynsail neu egwyddor y tu ôl i'r peth?

Simon Thomas: From the point of view of what you said to the Chair in relation to the different nature of these bodies, there are some things that strike me immediately. For instance, Channel Four Television Corporation is on the list. Broadcasting has not been devolved to the Assembly in any way. We are not responsible for broadcasting, and we are certainly not responsible for Channel 4. Is that the kind of thing that you were talking about, where the list has grown like Topsy and included people where there was no precedent or principle behind that?

[100] **Mr Brooks:** I made a note of this. There is a specific example. Forestry Commission Wales is now defunct as an organisation, but it still comes under the rule. So, a staff member of the forestry commission would be prohibited from standing for the National Assembly. So, presumably, that would apply to a park ranger as much as it would to the director of policy and communications for the forestry commission. However, in terms of the list, it is only BBC Trust members who are disqualified, not BBC staff. It would seem to me that BBC staff perhaps have a bit more of a politically sensitive role than a park ranger with the forestry commission. So, again, there seems to be no rhyme or reason for that.

[101] **Simon Thomas:** Os felly, a ydych yn gweld unrhyw rinwedd yn yr hyn sydd wedi cael ei awgrymu gan y tyst blaenorol o'r Comisiwn Etholiadol ynglŷn â'r gwahaniaeth rhwng bod yn gymwys ar gyfer sefyll etholiad a bod yn gymwys i fod yn Aelod Cynulliad? Hynny yw, a ydych yn gweld bod modd cael rhyw fath o twndish lle mae mwy o bobl yn gallu sefyll etholiad ond lle byddai gofyn i bobl ymddiswyddo ar ddiwrnod eu hethol o bosibl o rai o'r cyrff hyn? A ydych yn gweld bod modd i hynny ddigwydd?

Simon Thomas: if so, do you see any merit in what has been suggested by the prevision from the Electoral Commission in relation to the difference between being qualified to stand in an election and being qualified to be an Assembly Member? That is, do you see that there would be some kind of method by which more people could stand for election but would be required to resign on the day of election from some of these bodies? Do you see a means for that to happen?

[102] **Mr Brooks:** I would support what the Electoral Commission said on that point. I appreciate the argument that it might add a level of complexity, because essentially you have two different sets of rules that may be confusing. However, I would not see that it is beyond the wit of the Electoral Commission to explain that process and that rule in a way which party officials and party candidates should be able to understand. For example, there may be, say, a board member of the Arts Council for Wales who wants to chuck his or her hat into the ring and contest the election. It would seem—'unfair' is perhaps not the right word—but it would be unfortunate if they were forced to resign in order to contest an election. As long as it is clear in terms of how the arts council functions that that member was absenting themselves from any decision where it may be perceived that there was, or there actually was, a conflict of interest, then I think I would be satisfied with that.

[103] **Simon Thomas:** So, are you suggesting that there could be internal rules in organisations to deal with candidature, short of legislation, for many of these organisations?

[104] **Mr Brooks:** If it is a public appointments process, then I would be interested to—it is

not necessarily a recommendation, but it is a kind of question about whether that could be explored. However, it would seem to be that that would be one area where you could explore it. Therefore, you might, if you like, take gardening leave from your role in a public body, so that, for the period of an election, you do not attend meetings, you do not receive papers, and you do not receive remuneration, or it might be that you are a bit more active but that, as I say, you absent yourself from decisions that may be politically difficult. However, I think that that is certainly something that should be explored.

[105] **Simon Thomas:** How do you think this could be done in a way that was actually clear to everyone? I appreciate what you say about the Electoral Commission; not all of us, at this stage, necessarily feel that it has the wit to explain this properly to people, if it cannot follow its own rules. Therefore, how would you see a disqualification Order like this—even in its new, sort of slimmed-down form—being made available in the way that people and candidates, not just in the main parties, but generally throughout Wales, could then understand and really get hold of? Is there a role for other bodies to try to do this as well? How does it work?

[106] **Mr Brooks:** Possibly. I think that the Electoral Commission is probably the best-placed organisation to do that. I think that, if you look at the work that it has done on individual electoral registration—and we were a little bit critical at the beginning of that—it has done a really good job in terms of engaging local authorities, as well as in talking to political parties, about what that change means. So, I think that it is able to do it; I am mindful of what Kay Jenkins said in terms of having enough time to do it. I think that one of the important things is just making sure that there is not only sufficient time, but—and this was your point—in terms of pre-nomination, for people who were thinking about seeking their party's selection, that the rules are set then. Also, I think that enough time needs to be given for each of the parties to digest what these new rules mean, so that they are able to do that kind of dissemination within their political parties—inside their party units—but also for those organisations that are on the list, so that the relevant departments within those bodies are able, again, to understand it and disseminate that information through to the staff.

[107] Just by way of anecdote, I noticed that the previous organisation that I worked for is on the list, and we had never been told of it. So, I think that there is probably more to be done with some of those bodies, about getting that information out.

[108] **Simon Thomas:** Okay. Diolch yn fawr.

[109] **David Melding:** Suzy Davies has the next questions.

[110] **Suzy Davies:** May I just take you back to your earlier observations that there are some obvious candidates that should be on this list, either as individuals or as organisations and that, for others, perhaps it is less so, as, perhaps, they have more of an administrative role, rather than an inspecting role? Would you be prepared to pick out one or two and say that you really do not understand why they are on there at all, or is that out of the question to you?

[111] **Mr Brooks:** In terms of the ones that I think it makes absolute sense for them to be on there, there are obviously things like the quality of care inspectorate or commission—I am not sure of its exact name. However, I think that, for any organisation that is engaged in inspecting the performance of a public service, which is obviously a highly politically charged activity, and having a senior member of staff, or a board member, who is also a candidate and is probably making public statements on those issues as well, there is a compromise there.

[112] There are other organisations, as I say, such as the Arts Council of Wales and Sport Wales, where I am not entirely certain that there is a huge amount of conflict of interest with

perhaps their board members standing for public office. It may be that budgetary decisions are being taken, or, for Sport Wales, it may be the question about where a big pot of money goes, and then there might be political questions asked there. However, again, it comes back to absenting yourself from that decision.

[113] The only other remark I would have is that there are lots of—the sector that I know the best is the environment sector, which is the one that I worked in previously to joining the Electoral Reform Society; obviously, it has the predecessor organisations of Natural Resources Wales. However, there are lots of other bodies that are either owned by the Welsh Government or pretty much totally funded by the Welsh Government, which are not among those bodies—things like the Design Commission for Wales, Constructing Excellence, and Cynnal Cymru. So, again, what is the situation with some of those arm’s-length bodies?

[114] **Suzy Davies:** It is something to do with the length of the arm maybe. [*Laughter.*]

[115] **David Melding:** I get the sense that you feel that, if there is a question of doubt, they get put on the list, whereas it is in the public interest that you have to have pretty good reasons to put them on the list, would you say?

15:45

[116] **Mr Brooks:** Possibly. I do not know. It does not seem clear what the logic is or what the criteria are. How would one challenge an organisation being on the list or not being on the list? I do not understand what the rationale is.

[117] **Suzy Davies:** Also, there is the status of particular staff within those organisations, because that seems to be particularly confusing, I would say. Do you have a view on why just paid staff, who have no influence over the big decisions in any particular bodies, are excluded?

[118] **Mr Brooks:** Just to step backwards, on the point of Cynnal Cymru, I used to work for the Sustainable Development Commission, rest its soul, which is on the list. I think that anybody working for that organisation should have been prohibited from standing for public office, because the job was to provide policy advice to Ministers, so that makes sense. Cynnal Cymru is not on the list, but, effectively, it has inherited some of those duties that the Sustainable Development Commission did until the office of the sustainable futures commissioner is set up, so that seems to be a big discrepancy. As the public sector is going through such reform and reorganisation, my fear would be that there are lots of organisations that are potentially dropping through. Again, the Citizens Advice Bureau has been handed a massive chunk of the old consumer organisation’s work.

[119] The second part of your question—. Forgive me; I have forgotten it.

[120] **Suzy Davies:** It was about the level and the status of particular staff. Some are more senior than others, and more influential.

[121] **Mr Brooks:** Yes. So, again, I would go back to the Forestry Commission example. It would seem entirely appropriate that people who operate in a field that is more policy focused and more communications focused would be restricted. However, do we need to be that restrictive of people who, perhaps, have more of a back-office function? Should the director of human resources or the director of finance, for example, have the same restrictions that the director of communications should have?

[122] **Suzy Davies:** Or somebody who chops trees down. Would you apply that to the civil service, as well, that kind of distinction?

[123] **Mr Brooks:** Well, the civil service is politically restricted above a certain grade and there are a number of arm's-length bodies that have adopted civil service terms and conditions. So, again, I think it is right and appropriate for the civil service, because that is part of the Government of Wales Act 2006, it is not? As it stands now, that feels about right, I think.

[124] **Suzy Davies:** Okay. Thank you. You seem very familiar with the long list. Do you think that there are some that should just come off that list, because they are anachronistic rather than because there is a question about whether—

[125] **Mr Brooks:** There are some of them that I do not know what they are or what they do, so I cannot really answer that question. [*Laughter.*] However, again, if the starting point is to develop a set of criteria and, from that, work up a new list, then that would seem sensible.

[126] **Suzy Davies:** Okay. Can I be cheeky and ask whether there are any really obvious candidates, apart from the one you mentioned that should be on there, in your view?

[127] **Mr Brooks:** Should be on there. I did make—. Obviously, as I say, in terms of what I have mentioned previously, the commissioner for sustainable futures is not actually on there. Natural Resources Wales would need to go on there. I had a question in terms of the roles of deputy and assistant police commissioners, because one of the two—I think it is assistant police commissioners—are politically restricted posts, as well. Again, I am not sure where in legislation, or where in the Orders, that that would be taken up.

[128] **Suzy Davies:** Thank you, that is helpful.

[129] **David Melding:** I apologise on Suzy's behalf. She pinched your first question, Eluned.

[130] **Suzy Davies:** Oh, I am sorry. It is also in my questions.

[131] **David Melding:** There may be supplementary issues. [*Laughter.*] There was a natural flow to it.

[132] **Suzy Davies:** Well, yes, it is implicit. Not to worry; you might be asked it again. [*Laughter.*]

[133] **Eluned Parrott:** Do not worry, I have thought of a few questions of my own.

[134] **David Melding:** I am sure that you have.

[135] **Eluned Parrott:** You are giving us a picture, essentially, that the list looks arbitrary and that there is not an obvious logic to it. Do you think that we should be looking to publish an open set of criteria by which we judge whether or not an office ought to be disqualified?

[136] **Mr Brooks:** Absolutely. I think if you can consult on that and work with some of the bodies that are on the list, and perhaps do some kind of trawl just to re-examine which bodies are funded by the Welsh Government and may fall under the same kind of grey area as Cynnal Cymru, which is actually doing quite politically sensitive work and is technically independent, but completely owned by Government, however, and largely funded by Government. So, I think there does need to be an exercise on that.

[137] **Eluned Parrott:** There is a danger, because a lot of the third sector in Wales is at least partially funded by the Welsh Government, as you know. Do you think that there is a

danger if we do this trawl that, actually, we will find that the range of organisations that should be on that list is vast?

[138] **Mr Brooks:** Yes, I think that the difference between—. For example, I am sure that the RSPB must get some Welsh Government funding to do some kind of programme work. The RSPB's core funding comes from its own funding streams, whether that is fundraising or membership fees, commercial activities or whatever. That is kind of independently funded and I think, therefore, that it is appropriate that it is up to that organisation to determine its own policy in relation to who should be disqualified from standing. For an organisation like Cynnal Cymru, however, its core funding does come from the Welsh Government, so I think that that places it in a slightly different bag, if you like. The chief executive of that organisation is accountable to a sponsor team within the civil service, which the director of RSPB is not. So, I think that you are right; we should be careful not to draw too many organisations into that, but I think that there are kind of clear differences between the two types of organisation.

[139] **Eluned Parrott:** There is also, as you say, in some of the organisations that are included, a difference between roles, and it is based, generally speaking, on grade. Is that appropriate? You might have a manager of the forest rangers in an organisation who has no political role at all who is on a higher grade than someone who is a very junior member of the press and policy team advising Ministers.

[140] **Mr Brooks:** Yes. When I was at the Sustainable Development Commission, we used the civil service terms and conditions and practice on that. If I remember rightly, I think that it was everyone below higher executive officer, HEO, level. So, executive officers and below were politically free. There was then a period or gradient between HEO and, I think, the next one or two levels up, where you had to seek permission from a named senior officer within the organisation to partake in political activities. I do not think that standing for public office was one of those activities; I think that it was more things like campaigning, holding a position within a political party and that kind of thing, rather than seeking public office. Then there was a blanket ban for people above a certain grade. Similarly, it also came down to job families. As you said, if you are involved in policy and communications, Government relations, policy advice, and perhaps research that is beyond just very technical research, you would then more than likely fall into the category of being restricted, whereas if you were doing things like logistics, website development, or perhaps more technical or practical things, then you were not. I think that, overall, in terms of the civil service, that feels about right. In terms of organisations that I have worked in previously, I have worked for Oxfam and, if you wanted to seek public office, you had to get written permission, and part of the consideration was the level at you were operating—so, what the perception would be, how that would reflect on Oxfam, but also what your day-to-day job was, and how much of this would actually compromise your ability to carry it out. Again, I do not know how prescriptive or relaxed that should be, but, as a guiding principle, I think that that is where organisations do need to be when they are considering who they allow to stand and who they restrict from standing.

[141] **Eluned Parrott:** That is, however, from the point of view of the internal organisation of the bodies in question. It is absolutely right that, when they are talking about who they are going to restrict, they have some flexibility in the kind of middle range of grades. Potentially, there are more public bodies that ought to operate in that kind of way that are not civil service bodies. I am wondering, however, how we would go about adopting that kind of approach when it comes to the formal disqualification, which is a different issue.

[142] **Mr Brooks:** Formal disqualification of people from becoming Assembly Members.

[143] **Eluned Parrott:** Exactly. Disqualification from nomination.

[144] **Mr Brooks:** Again, I would probably concur with what the Electoral Commission said. It does seem prudent to separate nomination from election. If there could be two lists, with a list that said that it is not appropriate for those people, and that there is a conflict of interest for them to be a Member of this place and also hold either a paid employment in a body or be a public employment in another body, then that seems absolutely sensible to me. Of course, you then get into those questions of notice periods and how, practically, it works. However, I think that just drawing the two up separately, so that we are trying to extend the pool of people who are seeking office, would be eminently sensible.

[145] **Eluned Parrott:** Okay. Looking at that list, the Electoral Commission has told us that it is not an expert in these bodies and so cannot really comment on which ones should be on it or off it. You have said something very similar—except that you have a knowledge of a particular area. If we want to conduct a review of which bodies are on or off the list, how should we organise that, given that bodies such as yours and the Electoral Commission do not feel expert enough to give this advice?

[146] **Mr Brooks:** Again, when I was looking at the list, I thought that there is probably a basic set of criteria—a basic set of questions—that bodies, whether this committee, the National Assembly, the Electoral Commission or the Government, would go to and ask. Again, just looking at the list, with regard to the Sustainable Development Commission, the two post-holders who are restricted, or were restricted, were the UK chair and the vice-chairs—Wales, Scotland and Northern Ireland each had a vice-chair. On paper, that seems eminently sensible. However, it could also happen that you just happen to have another commissioner, one of the general UK-wide commissioners, who is from Wales but has a UK-wide portfolio—not the commissioner for Wales, like the vice-chair is; they might be the transport commissioner who just happens to live in Aberystwyth and wants to be the AM for Ceredigion. It seems to me that no proper conversation had been had between whoever drafted those rules and the Sustainable Development Commission to really understand the governance structure of the organisation and to understand who should be caught and not caught. It looks more like a desk exercise of, ‘Who, probably, should we restrict?’ So, I think that something is needed that perhaps goes into a little bit more detail in terms of the organisations. Once the guiding principles have been established and you have a long list of potential targets, if you like, then you need a process where you actually spend time with each of those organisations to properly understand their governance arrangements, because that is where—. That probably did not happen with the Sustainable Development Commission.

[147] **Eluned Parrott:** Finally from me, we have talked about the disqualification Order itself, but there is obviously another list in section 16 of the Government of Wales Act 2006. Can you tell us whether you have had a look at that and whether you think any changes might be appropriate to that list?

[148] **Mr Brooks:** Again, I am relatively content with how the legislation stands. I do not know whether the committee is going to ask more questions on this, but I am obviously mindful that there is legislation going through Westminster that may restrict dual mandates. So, that would need to be reflected but, broadly, we do not have too much of an issue with how it is.

[149] **Eluned Parrott:** Thank you very much.

[150] **David Melding:** Simon, do you have supplementary questions on this general area?

[151] **Simon Thomas:** Yes. On the issue that was raised around the Sustainable Development Commission, which is an example of perhaps not understanding the governance of an organisation, another example that strikes me as strange within the list at the moment is

the Children's Commissioner for Wales. Of course, I understand why he is not allowed to stand for election. However, nor are his staff. So, if the children's commissioner directly employs a cleaner in the office, he or she could not stand for election. It just seems that there is no sense of proportion in there with regard to what people's roles are and how they might impact on the Nolan principles. Is there any other way that you are aware of, as a society, where you have seen a different approach being taken—and, obviously, some bodies will need to be listed—and there has been a more iterative approach where the principles have been set out and people had to check against principles so that that was part of their qualification when they signed on the dotted line as a candidate and said that they were qualified to stand? In that way, there would be a process that would happen over perhaps a week or two weeks so we sorted out whether it all fitted. Is that done in other jurisdictions?

[152] **Mr Brooks:** I could not comment. I am not aware of that level of detail in other areas.

[153] **Simon Thomas:** Otherwise, we just keep on adding and adding and having longer and longer lists because we want to cover all possible circumstances. Since they are not individually tailored and cannot be individually tailored, you are catching a lot of minnows with the big fish.

[154] **Mr Brooks:** I am not aware—

[155] **David Melding:** The witness has pointed out the practice in the civil service or some public bodies—

[156] **Simon Thomas:** Indeed, that is a similar sort of iterative process—

[157] **David Melding:** —with permission from a named person or whatever. Joyce is next.

[158] **Joyce Watson:** A lot of what I was thinking of asking has been asked, but I would like to tease out your view on when disqualification should take effect. We have talked a little bit about that, but do you think it is possible to take it right to the wire, so that somebody could actually be disqualified at the point of taking the oath as an Assembly Member, because it could be when you put your name on the paper or when the result is declared, but there is also the point at which you take the oath, because that is when you actually do become an Assembly Member?

16:00

[159] **Mr Brooks:** I have no strong view. I am aware that the Electoral Commission mentioned the next working day, and that was exactly the question that I thought of: 'Why not wait until the oath is taken, because that gives both the individual and the organisation from which they have come slightly more time to prepare?' So, it would appear to me that there are probably more practical benefits to doing it that way, but I think that we would need to be satisfied that, perception wise, there were not drawbacks to that. Again, I am not overly familiar with the period of time between Members taking an oath here and being elected. Again, I cannot pluck a hypothetical example out of the air, but I would ask whether there are situations in which it would be possible for there to be a week or two when an individual who had been elected a Member here could also still be the chair of the arts council, for example, and if the arts council then made some controversial decision, it would have to be considered where that would place that individual in the whole scheme of things. So, I would not come down on either side. I think that there are probably benefits on both sides, and it is about how you establish the balance.

[160] **Joyce Watson:** The only other question that I am going to ask is: what is your view

on the suggestion that the disqualification Order should be made by the Privy Council in bilingual form?

[161] **Mr Brooks:** Again, absolutely, if it is practically possible, and I hope that it would be practically possible, then, yes, absolutely.

[162] **Joyce Watson:** Okay. That is all from me.

[163] **David Melding:** I will just follow up on a couple of issues. There is a great problem, I think, in general, with exclusion at nomination, although that clearly, administratively, is the easiest thing to do, which is why it is done. If we move to say that you can resign before you take the oath or whatever, there are issues over contracts and how all that operates, which is something that we are going to have to look at. However, if we focus on the fact that it is holding certain offices together that is the problem, so, being an AM and being on a board or whatever of a restricted organisation is not permissible, should we not be more radical and say that anyone who has stood for election and been elected to the Assembly, at the point of election, is deemed to have resigned from any excluded office? The whole burden of whether they are on a list or not is then taken away from the candidate, is it not?

[164] **Mr Brooks:** Yes, possibly. It is, obviously, a specific example, but I am mindful of the practical problems for an individual that may come from that. If you are elected, take an oath and then are disqualified and you have been forced to resign from a host of things, effectively, you are in a position where you do not have anything. You are not here and, suddenly, your public appointment or your paid staff position has gone as well, and you would be out on the street, as it were. Obviously, disqualification a working day after the election, or disqualification just before taking the oath, does not alter that hugely, but it does buy a little bit of time. I suppose that what you are advocating is on election, having been elected, when the result is declared, and that is one position; the next one is a day after the election, which the Electoral Commission is advocating; and a third might be just before taking the oath.

[165] **David Melding:** I think that I am going a bit further, am I not, in suggesting that the authority of the mandate ought to override what are secondary issues, really, if someone has won an election?

[166] **Mr Brooks:** However, if that election is then disputed and voided, what would the situation be? Again, if you are a member of the arts council, you have been elected as Assembly Member for Torfaen and then you have been ruled out, however many hours later, does that automatically mean that you cannot—

[167] **David Melding:** No, I think that my suggestion is that by taking the oath, you are deemed to have resigned from anything that would disqualify you.

[168] **Mr Brooks:** At that point, yes.

[169] **Simon Thomas:** Without examining the witness, that does not answer the problem of candidature.

[170] **David Melding:** No, it does not. There are issues. I think that we are finding that.

[171] Finally, on the issue of double-jobbing, we know that the Wales Bill will address the issue of AMs and MPs, but there is also the question of the House of Lords and councillors. Do you have a view on whether those offices should be held concurrently or not?

[172] **Mr Brooks:** We do. Again, as a guiding principle, it should be less restrictive.

Ultimately, it is for the voters to decide whether they are content for their local councillor to be their Assembly Member or their Member of Parliament as well. Where we draw a distinction, and where we are supporting the sections of the Wales Bill that would impose restrictions, is on double-jobbing between this place and the Commons. I think that it is different here because—and I do not want to rehearse all the arguments that we made for more Assembly Members—with approximately only 42 backbenchers, the idea that somebody could be an Assembly Member here, carrying out that vitally important work of scrutinising the Government, and also be a full-time Member of Parliament just seems to be a stretch too far. It is for that reason that we would say there needs to be a ban on people being both an AM and an MP, with a certain degree of flexibility to allow people to move from one institution to the other—we have said a year and a bit.

[173] When it comes to local councillors—and I am aware that there was a petition presented to the Petitions Committee—we would not support that. Ultimately, again, it is up to the electors to decide whether they want their local councillor to sit in this place or not. People might have different opinions on that. There might be benefits, there might be drawbacks from it, but ultimately, if there are any conflicts of interest, those should actually be dealt with within the system that exists at the moment. I do not think that a ban is particularly a good idea.

[174] In terms of the House of Lords, again I do not know. To a degree, peers' work is not as onerous as that of Members of the House of Commons and perhaps there is merit to having some people here who are members of the House of Lords and are able to go up to that place and provide a devolved aspect. They are obviously not working, full-time peers. They are only occasionally going to the other place. They are not being paid a full-time wage, as it were, as Members of Parliament are; they are only receiving allowances for when they are there—daily expenses. Again, I think that, on balance, we would probably say 'no', you should not stop people from being AMs and peers.

[175] **David Melding:** Are there any further issues? Joyce.

[176] **Joyce Watson:** I found it interesting that you clearly recognise how hard we work, the 42 of us. Due to the fact that you quoted the number—42 backbenchers—would you therefore support an increase in the number of Assembly Members? I just want to get some clarity. You quoted the number as a reason for disqualification, in your view, so, if there were an increase in the number of AMs, whatever that might be—let us say 80, because that has been on the table—would you think that it would then be viable for an Assembly Member to also be, say, an MP? That was one point that you picked up on.

[177] **Mr Brooks:** Possibly. It would certainly be an opportunity to reconsider that. You mentioned 80; I will see your 80 and raise you to 100. We think that 80 is just a sticking plaster. That is what was recommended by the Richard commission, and since then the world has moved on and this place has got more powers. So, with 80, I think that we would still be confronting the same sets of issues that we do at 60. At 100—if this place did expand to 100—then the dual-mandate ban should be reconsidered. Our principle, like I say, is that there should be fewer restrictions, not more. With 80, I am not sure.

[178] **Joyce Watson:** Okay; thank you.

[179] **David Melding:** That was very helpful. I thank the witness for his participation this afternoon. Thank you very much. We will now go briefly into private session, if people agree, to consider the weight that we want to place on the evidence.

16:09

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

[180] **David Melding:** I move that

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

[181] Is the committee in agreement? I see that the committee is in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 16:09.
The public part of the meeting ended at 16:09.*