



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

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

Dydd Llun, 19 Ionawr 2015
Monday, 19 January 2015

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Alun Davies	Llafur Labour
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
William Powell	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Dr Rodney Berman	Uwch Swyddog Gweithredol Polisi, BMA Cymru Senior Policy Executive, BMA Cymru Wales
Andrew Cross	Ysgrifennydd Cynorthwyol, BMA Cymru Assistant Secretary, BMA Cymru Wales
Daniel Hurford	Cymdeithas Llywodraeth Leol Cymru Welsh Local Government Association
Dr Stephen Monaghan	Cadeirydd Is-bwyllgor Deddfwriaeth Cyngor Cymru Cymdeithas Feddygol Prydain Chair of the British Medical Association Welsh Council Legislation Subcommittee
Tim Peppin	Cymdeithas Llywodraeth Leol Cymru Welsh Local Government Association
Marie Rosenthal	Cyfreithwyr Llywodraeth Leol Lawyers in Local Government
Daisy Seabourne	Cymdeithas Llywodraeth Leol Cymru Welsh Local Government Association
Graham Walters	Civitas Law

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

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

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

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

[1] **David Melding:** Good afternoon. Welcome to this meeting of the Constitutional and Legislative Affairs Committee. Let me start with the usual housekeeping announcements: we do not expect a routine fire drill, so, if you hear the bell, please follow the instructions of the ushers, who will help us leave the building safely. If you've got any electronic equipment, please switch it to 'silent'. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there's a translation on channel 1. Channel 0 will amplify our proceedings.

14:31

**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:** Item 2 are instruments that raise no reporting issues. They are, however, listed. Any comments? Are you content?

[3] **William Powell:** All good.

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

[4] **David Melding:** Item 3, then, are instruments that do raise reporting issues. There are slightly amended reports, which now include the Government response on the instruments in front of us. So, Members may just want a moment to read the Government's response.

[5] Are we content? Do you need a bit longer?

[6] **William Powell:** Just a moment, please.

[7] **David Melding:** Okay. Do you have any comments on the reports that just include

the Government's response?

[8] **Simon Thomas:** A gaf i jest ofyn cwestiwn? **Simon Thomas:** May I just ask a question?

[9] **David Melding:** Yes, sure, Simon.

[10] **Simon Thomas:** Yn ymateb y Llywodraeth ar y Rheoliadau Cyfrifon ac Archwilio (Cymru) 2014, maen nhw'n sôn am y Localism Act 2011 fel ffon fesur ar gyfer y peth y maen nhw'n cynnig ei wneud yn y rheoliadau. Ond nid yw'r Localism Act mewn perthynas â llywodraeth leol ddim mewn grym yng Nghymru, nac ydy? **Simon Thomas:** In the Government's response on the Accounts and Audit (Wales) Regulations 2014, they talk about the Localism Act 2011 as a yardstick about what they are proposing to do in these regulations. But the Localism Act in relation to local government isn't in force in Wales, is it not?

[11] **Mr Griffiths:** Rwy'n meddwl eu bod nhw jest yn cyflwyno hynny fel enghraifft o'r ffordd yma o ddrafftio. **Mr Griffiths:** I think they are just using that as an example of this way of drafting.

[12] **Simon Thomas:** Ocê, iawn; roeddwn i jest eisiau bod yn glir ynglŷn â hynny. **Simon Thomas:** Okay, fine; I just wanted some clarity on that.

[13] **David Melding:** Are we otherwise content? Thank you.

14:35

SICM 4—Gorchymyn Cyrff Cyhoeddus (Diddymu'r Pwyllgorau Cynghori ar Blaladdwyr) 2015

SICM 4—The Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015

[14] **David Melding:** Item 4 is the statutory instrument consent motion or memorandum on public bodies. Gwyn, did you want to draw our attention to anything specifically?

[15] **Mr Griffiths:** Y peth pwysicaf, buaswn i'n ei ddweud, ydy bod hwn yn dangos fel mae safon y memoranda yma wedi gwella dros y blynyddoedd diwethaf yma. Nid oedd dim byd y gallwn i ychwanegu i'r hyn sydd yn y memorandwm, ac felly nid wyf wedi paratoi papur ychwanegol. Mae'r memorandwm yn esbonio yn glir y rheswm dros ddiddymu y pwyllgor yma. Mae'r esboniad yn synhwyrol, felly nid oes gennyf ddim i'w ychwanegu, oni bai bod gan Aelodau unrhyw gwestiynau. **Mr Griffiths:** The most important thing, I would say, is that this demonstrates how the quality of these memoranda has improved over the past few years. There was nothing I could add to what's included within the memorandum, so I haven't prepared an additional paper. The memorandum explains clearly the rationale behind the abolition of this committee. It's a sensible explanation, and therefore I have nothing to add, unless Members have any questions.

[16] **David Melding:** We will have a report brought to us though, will we, in the—?

[17] **Mr Griffiths:** Yes. If Members are content, then it'll be—.

[18] **David Melding:** It may not say much other than we are content, obviously, but we will have a chance at that point to agree a response. Are there any comments?

[19] **Simon Thomas:** Rwy'n cymryd bod **Simon Thomas:** I take it that this will go hwn yn mynd gerbron y Cyfarfod Llawn before the Plenary session sometime. rywbyrd.

[20] **David Melding:** It'll come to us again. Okay. I will shortly move the Standing Order that allows us to sit in private session. We will then be going back to public session for the evidence at about three o'clock, of course.

14:36

**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**

[21] **David Melding:** I move the relevant Standing Order, unless any Member objects.

Cynnig:

Motion:

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

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

Cynigiwyd y cynnig.

Motion moved.

[22] **David Melding:** I don't see anyone objecting, so we will now conduct part of our meeting in private.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 14:37.

The public part of the meeting ended at 14:37.

Ailymgynullodd y pwyllgor yn gyhoeddus am 15:00.

The committee reconvened in public at 15:00.

**Tystiolaeth mewn Perthynas â'r Ymchwiliad i Ddeddfu yn y Pedwerydd
Cynulliad
Evidence in Relation to the Inquiry into Making Laws in the Fourth Assembly**

[23] **David Melding:** The committee is back in public session. We now move to take evidence in relation to our inquiry into making laws in the fourth Assembly. I am delighted to welcome our witnesses from the British Medical Association, specifically Dr Stephen Monaghan, chair of the BMA Welsh council's legislation sub-committee; Mr Andrew Cross, who is the assistant secretary of the BMA; and Dr Rodney Berman, senior policy executive. You are all very welcome this afternoon. I think you're well used to giving evidence. We propose to move straight to questions, if that's okay, because you did help us with some clear written evidence, and if we've not captured everything that you feel we should be looking at, at the end, I'll give you an opportunity to add to your oral evidence. We're very grateful for your time this afternoon in helping us with this important inquiry.

[24] I thought, by way of introduction, you could just explain the sort of work the BMA has done in Wales in trying to influence legislation—and that could be, actually, England-and-Wales legislation as well, as we're now into passing Wales-only Bills as well; just by way of introduction. I'm not quite sure how you're going to manage who responds, but I will leave that to you.

[25] **Mr Cross:** Good afternoon. Well, by way of introduction, I'm a solicitor and I've worked for the British Medical Association for too long now; it is about 22 years and, for 16 of those years, I've been involved with the devolution settlement as it applies to the medical profession in Wales. That has involved all sorts of things, but in particular coming along to what used to be the legislative sub-committee—I think that is what you were termed in those days—and exotic tours through all the subordinate legislation that the Assembly produced, looking at it from a health perspective. About two or three years ago, we formed a legislation sub-committee to give an informed view of the medical profession on legislation coming forward, obviously, with the new powers of the Assembly. Before that, the BMA had given evidence to the Richard commission, Sir Emyr Jones Parry's inquiry, and also the Silk commission about legislative powers as they applied to the medical profession. So, it's something we've been dealing with for a good many years now. That's a little bit of background.

[26] Is there anything else that either of you wants to add?

[27] **Dr Berman:** If I could just come in briefly, because I'm part of a two-person team on the staff within BMA Cymru Wales that deals with how we respond to, maybe, Welsh Government consultations, maybe subject inquiries from Assembly committees, or it may be legislation. I think, in terms of legislation, it's an area that we are, sort of, learning more about how to get involved with, because, historically we haven't been dealing with primary legislation in Wales; that only came in in 2011. So, I think it's a bit of a learning process for us, in just trying to keep track of Bills as they're going through. So, I suppose my job as a staff member is to, essentially, alert our members to what's coming up, what they might want to take a view on, try to get their views, pull them together into responses, et cetera. What I think we have been quite good at is dealing with the initial consultations that come out—the Stage 1 consultations on general principles. Perhaps where we're having to learn a bit more is in how we follow legislation through as it gets into the later stages, in particular amendments and how we can influence there. So, it's an emerging process for us.

[28] **David Melding:** You also made comments about the conferred powers model, potentially at least, being confusing. I just wonder, is that in the wider context that you appreciate clarity and distinctness, and that allows you in terms of developing these skills and representing your members in terms of engaging in the legislative process—that, if it's a clearer process, that is going to be of assistance to you? I don't want a great debate about whether we should have conferred or reserved powers in that, but—.

[29] **Mr Cross:** If I can, perhaps, answer that, yes, indeed, it's in explaining it to our members, who obviously have quite complicated day jobs and haven't got a massive amount of time to devote to the legislative and constitutional affairs of Wales, I guess, and I think in them understanding what it is possible to legislate on they obviously—. Within the BMA, I should say, we're a UK organisation, and the way they look at things is, 'Well, they're doing it in Scotland, they're doing it in Northern Ireland; why can't we do it in Wales?' I have to preface every discussion like that with a constitutional law lecture—or I certainly did until recently, but I still have to preface it with that—and say, 'Well, our powers aren't exactly the same as that'. So, I think, from a policy perspective, if we were on all fours with our colleagues in the rest of the UK, that would be exceedingly helpful.

[30] **David Melding:** I know at least one Member has indicated he wants to ask a

supplementary. I'll just put the next point and then I'll open it up to supplementaries. You also say you welcome the publication of Bills in draft. I mean, presumably—you have already indicated that the Stage 1 process is something that you've concentrated on, and you see draft as, in a way, enabling you to have a bit more upstream influence. I mean, are there any particular examples of draft Bills? I'm not quite sure I can think of one that you would have been heavily involved in, but it may be that I'm just ignorant. Are there any, or is it just the principle of draft Bills that you are recommending on us?

[31] **Dr Berman:** I think we were perhaps more talking about the principle. The only one that I've been involved with at draft stage, in the time I have been there, was the safe nurse staffing levels Bill, so, we responded to the draft, and we're now responding to the full Bill, as it were. I just think, in general terms, I suppose it gives us more opportunity to see what's coming up, influence, perhaps consider ourselves how it might be improved, and how we might maybe get that view across. I don't know if Andrew wants to add anything.

[32] **Mr Cross:** I mean, my personal view is that I am very much in favour of better law making and I do see draft legislation as an important part of that. I think it's important the public understands what a law's going to be, and what it's going to include, at as early a stage as possible. When we're talking to our members, as I say, they've got other busy day jobs to do. We find it helpful in the office to be able to say, 'Well, that's what the law is going to look like', or, 'Should we be seeking to amend that?' So, I think the sooner we have a draft Bill, the better it is for people like me having to undertake that task.

[33] **David Melding:** I should have just reminded you at the beginning that our proceedings are conducted in Welsh and English, so when a Member speaks in Welsh there is a translation, if you need it, on channel 1. Alun.

[34] **Alun Davies:** Thank you very much. I was interested in the tone of the answers to the Chair, particularly Mr Cross and Mr Berman. Both of you have significant, substantial experience of the Welsh political process, and both, in answering his earlier questions, seemed somewhat hesitant in your responses. Mr Berman, you were saying that you were taking time to understand and to learn processes, and you, Mr Cross, were saying something similar. I find that curious because both of you have significant political and legal backgrounds in Wales, and I'm left thinking, if both of you two are in this situation, then there are a lot of people who don't have your background and don't have your knowledge who would find the way in which we make law in Wales significantly more complex and more opaque. I'm interested—tell me if I've got your tone wrong—in understanding whether you answered in that hesitant way because of the complexity of the settlement or the complexity of the legislative process.

[35] **Dr Berman:** I don't think it's just about the complexity of the legislative process, from my regard. It's also about the overall workload that I and my colleague within the policy team have, because we're dealing with numerous Welsh Government inquiries and I think, as you can perhaps appreciate, the BMA represents doctors right across the spectrum, across all branches of practice. So, we are interested in lots of different aspects of health. We don't have the narrow focus that some, maybe, charity organisations might have in looking at a particular area. We're interested in lots of aspects, so we perhaps respond to more consultations than a lot of other organisations. So, when we consider the workload of following all those consultations, committee inquiries, inquiries by outside organisations—it may be the older people's commissioner's review of residential care, or the Welsh language commissioner's review of the Welsh language within primary care, for instance. We're dealing with all those at the same time. So, it's partly us just trying to keep up with our overall agenda, and legislation on top of that is quite a challenge. I think that it's perhaps the process where we have to be a bit more proactive and not just rely on waiting until somebody asks us to respond to consultation so we respond. With legislation, we have to move into the realm of actually

following what's happening in the committee, following it through at different stages, seeing if the points that we made earlier have been picked up, perhaps in the Stage 1 report, seeing if any of the Members have picked up on those points so we know who it might be worth, perhaps, lobbying to try to get our point across, if we feel the committee as a whole or the Welsh Government isn't picking it up. So, it's a more involved process, and I think it's just the overall breadth of what we have to do that causes a lot of the challenge, rather than our inability to particularly understand the process. But, having said that, we're probably quite a well-resourced organisation amongst Welsh civil society, and I think there must be a challenge for a lot of other organisations, which maybe have one person who covers policy, public affairs, communications and whatever, in just trying to keep up with all that's going on.

[36] **David Melding:** I think that's—[*Inaudible.*] Suzy, do you want to take us on to the next set?

[37] **Suzy Davies:** Well, perhaps I can ask, sitting on the legislative side, rather than the consultation responses: what sort of materials could be produced from this building that would make that job a little bit easier? Obviously, trying to avoid the trap of just deluging your members with loads of paper and loads of e-mails, I'm thinking of explanatory memoranda; you've mentioned draft Bills already. What sorts of things are useful to you?

[38] **Dr Monaghan:** Yes, it might be useful for me to say as I am the—. You know, we're a membership organisation and I am one of the members—a day-jobbing doctor. From my point of view, obviously, I've got an interest in the law and I chair the sub-committee. Obviously, one of the issues that has been alluded to by Rodney already is that we're a membership organisation and we try to be democratic and consult our members, which gives us an issue in terms of timescales but also in terms of explanatory—. Trying to get over—. This connects to the issue of uncertainty about conferred-powers models and reserved powers, because that introduces more complexity. But then also, when we're trying to get over to members what the Government is actually proposing, the explanatory materials are helpful. They're certainly helpful to me.

[39] **Suzy Davies:** I mean, I don't know how many pieces of explanatory material you've had to deal with, but I was curious to know whether there was any sort of difference in quality or informativeness, if there's such a word, about each individual one or whether there's consistency of quality in the materials you're provided with.

[40] **Mr Cross:** I have some experience, obviously, from Westminster legislation of the explanatory notes that are put out, which was quite a great development. I'm not so sure that the quality of those in the Assembly—no disrespect—is quite as helpful as those, from the ones I've looked at recently. But I think they are useful. Obviously, as a lawyer, you're quite used to looking at commentaries on statute when it's already been passed, so, when one's looking at a Bill, you still need the same sort of level of analysis, really, to understand what's being changed. So, yes, I think it's a good thing. I'm sure, like everything, it can be improved.

[41] Perhaps, if I could just—there's just one thing, going back to Alun Davies's question; I didn't quite answer it and get the opportunity there. I think our view on the conferred-powers/reserved-powers model is that I don't think we could do better than Lord Richard, I think it was, who, in his commission, described it as 'grotesquely complicated'. That's the problem that I have, time and time again, explaining it to members in training courses, if we say, 'What sort of legislation would you want to put forward?', to have to explain, particularly if we've got groups of members, including those from other parts of the UK—. To have to explain the labyrinthine process here and the fact that we just haven't got the same level of power—or it's more complex to do it because of the nature of what we've got, which I know is history; that's the single most irksome thing, actually. The other issues would be a

problem anyway, really—the understanding of legislation—but we’ve got an extra layer; an extra thing that we have to begin with. We don’t even get off the starting blocks on many occasions.

15:15

[42] **Dr Berman:** Can I just add that sometimes, I find the explanatory memoranda have been very helpful, but sometimes, they just seem to be overly long and quiet impenetrable, from somebody who’s not a lawyer coming and trying to read them? I know they’re supposed to help. I think, sometimes, they can also cause confusion and the example I can think about is, I was looking at the Well-being of Future Generations (Wales) Bill and one of the aspects of that that we were particularly interested in was the taking forward of the health-in-all-policies approach, which had been referred to, I think, in the public health White Paper, so we were expecting it in that Bill. I looked through the Bill and read it and I thought, ‘I can’t actually see where it’s taken forward in the Bill’. I found references to health-in-all-policies in the explanatory memorandum, but I couldn’t quite work out how they related to what was in the Bill, so it seemed to be, from my perspective, slightly confusing matters. Maybe what it’s trying to do is give a wider policy context, but if it brings in things that aren’t in the Bill, then actually, it could be slightly confusing your understanding of the matter.

[43] **Alun Davies:** Well, if you do find out, we’d be very grateful.

[44] **Suzy Davies:** Yes. [*Laughter.*]

[45] **David Melding:** That’s helpful.

[46] **Suzy Davies:** That is helpful and I would imagine—

[47] **David Melding:** In a negative way. [*Laughter.*]

[48] **Suzy Davies:** I would imagine, then, I would be writing saying that, in the current system that we have for amending legislation as it goes through the stages, that’s equally impenetrable to the non-lawyer who, perhaps, doesn’t follow our processes in any great depth. Would it be helpful to have, sort of, mini explanatory memoranda issued after each amendment stage, for example?

[49] **Dr Berman:** It might be. I mean, I’ve seen—it was some Bill, I can’t remember which Bill it was, but there was a—. Wasn’t there a schedule published to explain what changes had been made to the Bill as it had gone through the stages?

[50] **Suzy Davies:** Yes.

[51] **Dr Berman:** I thought that was very helpful. I can’t remember which Bill that was, but that certainly helped me understand how it had evolved since it had been initially published. So, I think, the more you can do—. I think, it’s making them succinct enough so that they’re not, in themselves, so impenetrable that, actually, they don’t help.

[52] **Suzy Davies:** Well, that’s very useful to know, as well. That’s my questions on that. Shall I move on?

[53] **David Melding:** Yes.

[54] **Suzy Davies:** Okay. A subject that exercises this committee in particular is, when Bills are drafted, some things are on the face of the Bill and some things are left to secondary legislation. With the Bills that you’re familiar with, have you been satisfied with the balance

in the draft Bills that you've seen? Brutality—[*Inaudible.*]

[55] **Mr Cross:** I'm trying to think of a recent example. There is an example that I can give you that causes us great concern and we were involved with, which relates to secondary legislation of a few years ago, which is the right of the community health councils, which, I know, have been subject to a lot of change of late, but it was their rights to access a GP's practice premises, obviously, where there would be a lot of confidential information, and that was done through a statutory instrument. Some of the powers that were suggested there were, in our view, quite draconian and we felt that they should've been subject to full and proper debate and amendment and everything else that one could do if it was in primary legislation.

[56] So, you know, we do have concern about the balance. Certainly, that's an example where we felt the balance was wrong, really.

[57] **Suzy Davies:** And, now that we're a primary legislature and facing those questions earlier on in the process, do you think that the BMA, for example, could be coming in more quickly in the process? I think it's where we actually started the conversation this afternoon.

[58] **Mr Cross:** Yes. I guess the difficulty is how soon one is alerted to where that type—I mean, that was a very specific example—. But, I mean, this is where, obviously, looking at a draft Bill, we would want, you know, early notice of that in order to prepare our arguments. But, going back to Rodney's point, really, I think it's the sheer amount of stuff that hits us. You know, that example came about, because, I think, somebody—a member, I think it was—brought it to our attention. Some of our members are very, you know, anoraky—they're into this stuff—so they will bring it up. But, it just depends, you know, who's available at the time. It really is a massive job and that concerns us, because that was a particular one, I would say, with sort of civil liberties implications, and, you know, obviously it's got—with a small 'p'—quite a political point, as well. So, it's just the ability to get in at an early stage. So, I think, the sooner we have notice of any of that, the better, and then it's obviously for us to resource it.

[59] **Suzy Davies:** So you don't want three future generations Bills on your plate at one time.

[60] **Mr Cross:** No, indeed not.

[61] **Dr Berman:** No, no. I was going to give another example though, which was perhaps a bit more recent, which was during the Active Travel (Wales) Bill, because one of the concerns we had about that was that, potentially, it could be an excellent Bill and could achieve a lot, but a lot would depend on how it's applied. One of our concerns with it was perhaps it was being left a bit to the regulations that would follow to determine how exactly it would apply and, you know, the example that we used was the one about calling for continuous improvement, but what exactly is continuous improvement? A local authority could perhaps produce an extra metre of cycle lane every year and you could argue that was continuous improvement, so, as a worst case, it could deliver very little, and it was difficult to tell from what we saw on the face of the Bill ultimately how effective it was going to be, because it would depend on what was going to be in the regulations. I think we've probably repeated our concerns when the regulations came out, that perhaps it wasn't being robust enough from the way we saw it, but, again, it's very difficult to have a view on something when certain fundamental aspects can be left to something that's going to be later determined in secondary legislation.

[62] **Suzy Davies:** Nicely put. Thank you.

[63] **Dr Monaghan:** Perhaps, relating to that, an example, though not necessarily here.

My understanding is that the original idea of secondary legislation was that it would follow on and give flexibility for amendment of often technical details. So, I've got an example, which is when I did some work on making the case with the Nuffield Trust, a few years ago in London, about the need to update the law about controlling infectious diseases. In the end, sometime later, there was new primary legislation brought through to, if you like, update, modernise and bring some of that legislation, which was 100 years old, up to date and congruent with our understanding of infectious disease, if nothing else. In the primary legislation, there was obviously a balance between freedoms and controls on freedoms of various parties, but in the secondary legislation an example would be the list of infectious diseases, which is covered by the primary legislation, that can be amended by secondary legislation. That, in a sense, is a technical matter. So, if there's a newly emerged disease, there might be advice to Government from public health doctors that that one needs to be considered and covered by the infectious disease law, and, so, that could happen fairly quickly, but it's a technical matter, i.e. adding a thirty-third disease. But, for more fundamental matters about a balance between control and freedom, that was, in a sense, reserved to the primary legislation, and, so, I think our suggestion on the CHCs is that we feel, and it may be a historic, and it may relate to the lack of primary powers at the time, that some of what happened there, under the roles of CHCs, shouldn't really have been going through. It wasn't a technical matter; it should have been going through with full scrutiny and debate rather than being, kind of, fast-tracked as if it was a technical matter, which it wasn't.

[64] **Suzy Davies:** That's very helpful. Thank you.

[65] **David Melding:** Music to our ears. We need to move on though. Alun?

[66] **Alun Davies:** Yeah. In terms of some of what's been said in terms of scrutiny and the ability of the BMA to provide reasoned views to Government, I presume that the BMA is in a position whereby it has a good relationship with Government—ups and downs aside, we know that. I presume that the BMA meets Ministers on a regular basis and has more regular meetings with officials, and, so, I presume that the BMA is in a position to influence, informally possibly, the genesis of legislation. So, in terms of what's been said about the ability to interact and to provide information to Government, or in a legislative process if legislation comes from outside of Government, to what extent does the BMA find that balance difficult then? Because, you know, I understand the points that Mr Berman has made, but if the BMA is almost an inside organisation, in that it has access to Government that many organisations don't have, then how would you use that in order to influence what Government is seeking to do?

[67] **Mr Cross:** I don't know quite how to put this. I don't think we would perceive that we have, probably, quite the access that you think. Certainly, when we're talking about policy and legislation, we have all sorts of views and the BMA—. I will give you some examples: obviously, organ donation was one. There is BMA policy on that and all sorts of views. Of course, you have to remember that the BMA is made up of individuals who've got many, many views. We're a professional association and a trade union. Whereas, I think, politicians listen to the BMA, I'm not so sure that we have the influence on decisions, perhaps, that your questions suggest. I think, as an organisation, we're certainly an influential commentator, but in terms of getting things changed, obviously, we will lobby and we will do that in the usual way, as other organisations do, but I'm not sure that we have any sort of inside track on those issues. I mean, there are political issues, but this isn't about the politics, so much; this is about getting our job done as a representative organisation. It is a sort of slightly different level and I don't think, at that level, that we can influence the machinery of Government quite that effectively.

[68] **Alun Davies:** But you're aware of what Government is doing.

[69] **Mr Cross:** Oh, yes, of course. Yes.

[70] **Alun Davies:** Quite often, the publication of a piece of legislation might be a surprise to some organisations that don't have that sort of inside track, but the BMA, you know—. Have you ever been surprised in this Assembly? I don't know if you've been surprised by a piece of legislation. You're aware of what is coming, so you're able to plan your work and the rest of it.

[71] **Mr Cross:** Indeed. Yes.

[72] **Alun Davies:** So, if the Assembly—not the Government—were to increase the time available for, for example, Stage 1 scrutiny, how would that impact upon the BMA?

[73] **Dr Berman:** I think I'll come in here. I mean, I think that would be very welcome. I'm just going to give one example, which is the most recent Stage 1 response that I've dealt with, and that was the Safe Nurse Staffing Levels (Wales) Bill. We were contacted by the Health and Social Care Committee on 11 December of last year and we were asked if we could give oral evidence this coming month—it's going to be on 29 of this month—and, therefore, could we get our written evidence to them by 8 January. So, essentially, two weeks before Christmas, they were asking us to give a written response to a Bill at the end of the first week in January. Now, I'm sure you can understand, that's not a very good timetable and it's not a good time of year to try to engage with members. It's not a good time of year for staff, who may have leave booked in that period, and you've got to take that not just on its own, but also in combination with whatever else is going on. I think, if I can just explain here, the following day, the same committee contacted us, asking us to give oral and written evidence to an inquiry into the GP workforce, which is quite an important issue for us, and they wanted the written evidence for that by 14 January. This came on top of the fact we were already considering an inquiry that the committee was looking at into alcohol and substance misuse. That had been published a bit earlier on 10 November, but written evidence for that, which we were already working on, had to be in by 9 January. So, you can see that the balance between those is very difficult, and I haven't even talked about the Government consultations that we were also dealing with at that time, because there were another three that we submitted to in the first couple of weeks in January as well.

[74] If you only give a few weeks, or a month or something, for a consultation, you've got to take into account that the organisation that you want to respond may already be busy on other things. You've got to take into account their capacity to engage with their members, for instance, because in an organisation such as ours, how it will work is: I and my colleague will get the details; we will then put those details out to our members and ask for their views; we then give them so long to get the views in; we collate those views; and we then draft them up and send the draft back out to the members, in order that they can verify if they are happy that we've captured what they wanted. All of that takes time. Now, to do that in three weeks over Christmas, which is, essentially, what we were asked to do, was, quite frankly, ridiculous. If we had a standard process that said you had a minimum of two months and, hopefully, more, even, for these kinds of consultations, I think that, you know, we would very much welcome that.

15:30

[75] **Alun Davies:** That, of course, would mean it would take 18 months to pass a Bill.

[76] **Dr Berman:** I'm talking about adding one month to the Stage 1 scrutiny.

[77] **Alun Davies:** But, you know, if you are extending the scrutiny, at Stage 1 particularly, then, you know, you're looking at a significant increase in the amount of time

available. If you take the safe nursing levels Bill, that had been through the Assembly once, of course—it had been through—so the BMA and others would have known that it was going to be referred to committee, because the Assembly had already taken that decision. I'm just trying to test you in terms of whether that is a reasonable balance, because I understand the point you're making about over Christmas—I think that is unfortunate; I'm a member of that committee, of course, and I'm aware of its workload—but I'm less convinced that extending the time for Stage 1 scrutiny provides you with the opportunity to do what you're suggesting.

[78] **Dr Berman:** It would certainly allow us to manage our workload more effectively and balance the different consultations and different responses we have to do, because some of them will be of more importance to us than others. I think, in this case, what happened was, possibly, the one that, from a member's perspective, was perhaps the one they were less concerned about responding to was the one we'd had the most notice of and had already started working on. So, then two important ones come in that we feel we've got to deal with and we're lacking that capacity—. So, if you've got to the point where your consultation runs for two months, at least, as a minimum, you'll at least have more chance to then space it around what other work you're doing: that's just a practical point from the job I'm doing. It's perhaps more difficult for us because we're a member-based organisation and we have to go through extra steps of consulting with members and getting things agreed. I have colleagues who work in the policy and public affairs field who work for organisations that don't have those issues, so it may be clearer for them just to discuss with colleagues what viewpoint they want to take on something, and then just put that together, and they can do that a lot more quickly. Certainly, that doesn't apply to a member organisation like ourselves.

[79] **David Melding:** I should point out, committee, that one of the Bills that's been referred to, on staffing levels, is a private Member's Bill, and yet it's clearly of huge significance to a very distinguished professional body. Perhaps, you know, we need to think of the legislature as a whole and the—I would say, 'burden', but I don't want to quite put it so negatively—assistance it asks from the wider civic community. That can sometimes impinge much more than we think, because even a narrow-focus bill, if you are hit by it, is of great significance.

[80] We need to speed up slightly if we can, but I think the quality of the evidence is of such a level that I don't want to sort of just skate through everything very quickly, so I will extend things a bit. William?

[81] **William Powell:** Thank you, Chair. I think we've gained some very useful insights in terms of the issues around capacity from some of the answers that we've just had. In that context, it was particularly interesting to read the BMA's comments on the use of emergency or fast-track legislation. I wonder whether you could maybe add to what you've said in your written evidence in terms of the impacts and your views on using such an approach in the legislative process.

[82] **Mr Cross:** Yes, I think the association's view would be that this should really be in extremis. I mean, one thinks of events in Wales where this might have been a possibility—I'm thinking back to foot and mouth, and you probably know more about that than I—and for something that was an emergency situation, like that, where action needed to be taken quickly, one can see a justification for it. But, you know, as a lawyer, I would say that legal history is littered with problems with the Prevention of Terrorism Act 1974 that went through Parliament in record time—I forget the number of hours—and, more recently, the Dangerous Dogs Act 1991. I think legislation made in haste tends to be bad legislation and, in terms of better law making, which is something else I've had some involvement with, I think it is probably to be avoided. So, I think our views would be to the contrary really: things need to be dealt with and properly debated and scrutinised, accepting the constraints that your colleague has mentioned, so I don't think it's something that the BMA would be endorsing—

fast-track legislation, or emergency legislation. We fail to see what—unless perhaps it was a public health matter; I suppose that would be the only other example. Steve will perhaps know more about that than me. You know, those are the type of extreme situations where it might be relevant, but, I think, other than that, I'd question the legitimacy of that approach.

[83] **William Powell:** I'm grateful for that answer. I mean, I'm thinking particularly of a Bill that fell within your own field of direct interest, the NHS Finance (Wales) Bill, where there wasn't the opportunity for engagement with stakeholders and committee at Stage 1. I wonder what the particular impacts were that you've drawn from that example, which you'd usefully share with committee.

[84] **Dr Monaghan:** Well, I think, just in principle, if I recall, it wasn't all that complex, and maybe it was about the budgets being set over three years, rather than one year. In principle, that shouldn't have been fast-tracked, and it was a bad example, you know. Whereas a foot and mouth emergency, that might legitimise emergency legislation; we can't think of many other examples that would.

[85] **Dr Berman:** Yeah, I mean, I think what we would say is, 'What was the urgency in having to do it that way?' 'Why did you have to do it quickly?' I can't see—or we can't see, as an organisation—that there necessarily would've been a justification that that had to be done quickly, so it needed to bypass Stage 1. It may have been that it was fairly uncontroversial and there was no problem with it, but the Stage 1 scrutiny would give this extra safeguard of giving organisations a chance to comment, and maybe might have brought to the Assembly's attention something they hadn't thought about.

[86] **William Powell:** Particularly given the constraints of consulting Members, which you referenced earlier. I'm grateful, thank you. Thank you, Chair.

[87] **David Melding:** And to take us through the final set, Simon.

[88] **Simon Thomas:** Fe wna' i ofyn y cwestiwn yma yn Gymraeg. **Simon Thomas:** I'll be asking my question in Welsh.

[89] Roeddwn i'n darllen eich tystiolaeth â chryn ddiddordeb, yn enwedig pan ých chi'n sôn am wella'r gwelliannau sy'n cael eu cyflwyno i ddeddfwriaeth, a'r amser sy'n cael ei roi i'r rheini. Rým ni eisoes wedi cael cwestiwn ynglŷn ag a ddylid bod mwy o waith esboniadol y tu ôl i'r gwelliannau, ond rých chi hefyd yn awgrymu yn eich tystiolaeth eich bod wedi gweld nifer o welliannau'n mynd drwyddo mewn pwyllgor mewn dwy neu dair awr, ac nid oes dim trafod, felly—dim cyfle i drafod y ffordd y mae'r deddfau'n cael eu gwella. A fydech chi'n leicio ymhelaethu ar hynny? Hynny yw, a ydych chi wedi gweld bod cyfle'n cael ei gollu oherwydd hynny? A ydych chi jyst yn poeni bod yna ddim digon o amser mewn pwyllgor, neu a ydy e'n adlewyrchu ar y ffaith bod y Bil sy'n dod gerbron y Cynulliad yn wallus yn y lle cyntaf?

I read your evidence with a great deal of interest, especially when you talk about improving the amendments that are tabled to legislation, and the time that's allowed for the consideration of those. We've already had a question about whether there should be more explanatory work underpinning the amendments, but you also suggest in your evidence that you've seen a great deal of amendments going through in a committee within two or three hours, and there's no discussion, then—no opportunity to discuss the way that the laws are amended. Would you like to expand on that? That is, have you seen an opportunity being missed as a result? Are you just concerned that there's insufficient time in committee, or does it reflect the fact that the Bill that comes before the Assembly is deficient in the first instance?

[90] **Dr Berman:** I think, from my perspective, it's more the fear that something could be

missed if things are dealt with in what seems to be a quite rushed manner. I mean, quite a bit of time is taken at the Stage 1 level, to hear lots of evidence, you get quite a good, considered report, and the report makes recommendations. I think the hope from the committee is that the Welsh Government are then going to come forward with amendments that deal with all the different recommendations. To then deal with all those amendments, whether they've come from Welsh Government or whether they've come from other Members, in just one committee meeting just seems a bit perverse, from my perspective, and could potentially mean that we're just rushing through them, not properly debating the merits of each amendment, and actually getting to the bottom of whether they're of value or not.

[91] It's hard to see that, dealing with, as I say, 42 amendments to the Human Transplantation (Wales) Act 2013 in one single meeting—I think that was in just over three hours, as I think we said in our response—and 57 amendments to the Active Travel (Wales) Bill in less than two and a half hours, as I think anybody looking at that from outside would see that you're not really properly debating all of those in that time. What concerns me now is it seems to be that that's the accepted norm, because, when I see timetables that committees are putting together for looking at legislation, they're only allocating one date for Stage 2. So, it seems to me that it's been accepted that this is the way it should be done, and I think that that is not giving enough opportunity to make sure that things are being discussed properly. I don't think it's doing justice, necessarily, to the earlier stages of scrutiny if you rush that bit.

[92] **Simon Thomas:** Heb edrych yn fanwl ar y gwelliannau yna, nid wyf yn siŵr, ond rwy'n cofio, er enghraifft, gyda'r Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru), roedd yna gannoedd o welliannau, ond roedd llawer ohonyn nhw yn welliannau a oedd yn diddymu colon, neu'n ychwanegu gair yn Gymraeg a oedd ar goll yn Saesneg, ac ati. Roedd yna dipyn o wallau felly, ac efallai fod angen ailedrych ar yr ochr yna.

Simon Thomas: Without looking in detail at those amendments, I'm not entirely sure, but I remember with the Social Services and Well-being (Wales) Bill, there were hundreds of amendments, but many of them were amendments that deleted one colon, or added a word in Welsh that was missing from the English, and so on. There were a few errors like that, and perhaps there's a need to take another look at that.

[93] Ble allwn ni, felly, adeiladu mwy o amser i mewn i'r broses yma? Er enghraifft, mae Bil gerbron y Cynulliad yfory: y Bil Addysg Uwch (Cymru). Roedd y gwelliannau i fod i mewn ddydd Iau diwethaf. Maen nhw'n cael eu trafod yn y *Plenary* yfory. Nid oes lot o amser i unrhyw fudiad sydd â diddordeb yn y Bil neu'r gwelliannau fynegi barn, felly. A fydddech chi'n adeiladu amser i mewn fel bod y gwelliannau ar gael i bobl am bythefnos, dywedwch, i gael cip arnyn nhw, neu a ydych chi am weld y pwyllgorau yn ymestyn y cyfnod? Wedi bod ar bwyllgorau fy hunan, rwyf yn ffeindio mai fi yw'r unig un sy'n siarad am y gwelliannau weithiau, felly nid wyf cweit yn siŵr beth sy'n mynd o'i le weithiau.

Where could we build more time into this process? For example, there is a Bill before the Assembly tomorrow: the Higher Education (Wales) Bill. The amendments were due in by last Thursday. They're being discussed in Plenary tomorrow. There's not a great deal of time for any group that has an interest in the Bill or the amendments to express an opinion, therefore. Would you build in additional time so that the amendments are available for people for a fortnight, say, to have a look at them, or do you want to see the committees extending the period? Having been on committees myself, I find that I'm the only person speaking on amendments sometimes, so I'm not quite sure what goes wrong sometimes.

[94] **Dr Berman:** I think, probably, my view would be both. I think if you could publish them more routinely further in advance, it would give organisations such as ourselves the chance to look at them. For instance, I'm aware that a number of amendments were published by Welsh Government to the Well-being of Future Generations (Wales) Bill, I think, before

Christmas. I actually haven't had time to go through them properly, to be quite honest, but I know that the committee meeting looking at them isn't till February, so I know I've got a bit of time, but at least I've got that opportunity now. So, it's not always the case that they're just published a week before, but if they are published a week before, and you happen to be busy on something else, then—

[95] **Simon Thomas:** That's the minimum allowed in Standing Orders.

[96] **Dr Berman:** If they're published a week before and you're busy on something else, then, yes, you've possibly had it in terms of being able to deal with it. I suppose Members might know better about how the debates go in individual committee meetings, but it just seems to me as an outsider that you can't properly debate that many amendments in just one session, not if you're giving them proper consideration and actually discussing the merits. It does perhaps make me wonder whether it's just that perhaps a Government whip is being applied to make sure that the Government amendments all go through without necessarily having a proper discussion of them.

[97] **Simon Thomas:** Perish the thought.

[98] **Dr Berman:** Perish the thought, as they say.

[99] **Simon Thomas:** Mater arall rŷch chi'n ei godi ynglŷn â phwyllgorau yn y dystiolaeth, sydd o gryn ddiddordeb i fi, yw'r ffaith bod y pwyllgorau bellach yn bwyllgorau pwnc a phwyllgorau deddfwriaethol ar yr un pryd. Mae gwaith y ddau yn cael ei wneud gan un pwyllgor. Wrth gwrs, roedd hwnnw'n rhywbeth a oedd wedi'i gyflwyno'n benodol ar gyfer y Cynulliad hwn, ac mae modd adolygu hynny ar gyfer y Cynulliad nesaf. Mae'n wahanol i San Steffan, wrth gwrs, lle mae pwyllgor yn cael ei ffurfio yn benodol ar gyfer Mesur. Rydych chi'n awgrymu yn y dystiolaeth, a dweud y gwir, nad yw hyn yn gweithio'n dda iawn, ac nad oes digon o arbenigedd neu amser felly yn cael ei neilltuo i deddfwriaeth. A oes rhywbeth y gallwch chi ei ychwanegu at hynny, a beth yw'r pryderon sydd gyda chi am y ffordd ddeuol yma rydym yn gweithio mewn pwyllgorau?

Simon Thomas: Another matter that you raise in your evidence in relation to committees, which is of considerable interest to me, is the fact that the committees are now subject committees and legislative committees simultaneously. The work of both is done by one committee. Of course, that was something that was specifically introduced for this Assembly, and it's possible for that to be reviewed for the next Assembly. It's different in Westminster, of course, where a committee is formed specifically to consider a Bill. You suggest in your evidence that, to be honest, this is not working very well, and that there's not sufficient expertise or time allotted to legislation. Is there anything that you can add to expand on that, and what concerns do you have about this dual system of operating in committees?

[100] **Dr Berman:** I think it just appears to me that the committees are trying to juggle too many balls in the air at once, and it looks as if, you know, they're trying to slot in this piece of legislation amongst this particular subject inquiry and this particular subject inquiry. I touched on that earlier when I talked about what we were responding to all at the same time with the Health and Social Care Committee. That just seems to be my perception, looking from outside. It seems as if it's a challenge for the Members on the committee to keep on top of everything, and I think it may be beneficial to have separate committees to look at the legislation and they can spend more time and follow that through.

[101] How that would work, I don't know, but I suppose one thing I can say is that I recently supported a couple of our members giving evidence to the Welsh Affairs Select Committee in the House of Commons, and I observed the session when they were being

questioned. It just seemed to me that, compared with my experience when I was supporting some of our members giving evidence to committees in the Assembly, the committee just seemed a bit more switched on to the subject. They seemed to have had more time to have read our evidence and were asking questions that seemed to be more directly related to the evidence. Sometimes we've had that—I'm not saying always, but on occasions, it's felt like that—when our members have been giving evidence to some of the committees in the Assembly, and I think it's just down to the workload that the individual Assembly Members perhaps have. They may be on too many committees, or they may be on a committee that's trying to do too many things at once, but it just gives the impression that the Members aren't always able to be as immersed as they could otherwise be.

[102] **Simon Thomas:** Ocê, diolch.

Simon Thomas: Okay, thanks.

[103] **David Melding:** That concludes the questions we wanted to put to you, but if you feel we've not covered an area that's important and that you want to draw to your attention, you can do so now. Don't invent anything, but if there is something we need to hear—

15:45

[104] **Mr Cross:** I don't know whether it's been covered, but, maybe in passing, there's just the question of the Keeling schedules specifically referred to in some of the questions. Certainly, we did think that that was a way forward, and that was very helpful, because, again, it's all about really knowing what the issues are upfront, and that's always helpful—explaining to members in terms of dealing with amendments. It's about clarity, really. So, in terms of a better law-making agenda, then that's something that we certainly would endorse. That was the only thing I had.

[105] **Dr Monaghan:** Also, on consolidation, I think, we felt that was, in general, a good idea, but we wanted just to say something about the role of the Law Commission, or not.

[106] **Mr Cross:** Yes, perhaps I could deal with that. You're obviously aware that it's the Law Commission of England and Wales as we are at the moment, but we think there are certainly possibilities for consolidation of legislation. Again, it's all about making law accessible to people, and obviously our profession is included in that—and to lawyers as well, for that matter. So, certainly, whether it's a Wales law commission or something that looks like that, that would be, we feel, a way forward. We already have so many different pieces of health legislation. There was an attempt, as you will know, to consolidate in 2006. I happened to be in the House of Lords on the Government of Wales Bill at the same time as that went through. So, it has been done, but we feel that that is something that would be a useful exercise for the future. And public health legislation in Wales as well would be another area that could be consolidated.

[107] **Dr Monaghan:** Also, one final point, from me anyway, is: we were asked about Government management of the legislative programme, and we commented in our written evidence about the model on one issue, and that was that we're still bemused about what did or didn't happen with, or is or isn't going to happen on health impact assessment, which was strongly proposed in the Green Paper, strongly supported across the board in terms of responses, and committed to—or we were led to believe that it would be in the White Paper. It mysteriously disappeared from the public health White Paper, and then we were given to believe it would be in the health and future generations Bill, and it isn't there. So, this is either an inefficiency model, lack of transparency, or something strange anyway. This is an example of where we have been surprised.

[108] **Mr Cross:** If I could just add to that, the issue is for us, as an organisation, that we have to lobby and put amendments to a number of pieces of legislation, because, potentially,

any of them could deal with this issue of health impact assessment. Obviously, when one looks at the legislative programme, which is done many years in advance, it's hard for us to know, as outsiders, where that would best fit. So, this is policy that the BMA has had for many, many years. Where would be an appropriate place to be seeking to influence? It's very hard to get that information, and we're people—even though I don't feel we have, perhaps, the insight that you might think we have, or inside information—who are quite well skilled in that, and we find it impenetrable to know. So, for anybody with fewer resources than ourselves, I'm sure it would be well-nigh impossible.

[109] **David Melding:** Okay, I'm afraid the clock's against this. You've raised very important and interesting points, I think, on Keeling schedules and consolidation and the role of the Law Commission, which are issues we've been consistently looking at, and we have similar views, I suspect.

[110] Thank you for the final example. That is very helpful indeed to hear experience in that. Can I conclude by thanking you once again? I'm grateful that you have been able to find time to attend and to prepare, because I think you've given some very crisp and helpful evidence to us. Thank you.

[111] Can I suggest that we move straight to the next witness, unless someone is desperate to—. Yes.

15:52

Tystiolaeth mewn Perthynas â'r Ymchwiliad i Ddeddfu yn y Pedwerydd Cynulliad

Evidence in Relation to the Inquiry into Making Laws in the Fourth Assembly

[112] **David Melding:** Good afternoon. I'm delighted to welcome our next witness, Mr Graham Walters, who is a member of the Civitas chambers and specialises in property planning and public and administrative law, and, I'm very pleased to say, did take part in our stakeholder event on 13 October last year, and I know has expressed concern about the accessibility and usability of legislation that applies in Wales. So, Mr Walters, we're very grateful for your time this afternoon.

[113] **Mr Walters:** No, no; thank you for inviting me.

[114] **David Melding:** We have a range of questions. I think it's probably best to dive straight in, if you don't mind, but, should we not cover something that you think is really important for us to know about, then I'll give you a chance right at the end to add to the evidence session then. Can I just say that these proceedings are conducted in Welsh and English? When Welsh is spoken, you'll get a translation, should you need one, on channel 1; channel 0 will amplify proceedings, if you need that.

[115] **Mr Walters:** Yes, thank you.

[116] **David Melding:** I'll ask Simon Thomas to start.

[117] **Simon Thomas:** Efallai y byddwch **Simon Thomas:** You may need your
chi angen hwn. headset.

[118] **David Melding:** You can test the equipment as well.

[119] **Simon Thomas:** A yw'n gweithio yn **Simon Thomas:** Is it working?

iawn?

[120] **Mr Walters:** Yes.

[121] **Simon Thomas:** Da iawn. Rwy'n cofio, y tro diwethaf y bu inni gyfarfod, fe wnes i siarad yn Gymraeg â chi yn syth heb fod cyfieithu ar gael, felly rwy'n falch bod cyfieithu i helpu y tro yma. Yn gyntaf oll, a gaf i ofyn i chi yn gyffredinol ynglŷn â'r ffordd y mae deddfu yn digwydd erbyn hyn yng Nghymru? Pa mor glir ydych chi'n teimlo mae deddfu gwahanol—yn y Cynulliad, ond deddfu hefyd yn San Steffan, sy'n dal i gynnwys Cymru? Pa mor glir yw hynny, a pha mor hygyrch yw i ddinasyddion, cymdeithasau a chyrff o bob math—busnesau hefyd—i gael gafael ynddo a deall y peth sy'n digwydd o dan y drefn bresennol?

Simon Thomas: Excellent. I recall, at our last meeting, I spoke Welsh to you immediately without there being interpretation available, so I am pleased that there is interpretation available today. First of all, can I ask you in general terms about the way legislation is made here in Wales? How clear do you think are the various kinds of legislation made here in the Assembly and also legislation made on an England-and-Wales basis in Westminster? How clear is that, and how accessible is it to citizens, stakeholders, businesses and bodies of all sorts to understand what happens under the current regime?

[122] **Mr Walters:** In terms of clarity, if we talk of clarity in the wording, then I've got no particular issues. It's subject matter based. Some is clear legislation, some isn't, whether that's Welsh, English or UK-wide. Accessibility is the concern that I do raise. I think a distinction would be drawn between Welsh and UK or English insofar as I think there is probably a greater opportunity in Wales to become aware of and—that is, more directly involved and aware of the legislation.

[123] **Simon Thomas:** So, in your experience, does that mean that the process of legislating here—you know, the Stage 1, the public consultation before it comes to committee for formal amendment and so forth—that's something that isn't available in Westminster and that's something that adds to the process in that sense?

[124] **Mr Walters:** It certainly does. It may simply be the scale. It is very easy to access a relatively smaller number of matters to be considered, and it's very easy—and perhaps it is just that, practising in Wales, one automatically would check. So, it may be that that level—of course, there's a much greater volume of legislation in Westminster, in particular subordinate legislation, so it could just be the scale that makes it easier.

[125] Having said that, on the accessibility from a practitioner point of view, if you are textbook-reliant, which is the first port of call for most, it's much easier for English law; it is still a problem that Welsh—

[126] **Simon Thomas:** Finding Welsh legislation.

[127] **Mr Walters:** It's the old footnote problem—Welsh legislation is: 'for Wales, see...'—so it's not as accessible, but that's a problem of textbooks.

[128] **Simon Thomas:** To what extent does the fact that Westminster still legislates even for subject matters that are devolved in Wales—maybe not so much in health and education, but, around the fringes of the 20 fields, there's still a lot of legislative consent motions going from here and permission given to Westminster to legislate. To what extent is that a confusing addition to the current legislative settlement, or as a lawyer are you fairly content with that?

[129] **Mr Walters:** No, I think in principle it must be confusing, if you are—. I know

historically, because of the changes, and we are not going back that long, but, if I just look at planning law, as I do and am currently, to itemise all the sources is really quite confusing.

[130] **Simon Thomas:** We've just looked at the new Planning (Wales) Bill, and we won't go down that particular path, but it's an example of where there are lots of cross-references to England-and-Wales legislation and an example perhaps of where it's quite confusing for people to understand what's being done in the name of Wales, if you like.

[131] **Mr Walters:** Yes, because it has to fit into the principal Act, of which the vast majority is England-and-Wales, and then you have just a few additional sections applying. So, the basic framework is not purely Welsh, so it is quite confusing.

[132] **Simon Thomas:** Océ. Diolch am y **Simon Thomas:** Okay. Thank you for the tro. time being.

[133] **David Melding:** Alun.

[134] **Alun Davies:** I'm interested in whether you believe the legislation we have in Wales is well drafted.

[135] **Mr Walters:** Generally, yes. As I indicated, certain subject matter leads to greater difficulty than others, self-evidently. I was trying to think of specific examples that I have had to advise on. Well drafted: certainly the Learner Travel (Wales) Measure 2008 I thought was very clear—I recall advising on that some years back, when I did that—and probably much clearer than just primary legislation in England and a lot of non-subordinate legislation.

[136] On the other hand, I can remember, very early on, the Care Home (Wales) Regulations 2002, which I would criticise. That was more the style of drafting, which was the same in England. So, it does differ, individual ones, but certainly I would have thought the general standard comparatively the same. Insofar as I can judge, I would have certainly no criticisms at all.

[137] **Alun Davies:** Okay. That's good to hear. Do you believe that the fact that we are a bilingual legislature has any impact in terms of either clarity or usability?

[138] **Mr Walters:** I've not come across anything where there has been an issue, but, thinking about it as a topic in terms of usability and going back, if I may, to the Planning (Wales) Bill, where you are drafting against a background of a principal Act that is England-and-Wales and is therefore English-only language, and you're adding a number of sections and obviously then subordinate legislation against what I'll term a purely English—that is, English language—background, I can see the potential for that to cause an issue when it comes to individual interpretation. That is purely theoretical. It's me just looking at the issues that could arise, having looked at the Planning (Wales) Bill, which, as you'll realise, was putting in—. So, if you were to ask me, if you had a particular problem of construction in a court, on a section that fitted into what I'll term a purely English-language pattern, I can see you would need to be very careful about how that would be approached.

16:00

[139] **Alun Davies:** Okay. That's very clear. Thank you very much for that. You were, in answer to an earlier question, very clear that you felt that the overall, general standard of drafting was very good here; you had no criticisms to make of it. In terms of additional materials, such as explanatory memoranda and the rest of it, do you feel that they too are well drafted and actually are able to deliver on the purpose for which they have been drafted?

[140] **Mr Walters:** Yes, in general. The hesitation I have, and I haven't checked this in detail, is I had the impression that in Westminster there was a standard format. So, they use standardised headings and address particular topics, which I didn't think had been adopted in Wales. That sometimes is quite useful. I did, just in anticipation of coming here, look at a particular area—the development management procedure relating to planning—and certainly the amendment in 2010 in England, I think it was, or 2012, had this format for explanatory memoranda, and, actually, the actual Order in Wales didn't. It wasn't accessible, certainly, on the statutory database—the Government statute database. So, I don't know—it may be that, because of the requirements, there will be no requirement for explanatory memoranda in that form of delegated legislation, whereas there was in Westminster. So, it may be just the use of it, but those are the two points. Standardised headings seem quite a good idea to me; I do tend to favour them. And it may be there are some individual pieces of legislation that do not attract the requirement for explanatory memoranda in the Assembly, whereas they would in Westminster.

[141] **Alun Davies:** Okay. Thank you very much.

[142] **David Melding:** William.

[143] **William Powell:** Thank you, Chair. As a practitioner, it would be very useful to have your perspective on how the provisions in Bills that aim to amend existing legislation impact on the readability, and indeed the usability, of those laws when it comes to their application.

[144] **Mr Walters:** If I can, it's the age-old problem that everyone has. The form of legislation is simply to say, 'In subsection (2), for the words "whatever", substitute "whatever"', and so the readability is that you never see the full subsection or section written out in its amended form. I remember many years back a lecture on legislative drafting where I think the draftsman did always reduce it to what is called the composite amended section. But that doesn't happen. It's a matter of parliamentary time, I was informed, then—I'm going back 20 years or plus. So, yes, the readability is sometimes quite difficult, because you've got to delete words, got to delete subsections and add in, as opposed to simply reading the beginning and finishing at the end.

[145] **William Powell:** Thank you. Do you feel that the provision of Keeling Schedules would actually assist in terms of the clarity of the finished product?

[146] **Mr Walters:** Yes. If, as I understand, that that is the one that amalgamates, yes.

[147] **William Powell:** Indeed, yes.

[148] **Mr Walters:** If I understand them correctly, yes. Yes, I do.

[149] **William Powell:** Finally from me, it would be useful also to hear your view as to the extent to which the consolidation of Welsh legislation would affect its usability in practice, and also serve the cause of clarity.

[150] **Mr Walters:** It would be basically very useful, it seems to me, in terms of accessibility. We have to come back to the problem of interpretation, which is similar to what I mentioned before, because you would have parallel interpretation, it seems to me, of those sections that are still applicable in England, or identical to the English applicable, and those that are not. So, I can see that, long term, you would have to be careful in your approach to construction, and that's really on a one-off basis when you've got decided cases and this is down to a practitioner. But, if we are trying to look at usability and access from first stage, whether for members of the public or lawyers or whoever, I think consolidation must be a step in the right direction.

[151] **William Powell:** I'm grateful; thank you.

[152] **David Melding:** Simon, did you just have a supplementary on that?

[153] **Simon Thomas:** Yes. Just to follow up on the point you responded to William Powell on, which is this: I think it must just be a parliamentary protocol, really, or convention to amend Bills in this very terse way. I sometimes feel that those drafting it like to try to make it as terse as they possibly can. You know, 'Take out IV, insert III', and that can change the whole Bill, but it's done in a very strange way. You have this idea of Keeling schedules, which then tell you what the effect is. Is it simply a drafting convention to do it that way? Do you have any idea why we seem to have just followed the Westminster convention here in Wales, and why we haven't tried to restate more on the face of Welsh legislation the England and Wales legislation that is being amended? Is there any reason why we couldn't do that?

[154] **Mr Walters:** I have at the back of my mind an issue as to—. Well, firstly, there would be an issue, I think, for legislative competence in the Assembly—

[155] **Simon Thomas:** Because we'd be restating a Bill that was an England and Wales Bill.

[156] **Mr Walters:** Yes. So, that would certainly be the first issue. The second—. Having said that, it is many years since I attended a lecture on this, and I'm sure that time factors was the main reason given for why it was drafted in that way. I have at the back of my mind that there was also some substantive matter of the ability—obviously, it's a sovereign Parliament—to draft afresh each time and in terms of interpretation, because it would be a constantly consolidating statute, I think, wouldn't it, and that gives issues of interpretation then. So, there was something at the back of my mind, but I'm not a constitutional legislative expert—

[157] **Simon Thomas:** No, I just thought I'd press a little further to see whether we—

[158] **Mr Walters:** But, as I say, I think the answer that would occur to me would be legislative competence, which I think would be a greater issue.

[159] **David Melding:** Alun.

[160] **Alun Davies:** I'm interested in your answers, Mr Walters. I've been listening to you answer a number of different questions from different Members. You appear to be saying that what is being produced through this place is of good quality, it reaches a particular quality threshold and it seems to work very well, but you seem less convinced that the structure within which this legislative process sits is a structure that is fit for purpose. You speak about the issue of consolidation. You speak about access to Welsh law, statutes and the rest of it. Would I be right in interpreting your thoughts as being that this element, in terms of the process of creating law, works in a narrow sense, but that the context in which it sits is overly complex, and perhaps inaccessible? Or, am I over-interpreting there?

[161] **David Melding:** Or, it's not being made simpler.

[162] **Mr Walters:** Yes, that may be because I'm in practice, so what I'm concerned with, obviously, is much more trying to interpret the finished product. So, it wouldn't be fair for me perhaps to go on too much about the legislative framework. The definite concern I have is the ability to access what has been done. So, it's not the quality, or the process that leads to the particular instrument, it is the ability of anyone who needs to know it, and I obviously stand as a sort of mediator in that, as a lawyer trying to explain it. I think there are definite problems

of access, which probably don't lie with the Assembly, but certainly there are problems with publication, there are problems of communicating to people that something has been done and communicating that it is in force on a particular date, because, you know, I, obviously, have come across examples of people being wholly unaware of amendments, even down to official bodies being unaware of an amendment and acting irrespective of a change. And so, at that level access, on what do you depend for access? Is it down to your own resources, et cetera? Obviously, I come at it afterwards. I look back and find out as at the date I'm asked to advise on what has happened, but those bodies have got to implement it, et cetera. That is the one concern that I do have. So, I think it's the ease of access, communicating the fact that something has been changed, and the ability then to access that within the proper framework, rather than the process that you're concerned with more directly.

[163] **David Melding:** To take us through the final questions: Suzy.

[164] **Suzy Davies:** Thank you. Just sticking with that point about how easy it is to find out whether a particular part of an Act has been commenced, or whether secondary legislation necessary to make a piece of primary legislation work has come into effect, do you think that, generally, the legislation that emerges from this place has the balance right between what's on the face of the Bill and what is left to these difficult-to-determine pieces of legislation, shall we say? Secondary legislation. Is that part of the problem of the accessibility?

[165] **Mr Walters:** I think it is. If you have framework-style Acts, speaking personally, I'm never quite sure why something is in a Schedule and why something else would be by delegated legislation—by order, or regulation, et cetera. There is always the problem that you see something that is simply a law-making power in an Act and then have to try to find out whether it has been implemented in a particular way. So, you're fairly heavily dependent on secondary texts there, if, for example, there hasn't been any law. Generally, you do find that quite often. So, you'll be dependent on something like *Halsbury's Laws of England* to tell you that no laws had been made in however many years it is since the empowering provision was in the Act. So, there are those difficulties that you do come across and, as I say, one would always be dependent on, very largely, something like *Halsbury* or one of the encyclopaedias, according to your particular subject matter.

[166] The Assembly is actually quite good, if I can say that, having looked today, for example, in the planning sphere. There is obviously an index of relevant planning; it goes from circulars right down to legislation. So, that's very good. If you depended on, I think—they're not here to defend themselves—the Planning Inspectorate, their English site is up to date, but their Welsh site isn't.

[167] **Suzy Davies:** You also mentioned, as a practitioner, it's very useful to be able to be certain about what an Act means. You mentioned interpretation. Certainly, when you're advising clients, you want to feel confident you can interpret an Act correctly. Does the framework system, which seems to be very popular here in the Assembly, cause you problems when you're advising clients?

[168] **Mr Walters:** It shouldn't cause me a problem, because I should be able to find out where it is and understand it. So, it is less accessible, and, as I say, it is sometimes harder simply to find out where the particular rules are that you know are required. Sometimes, it's quite easy, but it isn't always as easy as it should be. But, as I say, once I've accessed it and got it on the screen, or on the paper in front of me, no, I've got no issues there with the language used—it's as accessible, in that sense.

16:15

[169] **Suzy Davies:** Okay, that's fine. When you have discovered those relevant pieces of

secondary legislation or guidance, whatever it is, do you ever ask yourself the question, ‘Well, now that I’ve seen this, why on earth wasn’t it on the face of the Bill in the first place?’

[170] **Mr Walters:** Yes.

[171] **Suzy Davies:** Thank you. Right, I did want to ask you quickly as well about statements of policy intent that the Welsh Government seems to be bringing out now, alongside its draft Bills, to help us all understand what the draft Bills are all about. Is that something you find helpful, or does that again make you ask the question, ‘Well, if you know what your policy intent is, why haven’t you articulated it on the face of the Bill?’

[172] **Mr Walters:** I don’t think it assists at all in terms of the individual interpretation or construction. It’s obviously only in rare cases that you need to go to the Pepper and Hart source of documents behind. So, the general rule should still be that the legislation should be perfectly clear and unambiguous, and if it is, you would have no need to go to anything else. So, in terms of actually advising in detail on what something means, it’s not particularly helpful, because it shouldn’t be ambiguous and so you’d have no regard to it. I can understand that coming to something, trying to understand a subject matter, it is helpful—I can understand that—but it’s a rather different question; if you were to ask me the specific question, ‘Does it help me in giving specific advice?’ the answer would have to be ‘no’. But, that doesn’t mean to say that I don’t think it’s quite useful just to keep up around subjects and quite helpful to me, generally, to see how people are thinking.

[173] **Suzy Davies:** Thank you very much for that. I’ve only got one final question, and that is on explanatory memoranda, which are useful in the development of a Bill through its earlier stages. I don’t know how many of those that you actually read, but of those that you have read, are you, sort of, quite content with the way that human rights issues are dealt with? Very generally—there might be some specific Bills that you want to refer to maybe.

[174] **Mr Walters:** I’m trying to think of anywhere I’ve seen anything set out specifically. Human rights. I’m certainly aware of some where they say there’s no need to do an impact assessment because it doesn’t amend primary legislation. Now, that shouldn’t apply in Wales because of the Government of Wales Act. So, I was trying to think of an example, but I can’t think specifically of one, I confess, that I’ve read in Wales that will affect that.

[175] **Suzy Davies:** Then you’ve identified the very problem in saying that.

[176] **Mr Walters:** But, yes, in principle it should be there; it would be very helpful.

[177] **Suzy Davies:** So, you would expect some sort of explanation—

[178] **Mr Walters:** I would expect it to be there, yes.

[179] **Suzy Davies:** An explanation about why a conclusion has been reached on a particular human rights—

[180] **Mr Walters:** Yes, I mean, just a very brief statement that it’s been addressed and what specific conclusions were reached. I would anticipate that.

[181] **Suzy Davies:** Thank you very much. Sorry, can I just ask—. You would include something like children’s rights in that, or would you expect to see separate declarations or statements of consideration to do with children’s rights?

[182] **Mr Walters:** I’d have expected it to follow the convention, in fact.

[183] **Suzy Davies:** But, you'd expect to see some reference to the fact the convention has been considered.

[184] **Mr Walters:** Yes, yes.

[185] **David Melding:** Well, thank you very much. That completes the questions we want to put to you, Mr Walters, but if there's anything specific that we've not covered that you think it would be useful for us to look at—. Don't think of something for the sake of it, but if there is something we need to know, then now is the opportunity to raise it.

[186] **Mr Walters:** No; just thank you very much indeed for letting me say what I have.

[187] **David Melding:** Well, it's very polite of you to thank us, but really it is the other way around: we should thank you for a very well-informed session. I think we've greatly benefited from your expertise, and also you've dealt with areas of the law that are quite significant, I think, in a lot of the issues that we are concerned about. I think the quality of your answers and the thought you've given to the questioning that we were likely to engage in has been very helpful, so thank you very much again. Thank you.

[188] I suggest we move to the next witness straight away—or witnesses. I know that we're against the clock—it's difficult.

[189] **Simon Thomas:** I have to leave at 4.30 p.m., but I may as well leave now, before we get into the next witness. I have a long-standing thing this evening, which was arranged before I knew this was going to be quite such a long meeting. [*Laughter.*]

[190] **David Melding:** I realise. Thank you, Simon.

[191] **William Powell:** Is anyone going to ask Simon's questions?

[192] **David Melding:** Yes. Is anyone going to volunteer? If you fancy any of his questions, now is the time to shout. Do you want to do them, William? It was on Assembly capacity, I think, towards the end, wasn't it, and the committee structure? They're questions 32 and 33.

16:21

Tystiolaeth Mewn Perthynas â'r Ymchwiliad i Ddeddfu yn y Pedwerydd Cynulliad

Evidence in Relation to the Inquiry into Making Laws in the Fourth Assembly

[193] **David Melding:** Good afternoon. I'll welcome you formally in a moment. Please make yourselves comfortable. I'm sorry, we're running a little late—not too much. Could I welcome our third, and final, set of witnesses, who represent the Welsh Local Government Association? I am delighted to welcome you this afternoon, and I'm very grateful that you're helping with this work. The witnesses are: Marie Rosenthal, who is Lawyers in Local Government, Daisy Seabourne, Tim Peppin, and Daniel Hurford. I should actually read from the plates in front of you, in case my information on the script is incorrect. [*Laughter.*] Can I just say, it was helpful to get your written evidence, and I propose that we just go straight to questions, rather than ask you to make an introductory statement? However, I will give you the opportunity at the end. If you feel we've not covered everything that's of interest to you, and there is some evidence that you need to bring to our attention, you'll have a chance to do it at the end. So, I hope that's acceptable.

[194] Can I just ask then, by way of introduction, whether you believe the system of developing legislation in the Assembly would be improved by more effective consultation, and longer consultation, and looking at that stage of the legislative process?

[195] **Mr Hurford:** I'll start, if I—

[196] **David Melding:** And I should say, I'll leave it to you as to who speaks. You know, if you've all got something relevant to say on a particular question, fine; if it's only one, that's not a problem either.

[197] **Mr Hurford:** I'll kick off, in that case, then.

[198] I think, generally, as our evidence suggested, we think there should be more consultation. Generally, consultation is pretty effective, through the legislative process itself, and also, you know, the Welsh Government's policy development stage. But, I think there's scope for improved consistency across departments, in terms of some of the pre-legislative policy development, and also developing the legislation itself, so when it comes into the formal arena—into the Assembly—some of the potential issues might be ironed out, some of the issues of clarification will have been clarified et cetera. And, generally—and I know it has been a theme in the earlier evidence sessions that we've just heard, in terms of the timescales for the actual formal legislative process—if there could be more time built in to some of the stages in terms of consultation there, that would improve the process.

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

[200] **Suzy Davies:** Thank you. Thank you for your evidence. I just want to go back to that statement you made there that the consultation is pretty effective. Your evidence is quite critical—I think it's fair to say—of the fact that we have so many framework Bills coming before us in the Assembly. Why do you think the consultation is effective, then, if we're still getting so many framework Bills?

[201] **Mr Hurford:** I think the consultation of what we have before us is fine. There is a debate over the appropriateness, or otherwise, of framework legislation, and, generally—and you could argue it both ways—but I think, generally, the view would be that, where possible, as much of the legislation should be on the face of the Bill as possible, to allow fuller scrutiny. Conscious that there may be scope for amendment, or change, in future, through subordinate legislation, or framework Bills, but I think, generally, if most of the legislation was on the face of the Bill rather than in framework, I think it would be preferable, and it would allow more open and constructive scrutiny of that process. But, as I say, it's generally good with what's presented to us in terms of the timescales and in terms of the level of engagement, certainly with committees as well. Whether it's a full Bill or whether it's a framework Bill, our preference probably would be, on the balance of choice, for the fact that most of the information should be on the face of the Bill rather than framework.

[202] **Suzy Davies:** Thank you for that. We obviously have a scrutiny view on framework Bills, anyway, but can you give us some sort of idea of the practical problems that framework Bills present your members when you're trying to explain to them or engage them in the consultation process?

[203] **Mr Peppin:** One of the problems when we go out to authorities and seek feedback is that, if it's a framework, it's harder for them to know what the implications are. So they'll come back to us and say 'Well, until we know a bit more of the detail, we can't really comment'. So, that then makes it quite hard for us trying to respond, because you lose a period, you go out, you ask for views and by the time they've come back, you know, the clock is ticking.

[204] **Ms Seabourne:** Can I jump in?

[205] **Suzy Davies:** By all means.

[206] **Ms Seabourne:** I think it's a balance though, isn't it? Sometimes I think that—. You know, we come to committee quite often and give evidence on Bills and we get asked things that are outside the scope of what's actually written in front of us. So, we're also trying to kind of second-guess what will come after the primary legislation. But I think we've also got to be careful. This is where I think Dan's point on consultation comes in quite nicely. If we have good consultation before we get to that stage, we can work with Welsh Government to sort of try and look ahead a little bit about where they're thinking with the legislation, because, sometimes, you actually don't want everything in the primary legislation in case it's sort of time-limited. So, I can think of a couple of examples recently—the Financial Education and Inclusion (Wales) Bill, for example, where there was quite a lot of detail on the face of that legislation that we felt that, perhaps, was time-limited and would be out of date in however many years' time, because it directly related to the curriculum. You don't always want everything there, because you can't go back and change it, whereas if you've got something that's a bit looser, then you can create some subordinate legislation or some statutory guidance that sits below it that is easier to amend, so it's still relevant, essentially, as you implement it.

[207] **Suzy Davies:** So what sort of general principles—and I appreciate this is quite a difficult question—would you like to see guiding both Government and civil society in coming to a conclusion about what should be on the face of the Bill and what should be in secondary legislation? The Welsh Government has Counsel General guidance on that, which we can all sign up to, obviously, but have you got any views about—

[208] **Ms Seabourne:** I think it would be difficult to be specific about that, because it's case dependent isn't it? So, I think with some things, it's really useful to have it all laid out on the face of the Bill, because then it's there and it's really clear, but on other things—as I said, in some of the areas I work with in education—things change quite quickly. So, you need to be sort of light-footed and it's sometimes difficult, if that's set in primary legislation, to be as light-footed and to be as sensitive to a changing environment.

[209] **Mr Hurford:** It's difficult. I haven't seen the Counsel General's guidance, but if there were some principles around how substantial the piece of legislation was or how transformative it really would be in terms of public service provision and citizens' entitlement, and how sensitive as well the issues are—. You know, we wouldn't want issues being dealt with by framework legislation if they were particularly sensitive or particular issues of concern for the public as well. So, you know, where as much engagement as possible is needed, that should be on the face of the Bill, I think.

[210] **Suzy Davies:** That's helpful. A genuine concern for us, I think, is that your members need to understand what's happening, mainly because you're being asked to do a lot of the delivery end of the work of legislation. So, when you have framework legislation, have there been any better examples than others, shall I say, where the final product has been clear enough for you to go to your members with and say, 'Look, it's pretty obvious what you need to do as a result of Act X' whereas with Act Y, you have to go to your members and say, 'Well, we think we know what this means, but we're not really sure'?

[211] **Ms Seabourne:** I can think of quite a good example. In the School Standards and Organisation Act 2013, the front section of that goes through the powers for local authorities, governors and Welsh Ministers as to how they could intervene in schools or local authorities. Actually, there's an excellent section there on the face of the legislation that is really clear

about the circumstances under which local authorities can intervene in schools, for example, and, actually, that was a really easy piece of that legislation to go to our members with and say, 'Look, in this circumstance, this is what the legislation will allow you do'. That was a really good example of where—

16:30

[212] **Suzy Davies:** But, on the other hand, if you want to merge your school, you have got to wait for a code to come out.

[213] **Ms Seabourne:** Absolutely.

[214] **Suzy Davies:** I mean, then, we've got some other examples. At the moment, we're looking at the future generations Bill and the planning Bill, both of which are going to affect your members quite substantially. Without going into the policy areas, do you think the draft legislation in its development, as far as it's reached, is helpful, or do you think there's a fair bit of work to do yet?

[215] **Mr Peppin:** I think, on the future generations Bill, we recognise the fact that having a good framework is a big step forward, because it's about integrating all the different pieces of work, and that's an area where we've been weak in the past. So, I think, we recognise that it needs to be fairly high level, but the strategy guidance will then need to help you take it down a level, which you wouldn't necessarily want on the face of the Bill. You'd want to keep that sort of ability to make the links between different policy strands without being tied up in knots in the legislation. So, I think, provided you've got good statutory guidance backing up that high-level legislation, in that situation, we'd be happy with that.

[216] **Suzy Davies:** Aren't you concerned at all that, with the guidance coming out in that way, you may not know when that's coming?

[217] **Mr Peppin:** Well, one of the things is, I mean, the point Daisy made, which is how closely we're working with the Welsh Government on it. We've had some very good working relations. We've got a group of 11 early-adopter authorities that are actually piloting some of the work on this, which is enabling us to have discussions with officials about the shape the guidance may take. I think, if you've got that involvement as the work is unfolding, then you feel more comfortable allowing the legislation to just have more of a framework approach.

[218] **Suzy Davies:** Sorry, my next question is related, but carry on—

[219] **Ms Rosenthal:** If I can just come back from the lawyer's perspective and in relation to the planning Bill. I'm relatively new to Wales; I've been working here now for about 18 months. The Government met with my group, the Lawyers in Local Government group, and consulted with it on certain aspects of the planning Bill in relation to planning committees, which we know very well, as practitioners, but they may not necessarily, and I thought that early engagement was incredibly positive in relation to the applicability and the ease of interpreting the legislation. We are also working with them to develop a protocol, a code of conduct, for planning committee members. So, I thought that partnership approach, at an early stage in the legislative programme, was not something I'd seen in England, being honest with you, and it's something that we, on the legal side, would particularly welcome its codifying, because I don't know if that approach is consistent across all Government departments in Wales.

[220] **Suzy Davies:** I've just got one final question on this, and this is: if, as a result of those pre-legislative conversations, you're fairly confident that you've reached with Government, or the Government, I should say, has formed a particular policy intention that

it's pretty clear about, and even goes so far as set out a separate document, 'Here's our policy intent to go alongside the draft Bill to help you understand how this is going on', then shouldn't it be on the face of the Bill? Would that help your members?

[221] **Mr Hurford:** I think so, and I think—

[222] **Suzy Davies:** I'm not talking about a specific Bill here, by the way, just generally.

[223] **Mr Hurford:** I think the relatively recent approach of the policy intents being published alongside legislation as well is a very useful development, because it gives some clarity around the policy intent—the name is on the tin. But, there is the argument, then, of, 'Well, if you know your policy intention, why is it not on the face of the Bill?' So, there is that argument and I suppose the policy intent gives you that additional evidence to further challenge the Welsh Government to say, 'Well, actually, you say it here—why not on the face of the Bill?' So, I think that is a useful development, but there is always that room for debate around what should be on the face of the Bill and what should be left to scope for further flexibility afterwards.

[224] **Suzy Davies:** Okay. Thank you. Thank you, Chair.

[225] **David Melding:** Before we move on to the next subject, Alun wants to come in on some of these responses.

[226] **Alun Davies:** That's fine. Thank you very much for an interesting conversation. I'm interested in your answers. Mr Peppin, I was interested in what you said about the future generations Bill, in terms of fleshing out that legislation with statutory guidance. Of course, that is not subject to the same checks and balances, and it's not subject to the same scrutiny as primary legislation, and I would anticipate that many people, whether in local government or elsewhere, would expect to see statutory guidance, if it's fulfilling such a fundamental role in that legislation, as you suggest it is, being subject to a level of scrutiny that guidance isn't generally subject to.

[227] **Mr Hurford:** Yeah. Could I just come in on that? It's a key point from your perspective in the Assembly, because you probably don't get a chance to scrutinise it. Statutory guidance is covered by the partnership scheme between local government and Welsh Government. So, there is generally a 12-week consultation period on all statutory guidance coming out from Welsh Government—generally, but sometimes it's curtailed for various reasons. So, there is an opportunity for scrutiny from a local government perspective, but granted, I presume, from the Assembly side, you don't necessarily always get that opportunity yourselves.

[228] **Alun Davies:** Well, nobody else gets that opportunity; let's get it right. You are an insider, you have a right to do these things, and nobody, not just Assembly Members, but people who are represented elsewhere, has the same sort of inside track that you have.

[229] **Mr Hurford:** I wouldn't say that it's an inside track. Granted, we do have privileged access in terms of some of the policy development, by the nature of our organisation, like some of the organisations that appeared before you earlier, but, on the statutory guidance, the consultation is a public consultation. It is a 12-week consultation, so anyone with an interest—if you do have an interest, and crucially, if you know about it as well—. The Welsh Government, obviously, would write out to relevant bodies. So, in our area, it'll be local authorities, community and town councils, school governors, and so on, but the general public, as you said, probably wouldn't get wind of that.

[230] **Alun Davies:** Is that a situation that you're content with, or is that above your pay

grade?

[231] **Ms Seabourne:** I think, again, though, we're back to the point that it is useful to have a level of detail on the face of legislation, but I think there is often a concern—there's a balance, isn't there: you want the detail on there for us to go to our members but also for members of the public to understand what's being proposed and for yourselves to scrutinise it? But, also, some of it is so detailed. Again, I can only refer to education and children's legislation, because that's what I know best, but I think there's a lot of really detailed stuff in there that you probably wouldn't want on the face of legislation; there has to be another vehicle to get that out there, and statutory guidance, I think, is probably the best way of doing it, because that does have a level of scrutiny and it provides, then, that kind of manual for practitioners to take and then go away and interpret that to deliver at a local level.

[232] **Alun Davies:** But statutory guidance—and I'm looking across at our lawyers here—is different as well to statutory instruments, secondary legislation. I think the concern of this committee is that you have this relationship, which you and Mr Hurford have described, in terms of being almost a joint approach to developing the statutory guidance with Welsh Government, and that is fit and proper, and I don't disagree with you, as it happens, in terms of that. My concern is different, because if, for example, you have a number of different framework Bills, they will be fleshed out, not with statutory guidance in the first instance, but with statutory instruments and secondary legislation, which goes through a very significantly reduced level of scrutiny before I would have anticipated statutory guidance actually being issued. So, you would be dealing with something that has not been through the Assembly, because it's a framework, and hasn't actually been subject to significant scrutiny either, because it's secondary legislation, which goes through a much-reduced level of scrutiny. Does that concern you at all?

[233] **Mr Peppin:** Yes, I think the point you are making was very well taken. We've responded to the Well-being of Future Generations (Wales) Bill with a number of areas where we would like to see amendments. In a number of cases, they are about making that process more robust so that, for some of the powers suggested for Ministers, there would be checks in the system, or just to introduce some of those things to deal with the issues you're raising. With the future generations Bill as well, as you know, it's such an all-embracing, sort of, piece of legislation that to try to get all the detail in the Bill would be incredibly difficult. So, you've almost got to allow that, sort of—. If you put too much in there, then I think you lose sight of what the Bill is trying to do. So, keeping it as a framework and then having statutory guidance would seem to be the best way forward, provided you've got those checks in the system.

[234] **David Melding:** I think we've heard the view. It's for us to reflect on that, rather than to scrutinise the witnesses and, in effect, sum up before we move on to the next session. I think they have emphasised that a balance is needed and that there are different mechanisms and, if you get the balance wrong, one way or the other, you can end up making the whole process of policy difficult. William.

[235] **William Powell:** Thank you, Chair. It would assist us in our inquiry if you could share with us your experience both of Wales-only legislation and of legislation for England and Wales that has separate provisions for both that would inform our work.

[236] **Ms Seabourne:** To be honest with you, I personally haven't had a vast amount of experience in this area, because, since I've been working at the WLGA, we've had the Assembly and you've had law-making powers, although, obviously, that's changed over the years. But, we do have a reasonable amount to do with bits of England-only legislation that then gets commenced at a later date in Wales. I think one of the issues—and I think we've mentioned it in our evidence—is that it then becomes quite a confused picture. If you've got

bits of legislation that have been made in previous Assembly terms—back when they were Measures, for example—and then you’ve got bits of legislation that are England-and-Wales legislation that have Wales-only provisions or can be commenced at different times within Wales, and then obviously we have Acts that are now Wales-only Acts, it does become quite confusing. I think from a local authority point of view, sometimes trying to navigate around all those pieces of legislation is quite difficult.

[237] **Ms Rosenthal:** Yes, it is.

[238] **Ms Seabourne:** Again, in more complex areas like social services and education, trying to actually pin down what a local authority’s statutory responsibilities are in those areas is often quite difficult.

[239] **William Powell:** That’s useful; in fact, you’ve anticipated one of my later questions in terms of commencement provisions. But if I could return to the issue of consolidation, I wonder what your thoughts are as to the extent to which consolidation of Welsh legislation would impact on its usability by the practitioners in a positive way.

[240] **Ms Seabourne:** I think it would be incredibly positive, and we’ve had some examples of that in education already in the Education (Wales) Act 2014, and the School Standards and Organisation (Wales) Bill did a little bit of that in consolidating existing legislation. I think it’s incredibly useful and it gives us some clarity in local government as to what the statutory responsibilities are, and it makes it a little bit more accessible.

[241] **William Powell:** And the issue around the availability of bilingual legislation—does that add issues that you’d like to share with us?

[242] **Mr Hurford:** I don’t think we’ve had any experience across the team here regarding the bilingual nature. Obviously, a number of authorities do work through the medium of Welsh primarily, and it’s incredibly important for them. There are issues in terms of the amendments process—obviously, the effectiveness and quality of the translation. But I think, as a legislature for Wales, it’s important that legislation is produced bilingually.

[243] **William Powell:** Absolutely. Do you have any learning points that would help to inform our inquiry in terms of the Welsh Government’s approach thus far to consolidation of legislation? Is there anything that we can take forward?

[244] **Ms Rosenthal:** We’d just encourage it.

[245] **David Melding:** Are you disappointed there’s not been more?

[246] **Ms Rosenthal:** Again, coming from another jurisdiction into Wales, it’s a very confused picture. I have to be very careful in the advice I give that I’ve gleaned all the pieces coming into it. So, I think it does create risk at the moment for local authorities that a point could be very easily missed.

[247] **William Powell:** That’s helpful, thank you.

[248] **David Melding:** Alun.

[249] **Alun Davies:** In terms of taking forward the processes, you said in your evidence that you would welcome more time for Stage 1 scrutiny. You’ve touched on this to some extent in answer to previous questions, but, in terms of the organisation itself, could you discuss with us how you engage with Stage 1 scrutiny, and also in terms of amendments when we get to Stage 2?

[250] **Mr Hurford:** In terms of Stage 1, everyone would like more time, although we recognise that you've got a difficult legislative timetable to adhere to. The earlier the dialogue the better, both informally with committee clerks and Chairs, and I understand that there's a new approach—I'm not sure if it's consistent across all committees—where there's an informal round-table seminar dialogue that occurs, which I think is a useful innovation. But, I think, in terms of our evidence as a representative organisation, we represent 22 authorities, the fire authorities and the national parks, so we have to canvass views and try to represent them. So, it's quite difficult for us to come in earlier in the Stage 1 process.

16:45

[251] But also, in terms of when we come and give oral evidence, it would be useful to have an indication of the areas of specific interest for the committee because Stage 1, as you know, is supposed to look at the principle of a piece of legislation but occasionally gets into some more technical areas, and we, in our evidence, put forward some of the technical issues as well. Sometimes, it would be useful to know whether the committee's areas of interest are in the policy intent principles or some of the technical issues, because, in those situations, we may need to bring some of the technical experts from local authorities, legal representatives or finance experts, and so on, with us to deal with those questions. Sometimes, we come here to cover the policy and the strategy and we do not always have that sort of technical back-up for us. So, just earlier dialogue really—. Stage 1 is generally quite good, but the earlier the dialogue the better.

[252] **Alun Davies:** Thank you for that. So, your concern is that of timetables as much as anything else?

[253] **Mr Hurford:** Yes.

[254] **Alun Davies:** Yes. In terms of a Stage 2 debate and amendments, where timetables can be telescoped quite considerably, and at Stage 3 as well I assume, can I read your comments as applying to that in the same way?

[255] **Mr Hurford:** I'll start and then Daisy will come in. Yes, I think that part of the issue at Stage 2 and Stage 3 is the level of engagement, certainly from us and possibly from other partners as well. Stage 1 tends to be kicked off with maybe a press release from the Welsh Government saying, 'The Bill's being introduced', and then it's quite proactive from the relevant committee, where there's a call for evidence, written and oral. But then, when you get to the amendments stage, it is incumbent on outside bodies, such as ourselves, to, you know, keep a lookout, 'When are the amendments coming? When are the Welsh Government amendments and when are the Assembly Member amendments coming?' So, there isn't that same sort of level of proactive engagement from the Assembly. So, it is quite difficult to keep on top of what the developments are, and then, as you say, the timetable itself at the amendments stage is quite curtailed. I think that there are only two days between the Government amendments and the Assembly Member amendments. Is that really an appropriate amount of time for partners to engage but also for Assembly Members to engage in the process? One of the ideas we thought of before we came in is that committee clerks will have a list of people who submitted evidence at Stage 1 and who attended to give oral evidence as well, and if a database of those contacts could be kept so that, when the amendments are tabled, those people could be just e-mailed to say, 'Look, you've obviously got an interest in this piece of legislation. Just for your information, here are the amendments that have been tabled', so the onus isn't so much on civic society to keep a lookout on the website all the time. So, that's just a little—

[256] **Alun Davies:** That's a good point. In terms of the materials that are produced and

published by Government in terms of taking legislation through, are you content that the explanatory memorandum, the financial implications are outlined and described—you might not like what is written there; I know you don't on some occasions—but are you content with the quality of information? I know you do discuss this in passing in your evidence.

[257] **Ms Seabourne:** The explanatory memorandums are actually really useful, because they provide a sort of common-sense guide to what's in the legislation. So, in that sense, I think they're very useful. I think they can be quite varied, and I think we've seen that over the last few years. I don't mean that as a criticism at all; I just mean how they're set out or how they're presented. Certainly on the cost-impact assessment, personally, that's the first thing I go to, to have a look at that, and I think that there hasn't tended to be, up until this point, a consistent approach as to how they are developed in the first place. So, for example, we've had quite a lot to do with some of the developments and some of the cost-impact assessments, but not in others. I know there are examples of where the Wales Audit Office has been involved in some and of other examples of private sector organisations with a financial interest being brought in to look at developing those. Again, it depends on the different pieces of legislation as to how important that is, but a consistent approach to that might be more helpful, just so you can make comparisons between different pieces of legislation.

[258] **Mr Peppin:** By their very nature and the detail they've got to go into, they are quite long, and, for our members, what they really want to know are a few bullet points—what are the key things? So, they'll look to us to try and extract some of the—. You know, are there any things hidden in this that you need to be looking out for? So, the explanatory memorandum is very useful for a body like us, but we then need to go through to sort of mine out any information.

[259] **Alun Davies:** We have to do the same. [*Laughter.*]

[260] **David Melding:** William, would you like to take us through the remaining questions?

[261] **William Powell:** Yes, thank you, Chair. I'm aware that a number of your member councils were very involved in the Control of Horses Bill that was brought forward a couple of years ago, but, more broadly, what are your thoughts on the impact on quality of legislation that's brought forward in a sort of fast-tracked or accelerated way? I wonder whether you could share that with us, because that's something that we've discussed with some of the earlier witnesses.

[262] **Mr Hurford:** Okay. I haven't had any experience of those particular—and the control of horses one in particular. I think there needs to be some flexibility and scope for urgent or emergency legislation to be brought through, but, of course, there needs to be appropriate safeguards and appropriate checks and balances as to (a) is this really urgent, is this emergency, and does this warrant a fast-track process? But, still within that, is there scope for post-legislative scrutiny, maybe a year down the line, 18 months down the line, where that's happened, to go back and actually say, 'Right, this was brought through under urgent resolution, let's check whether it's actually been a good process, whether it can be improved and, you know, whether you can have post-hoc scrutiny of it to see if it can be amended to improve'. But, as I say, I've not been involved; I think it's only been three in this current Assembly term. I suppose there need to be checks and balances, but it's whether there can be some post-hoc scrutiny for scope for amendment at a later date when the emergency has subsided.

[263] **William Powell:** Yes, okay. So, maybe a timetable for something to be reviewed two or three years down the line, or some sort of sunset-style approach.

[264] **Mr Hurford:** Yes.

[265] **William Powell:** Okay. That's useful. Some earlier witnesses from the BMA spoke to us about some of their own capacity issues in responding to the varied workload that they have in terms of dealing with legislation in this place, but also they had some concerns around the impact of the current committee structures in terms of the balance between scrutiny and legislation and policy. I wonder whether you've got any thoughts that we might take forward in our inquiry with regard to that.

[266] **Ms Seabourne:** On the workload issue, I think, certainly, within my team in education and children and young people, I've seen a massive increase in the amount of time that the team spends on legislation at the pre-legislative stage; they're working with Welsh Government, but also it does take a reasonable amount of time to prepare to come committee and talk to yourselves and I think that's absolutely the right approach, but, you know, it does increase your workload, but that's part of what we do anyway.

[267] In terms of the committees and having legislation committees or policy committees, I think it's actually—. I like going to, you know, the policy committees; I think that's useful, because you build up an expertise and you can refer to previous inquiries, which I think is useful. Although, you do have to watch, I think, for pieces of legislation that span different committees, because either you end up going to different committees or—[*Interruption.*] Yes. But I'm not sure how often that happens. I can think of a couple of examples off the top of my head, but I don't think it happens an awful lot, but I think that just needs—. You just need to think—. That needs to be thought through as to how that's handled, but I think actually having the policy committees is really useful.

[268] **William Powell:** Thank you. Thank you, Chair.

[269] **David Melding:** That takes us through the questions we wanted to put to you, but we've now reached that final stage where, if there is any evidence that we've not explored so far that you think would be useful for us to consider—. It's not a problem if there isn't. Well, can I thank you for attending this afternoon and for your thorough preparation? It's very important in our work, but we do realise that it does require quite a commitment from you as well, but we've found this session very, very helpful. I hope you will find it to have been productive also. Thank you very much.

16:54

**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**

[270] **David Melding:** I suggest we have a very brief session now in private—not long; we'll finish by 5.00 p.m., okay?

Cynnig:

Motion:

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

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

*Cynigiwyd y cynnig.
Motion moved.*

[271] **David Melding:** So, I move the relevant Standing Order to conduct the rest of the meeting in private session, unless anyone I see any Member object. I see no objections. Please switch off the broadcasting equipment.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 16:54.
The public part of the meeting ended at 16:54.*