

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

28/09/2015

Trawsgrifiadau'r Pwyllgor Committee Transcripts



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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
Dafydd Elis-Thomas	Plaid Cymru The Party of Wales
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
William Powell	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Sean Bradley	Uwch-gyfreithiwr, Llywodraeth Cymru Senior Lawyer, Welsh Government
Richard Clarke	Rheolwr Prosiect Gweinyddu Trethi, Llywodraeth Cymru Tax Administration Project Manager, Welsh Government
Jane Hutt	Aelod Cynulliad, Llafur (y Gweinidog Cyllid a Busnes y Llywodraeth) Assembly Member, Labour (the Minister for Finance and Government Business)

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

Ruth Hatton	Dirprwy Glerc Deputy Clerk
Naomi Stocks	Cynghorydd Cyfreithiol Legal Adviser
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Joanest Varney- Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

Dechreuodd y cyfarfod am 13:29
The meeting began at 13:29

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

[1] **David Melding:** Good afternoon, everyone. Welcome to this meeting of the Constitutional and Legislative Affairs Committee. I've received no apologies; I'm sure the other Members will be here shortly. We do not expect a routine fire drill, so if you hear the alarm, please follow the instructions of the ushers who will help us leave the building safely. Please switch off all electronic equipment or put it on to silent mode. These proceedings will be conducted in Welsh and English, and when Welsh is spoken you'll have a translation on channel 1. Should you need to amplify proceedings, you can do that on channel 0.

13:30

Tystiolaeth mewn perthynas â Bil Casglu a Rheoli Trethi (Cymru) **Evidence in relation to the Tax Collection and Management (Wales) Bill**

[2] **David Melding:** So, we'll move to our substantive item this afternoon, which is the oral evidence in relation to the Tax Collection and Management (Wales) Bill. I'm delighted to welcome Jane Hutt, the Minister for Finance and Government Business and the Member in charge of this Bill. Minister, do you want to introduce your colleagues?

[3] **The Minister for Finance and Government Business (Jane Hutt):** Yes. Can I introduce Richard Clarke, who's the head of tax collection and management policy and this Bill, and Sean Bradley, our senior lawyer in the Welsh Government?

[4] **David Melding:** I hope the first question is going to be fairly straightforward, but, anyway, are you entirely satisfied that this Bill is within the Assembly's competence?

[5] **Jane Hutt:** I am, and I can expand on why, Chair, if that would help. I think it's very important, of course, that the Wales Act 2014 did confer new competence on the National Assembly by adding devolved taxes as a new subject to Schedule 7 to the Government of Wales Act 2006. Of course, devolved taxes in this context include our proposed land transaction tax and

landfill disposals tax. GOWA also confers competence on the National Assembly in relation to public administration. I mean, those together satisfy me that those subjects confer competence on the Assembly to pass this Bill.

[6] **David Melding:** For these new powers to operate, it requires legislation—that is the most logical and efficient vehicle.

[7] **Jane Hutt:** There are no alternatives to legislation if we want to raise devolved taxes in Wales.

[8] **David Melding:** The balance, then, on the face of the Bill, between regulations and what's written on the face, how have you tried to strike that?

[9] **Jane Hutt:** Well, that, obviously, is a balance to be struck. We've put, I believe, as much detail as possible on the face of the Bill. It is a very detailed Bill. There's extensive and comprehensive provisions on the establishment of the Welsh revenue authority and the operation of the devolved tax collection and management system in Wales. Of course, I think one of the important issues is we need flexibility provided by regulation-making powers, because, unlike in Westminster, we won't have an annual finance Bill. The annual finance Bills are used to tidy up and improve tax legislation. So, for that reason, and in a similar way to the Revenue Scotland and Tax Powers Act 2014, this Bill includes a number of regulation powers that anticipate changes that may be needed in the future, many of which would be administrative or technical in nature, some more substantive, but where those powers would relate to more important, substantial issues, we have proposed they should be subject to the affirmative procedure.

[10] **David Melding:** I notice from written evidence that's been submitted to the Finance Committee that Deloitte, who are obviously in a position to read this Bill with particular expert attention, do actually challenge you on a few key areas. In their view, regulatory powers are used when the matter should be included on the face of the Bill and should be dealt with in primary legislation. I don't know if you're familiar with this written evidence, but it relates to the power to amend the conditions under which protected taxpayers' information is disclosed, which is clause 17(2); the power to amend provisions relating to what are to be classed as appealable decisions—clause 170(7); and the power to confer further investigative, detention and seizure powers—obviously a very sensitive area—clauses 183(1) and 183(2). You know, we encourage people to look at Bills very thoroughly and to make suggestions where they think the balance hasn't

quite been struck. So, from such a powerful source, what would be your response to those particular objections to how you use regulatory powers?

[11] **Jane Hutt:** Well, I very much welcome the extensive engagement of tax experts. I've got a tax advisory group and not only tax accountants, but tax lawyers are engaged, and, of course, we've appointed tax experts to advise us. So, the consultation has been very important to us in terms of stakeholder interest and expertise. I'm very aware that questions like this have been raised in terms of whether we've struck the right balance between primary and secondary legislation.

[12] I think in terms of those particular regulations—. In fact, the regulations that relate to one of those points that you raised—protected taxpayer information being disclosed—as well as appealable decisions and, indeed, the detention and seizure powers are all subject to the affirmative procedure. So, we believe that is sufficient in terms of providing those safeguards. I think it is important—the ability to amend more than a technical administrative power. Of course, that's where the affirmative procedure is appropriate.

[13] **David Melding:** Okay. Well, we'll have a chance to follow up these points in greater detail, and I'll ask William Powell to take us through the first section.

[14] **William Powell:** Diolch, Gadeirydd. Good afternoon, Minister. Central to the workings of the proposed Bill, of course, is the establishment of the Welsh revenue authority, dealt with by Part 2 of the Bill. In that context, could you please explain why the affirmative procedure is not currently being proposed for the regulation-making power in section 3, that is to amend the number of members of the WRA, which would involve the amendment of primary legislation?

[15] **Jane Hutt:** Thank you for that question. The power may only be used for administrative purposes in terms of the setting up and the membership of the Welsh revenue authority, but, of course, you do have to update from time to time administrative provisions—the size of the WRA's body corporate—and we've prescribed the negative procedure. It is actually a relatively minor technical power within the scope of the Bill. If you look at the Bill, as drafted, it allows the membership of the board to range between six and 12 executive and non-executive members, but this regulation-making power does provide added flexibility to adjust the size of the board, if its role

were to change to the extent that six to 12 members wasn't appropriate. So, we need the power, obviously, but we feel that it is a relatively minor, technical power within the scope of the Bill.

[16] **William Powell:** I am grateful to the Minister for that response. This committee and, indeed, the wider Assembly over time, have wrestled with issues around disqualification. In this particular matter, given that disqualifying people from membership of any body can be quite a significant issue, did you, at any stage, consider making these regulations subject, again, to the affirmative procedure?

[17] **Jane Hutt:** I think it's important that we did put the offices that disqualify a person from becoming a non-executive member—. They are listed, obviously, on the face of the Bill. We're only anticipating that this power should be used if, for example, we might want to add to that—if there was a new public office that might be created that isn't on the face of the Bill, as it doesn't exist yet. This is really only going to be used, this power, if we should add in that way to a list, as that would be a significant change of circumstance. I think, in the overall legislative scheme, this would be a relatively minor amendment.

[18] **David Melding:** I'll come back to Suzy at the end—

[19] **Suzy Davies:** Okay, thank you, Chair. It is on this.

[20] **William Powell:** Okay, thank you, Chair.

[21] **David Melding:** If it's not been addressed, we can come back.

[22] **William Powell:** In the context of the issue that the Chair's already made reference to previously, which is around the disclosure of taxpayer information, could the Minister please expand on the potential for,

[23] 'a significant impact on taxpayers' human rights.'

[24] under this provision?

[25] **Jane Hutt:** On the whole issue of human rights, I've looked at this very carefully, as I know that the committee does in terms of new legislation. Of course, it's relevant to several aspects of the Bill, and you've raised one point. Chair, if I may, I did want to say that I looked at this in terms of

competence as far as the Bill is concerned, I've received advice on compatibility with the European convention on human rights, and I'm satisfied the Bill is compatible. But, of course, looking at it from all the different perspectives, on this particular point that you raise in terms of taxpayer information, if you look at the way the Bill complies, it provides taxpayers with a right of appeal to the tax tribunal over a wide range of Welsh revenue authority decisions. That's also, I have to say, common with the current UK and Scottish laws as well. The comprehensive system of reviews and appeals exceeds the requirements, in fact, of the European convention on human rights, because it allows taxpayers access to the tribunals for decisions that relate to a taxpayer's liability as well as over penalties. I think Richard or Sean might like to say we're giving taxpayers more rights in this respect, which is important in terms of your point. Did you want to add to that, Richard?

[26] **Mr Clarke:** What we've looked at is the existing legislation around HMRC and what was rolled out more recently in Scotland, and considered that legislation in the way of rights for taxpayers, and there were a number of areas that we found where perhaps it wasn't quite as clear as to whether the taxpayer might have a right to go to the tribunal. So, all we've done is simply clarify that in this particular Bill. So, we've gone a little bit further than the existing legislation, where there was a lack of clarity.

[27] **William Powell:** I'm grateful for that. So, in summary, Minister, you are convinced that the potential interference with article 8 of the European convention of human rights is, in this case, both justified and proportionate.

[28] **Jane Hutt:** Yes, I believe that these provisions ensure compliance with article 8 as well as with the other relevant provisions of the European convention on human rights.

[29] **William Powell:** Thank you. And finally from me, I'd like to ask why the affirmative procedure has not been proposed for the regulation-making power under section 26(7)(b) of the Bill, that is, to amend the planning period for the WRA's corporate plan. This could involve, again, the amendment of primary legislation.

[30] **Jane Hutt:** Thank you for that question. The regulation-making powers allow the Welsh Ministers of course to set the initial planning period that WRA's corporate plan will cover, and then substitute the three-year planning that will apply thereafter, unless regulations are made for such other period

as they consider appropriate. So, I think this is important in terms of initial planning and then moving to substituting with the three-year planning, and that corporate plan is crucial in setting out the WRA's main objectives and outcomes that can be scrutinised, as far as that's concerned. I think that subsection 8, which allows the Welsh Ministers to amend the length of subsequent planning periods, is only to be used if there's a very strong rationale for amending that three-year planning period, which relates to the efficient and effective running of the WRA. So, we believe that the negative procedure is appropriate because, whilst primary legislation will be amended, the power does relate to an administrative matter, and that of course is the planning period for the WRA's corporate plan.

[31] **William Powell:** I'm grateful, thank you.

[32] **David Melding:** Suzy, has your point been covered?

[33] **Suzy Davies:** Yes. Minister, can I just go back to section 4, please, and this question of disqualification? Obviously, being disqualified from holding a public office, whether that's for the reasons of your own individual person or the status you hold elsewhere, is quite serious. While I accept your answer to William Powell about the need to be able to extend that list as new offices arise, you didn't actually explain why that should be a decision for Ministers rather than the Assembly, because it's the Assembly that's going to be passing that Act and approving the list that's already contained in section 4, and then surely it should be up to the Assembly to approve any additions to that list.

[34] **Jane Hutt:** Well, I think it isn't about Ministers making a decision to—. I mean if, say, a new public office was created, for example, and, obviously we've listed on the face of the Bill, and some of those are elected—if you're a Member of the European Parliament, for example. There are a couple that are more publicly appointed, like the national parks. It is if a new public office is set up, then that would be an appropriate point. So it's not a Welsh Minister's political decision in that sense.

[35] **Suzy Davies:** I wasn't suggesting that.

[36] **Jane Hutt:** Sean, I don't know if you want to comment further on that in terms of the administrative rather than policy issue.

[37] **Suzy Davies:** The Assembly might amend the section as it stands

before it's passed, of course.

[38] 13:45

[39] **Mr Bradley:** Yes. There's always a judgment as to whether something is technical, administrative, or whether it's more substantive in relation to the Bill. I think we've taken the view here that it probably falls on the side of being technical rather than administrative. Of course, the fact that it's a negative procedure doesn't mean that it's just a decision for the Welsh Ministers; it still can be subject to Assembly scrutiny, and, ultimately, the Assembly can turn down any of the regulations that Welsh Ministers may propose.

[40] **Suzy Davies:** And you know the political balance in this place at the moment. Perhaps I could just ask if you would consider it again, Minister. That's all.

[41] **Jane Hutt:** Well, clearly, we're coming to the committee, so that we can consider your views as well as—. I know you'll be reporting back. But, no, it's helpful to have your perspective.

[42] **Suzy Davies:** Thank you, Chair.

[43] **David Melding:** Before I move on, Minister—and you're not the only sinner in this area—we're getting towards the end of the fourth Assembly and time after time, we've had this discussion about which procedure should be used and the executives say, 'Well, we judge whether it's administrative or technical', a highly subjective set of criteria. We say it's a much more elegant principle that if you amend primary legislation by regulation, you should use the affirmative procedure. It's unlikely to take a longer time to do that, it's just a matter that that item will then be on the floor of the Assembly, where, *yn ffurfiol*, most of them proceed, if they really are technical and administrative. Only, it's that Chamber that, ultimately, will decide it. What is wrong with that principle? It is so firm and objective, why do you consistently reduce the rights of the legislature in this area?

[44] **Jane Hutt:** Well, I'm coming here to introduce and move this Bill forward and, as you can see, I have used the affirmative procedure a great deal in terms of the Bill. As I said in response to Suzy Davies, I am open, today, to listening to concerns about whether we should move from negative to affirmative. Obviously, lawyers and officials have looked at this very

carefully and, I would say, have respected the views of this committee and yourself, Chair, of course, in terms of these points. We will be very happy to take this back and consider it. Obviously, if we come to other questions about other regulation making powers, I would also want to hear from you, as well.

[45] **David Melding:** It is a general criticism of the Government and, in fairness, probably not just this Government; you could levy it against all parties that have been in office in Westminster and other jurisdictions, but we have an objective criteria; you have a highly subjective one and I do think Ministers ought to go away and think about this, because it's been a constant frustration to us and for very little reward, it seems to me, for the Government, because it does not slow the process down. You would find quite a few affirmative measures that do amend primary legislation and don't require full discussion on the floor, and they just go through formally as soon as the Minister moves the motion. But anyway, I'll get more and more heated and frustrated if I talk any more about it. Alun Davies.

[46] **Alun Davies:** Well, perhaps it might save your blood pressure if I proposed that we write to the First Minister on this matter, rather than detain the current Minister in front of us, because, as you say, it is a general principle, rather than a specific principle, here.

[47] **David Melding:** We've pursued it with other Ministers.

[48] **Alun Davies:** We have, but I'd be quite happy to see that letter go. In terms of taking this matter forward, clearly, the creation of this new authority, in terms of this Bill, leads to the creation of new structures and powers and the rest of it and I'm quite happy with much of what has been proposed by the Government on this, but I'm interested in that edge, if you like—the relationship between the new authority and the citizen—and perhaps one of the key areas where this relationship needs to be tested is that of the issue of penalties.

[49] Now, I'm interested, Minister, in understanding why you feel it's appropriate for the WR—I was going to say the 'WRU'; I have other things on my mind—the WRA [*Laughter.*]—

[50] **Jane Hutt:** Have you still lost your voice, Alun?

[51] **Alun Davies:** You noticed.

[52] —to have the power to levy penalties, and in what circumstances do you believe, Minister, that these penalties would be appropriate?

[53] **Jane Hutt:** Thank you, Alun Davies, for this question. Something you'll be aware of is that I have set out principles for our Welsh taxes, and fairness and simplicity are key to that. As you say, the relationship between the citizen and the Welsh revenue authority is crucial.

[54] In terms of penalties levied by the Welsh revenue authority, of course, penalties—civil penalties—are an important way of ensuring that people do comply with their obligations under the legislation, and the Bill does establish a comprehensive framework for the imposition of penalties, but in very clearly identified circumstances. I would say, again, this is consistent with UK and Scottish legislation, and we have sought to look for consistency wherever possible in terms of our new legislation. Looking at the circumstances, of course we've got them, and the amounts for the penalties, set out on the face of the Bill, including penalties for failing to make a tax return, failure to keep preserved records, failure to comply with information notices or obstructing inspections, and inaccurate information or documents.

[55] **Alun Davies:** Thank you for that. And the relationship between the Minister and the authority, in terms of the powers to amend the penalty regime. Without wishing to go back over the previous conversation, do you believe the affirmative procedure is sufficiently robust to ensure that the balance between the rights of a taxpayer and the effectiveness of the tax system is maintained?

[56] **Jane Hutt:** Well, I think it does go back to when—in what circumstances—would we use the regulation-making power. It would only be used to make adjustments to the amount of penalties or the mechanism for their application; for example, if we were encouraging compliance in Wales, or ensuring comparability with the rest of the UK—when changes are happening elsewhere, there might be a reason for it, as far as that's concerned. This flexibility we need does go back to the point I made earlier on, that, of course, again, unlike Westminster, we won't have that annual finance Bill, which is used and could be used to quickly align all penalty provisions with other parts of the UK, if that were the policy intent. But, we don't have that kind of flexibility. So, it would be only used to make adjustments to the amounts of penalties or the mechanisms for assessing them. We would expect, if there were any changes, that of course there'd be

consultation with stakeholders. Actually, this regulation-making power—I've mentioned Scotland and the UK Government—is significantly narrower than the equivalent Scottish provision.

[57] An important point, I think, to make here in terms of policy is: it can't be used to introduce new penalties. So, we do believe, in terms of using the affirmative procedure, that it should—. Of course, it's prescribed, going back to our earlier discussions, and it's vital that the affirmative procedure is prescribed, because it could lead to higher penalties for taxpayers; therefore, it's not just a simple, administrative or technical power, but it's much narrower than the Scottish equivalent.

[58] **David Melding:** Dafydd Elis-Thomas.

[59] **Yr Arglwydd Elis-Thomas:** Lord Elis-Thomas: Thank you very much. I have been working on this Bill from the Welsh text, and so I will be referring to that. I want to particularly ask you about the first Chapter of Part 8, which relates to reviews and appeals. I am interested in the question of why you have used the tribunal procedures and legislation to deal specifically with this issue. Are there broader constitutional reasons, such as a lack of fiscal legislation and a lack of appropriate devolved legislative arrangements in administrative areas that are behind that, or have I smelled a rat where there isn't one?

Diolch yn fawr. Rwyf wedi bod yn arbennig ynglŷn â Rhan 8, y Bennod gyntaf, sy'n ymwneud ag adolygiadau ac apelau. Rwyf â diddordeb yn y cwestiwn o ran pam eich bod chi wedi defnyddio gweithdrefnau a Deddfau tribiwnlysoedd i ddelio â'r maes yma yn benodol. A oes rhesymau cyfansoddiadol ehangach, megis diffyg deddfwriaeth gyllidol a diffyg trefniadau deddfwriaethol datganoledig mewn meysydd gweinyddol, y tu ôl i'r rheswm yma, neu a ydwyf yn aroglu llygoden fawr lle nad oes un?

[60] **Jane Hutt:** Well, it's an interesting question. I don't think there was any question about not using it; it is the only vehicle that is available to us in terms of the tribunal. I don't know whether Sean would want to add to that. It is not only the only vehicle, but I think it's very important that we do have a very robust way for appeals to be made, and that it's tried and tested, really. Anything more to say, Sean?

[61] **Mr Bradley:** The tax tribunal refers to the taxpayer tribunal and the upper tier tribunal, which are well used to dealing with appeals in these particular taxes. It's the tribunal system of Wales and England, and so we have conferred the function on that tribunal.

[62] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** Thank you very much. There is also a power to review decisions taken by the tribunals and to amend those decisions. How do you think those powers will be used?
 Diolch yn fawr. Mae yna hefyd bŵer, wrth gwrs, i ddiwygio penderfyniadau a wneir ac i adolygu penderfyniadau a wneir gan y tribiwnlysoedd. Sut ydych chi'n rhagweld y bydd y rhain yn cael eu defnyddio?

[63] **Jane Hutt:** Again, it's important that we have these powers so that we can react to changing circumstances and make sure that we can facilitate and ensure that the tax management and collection system is functioning effectively. I think there are circumstances where we haven't yet got to our specific devolved taxes legislation; those Bills will be forthcoming. So, those circumstances—. This is about futureproofing, in fact—this is a point that perhaps hasn't come over this afternoon very much—but we do see that we must futureproof this important new legislation in terms of tax collection and management, not just in terms of our devolved taxes that are coming our way but other taxes that might come our way in the future, so it is a vital power.

[64] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** But, it's very difficult for us to scrutinise a framework Bill such as this one without having greater information on how the finance Minister and the Government are thinking about the other two or three Bills that will be required to legislate through this Assembly in order to get a taxation system in place. It would perhaps have been an assistance—and this is a general complaint from this committee and from other committees too—. It's difficult to scrutinise legislation if there are other pieces of legislation in the
 Ond, mae'n anodd iawn i ni graffu ar Fil fframwaith fel hyn heb fod â mwy o wybodaeth ynglŷn â sut mae'r Gweinidog cyllid a'r Llywodraeth yn meddwl am y ddau neu dri Bil arall y bydd angen eu deddfu drwy'r Cynulliad er mwyn cael y system drethu yn ei lle. Mi fyddai efallai wedi bod yn help—mae hon yn gŵyn gyffredinol gan y pwyllgor yma a chan bwyllgorau eraill—. Mae'n anodd craffu ar ddeddfwriaeth os oes yna dameidiau eraill o ddeddfwriaeth ym meddwl y Llywodraeth a'i chyfreithwyr nad ydy aelodau'r

pwyllgor yn ymwybodol ohonyn nhw, a'n bod ni ddim yn gallu gweld y cysylltiad rhwng y Deddfau fframwaith neu'r Biliau palmantu—sef y gair sy'n cael ei ddefnyddio mewn rhai deddfwrfeydd eraill—a'n bod ni ddim yn gweld y pictiwr cyfan ynglŷn â'r maes deddfu. Mae'n ddrwg gen i bod y cwestiwn yna braidd yn hir.

minds of the Government and its lawyers which committee members aren't aware of, and that we can't see the inter-relationship between the framework legislation or the paving Bills—which is a term used in some other legislatures—and that we don't see the whole picture on the legislative area. I apologise that that was quite a long question.

[65] **Jane Hutt:** I think it's very interesting. It's partly circumstances of timing and planning with our legislation and Scottish legislation. We have looked inevitably a lot at what's happened in Scotland. We are only setting up the tax collection and management Bill and the Welsh revenue authority in order to manage the two devolved taxes—land transaction tax and land disposal tax. But, of course, through the Wales Act 2014 we could have new taxes as well, so that was my only mention about other taxes. But, we are setting this up for the two devolved taxes which are coming our way. In Scotland, they started with the two devolved taxes and then they set up their tax collection legislation. We discussed this when we visited and met with Assembly Members and the finance Minister. In some ways, they would rather have done what we're doing, namely getting the tax collection and management regime set up and right first and then move on to the devolved taxes; they did it the other way round through circumstance. We've learned quite a lot from them.

[66] I think the right of appeal in section 170 is in much broader terms than those provisions that are in HMRC and Revenue Scotland. So, obviously, we appreciate what you say that we haven't got those other taxes yet, but we do need to futureproof for those in the future. I don't know, Richard, if you want to say anything.

[67] **Mr Clarke:** I was going to mention that the Minister recently published the results of the responses to the consultations on the two proposed taxes, to give an indication of the direction of travel. I very much appreciate that not all three pieces of legislation are here together, but this Bill does provide, I think, a series of generic provisions that will apply to the new taxes.

14:00

[68] This might be built upon as the actual provisions for the new taxes are decided by the next Welsh Government, but these should apply equally to those new taxes and provide a means by which future devolved taxes might then come about. So, there'll be consistent provisions for each of the devolved taxes, which this Bill provides.

[69] **Yr Arglwydd Elis–Thomas:** Wel, os ydy'r Gweinidog a'i swyddogion yn dweud wrthyf fod Llywodraeth Cymru yn cynnig deddfwriaeth sydd yn well na beth sydd yn yr Alban, mae'n rhaid imi eich credu chi. Un cwestiwn ar hyn hefyd, sy'n dilyn cwestiynau a ofynnwyd yn flaenorol ynglŷn â'r berthynas ag Erthygl 6 yn yr achos yma o'r confensiwn hawliau dynol: yn amlwg, mae yna gydymffurfiaeth ynglŷn â hyn, Weinidog.

Lord Elis–Thomas: Well, if the Minister and her officials are telling me that the Welsh Government is proposing legislation that is better than the legislation in Scotland, I will have to take your word for it. One further question on this, which follows on from some questions asked earlier on the relationship with Article 6 in this case of the ECHR: clearly, there is compliance on this issue, Minister.

[70] **Jane Hutt:** There is compliance but, of course, we always welcome the views of the committee on this matter. Could I just say, in response to the point in response to Richard Clarke and the Scottish legislation, they have been sharing with us ways in which they think we could improve on what they've taken through? It's been a very constructive and open working relationship not just at Government level, but at official level, obviously, via Government.

[71] **Lord Elis–Thomas:** Thank you.

[72] **David Melding:** Suzy Davies.

[73] **Suzy Davies:** Thank you very much, Minister. I've got a couple of questions here regarding Part 9 of the Bill, but can you just help me, first of all, to make sure that I've understood this properly? We're talking about police and other officials investigating offences that arise under—. I think there are four Acts mentioned in the Bill. I just wanted to be sure that this isn't just a case of not creating any new offences, or anything, and that it's just a read across in the case of the two taxes we're talking about for HMRC—now the WRA. Is that a sort of fair reflection of it?

[74] **Jane Hutt:** Yes, that's what we've sought to do.

[75] **Suzy Davies:** Because you mentioned consistency.

[76] **Jane Hutt:** Yes, absolutely. The consultation that Richard mentioned earlier on, and the tax advisory group—and, in fact, we've got an executive group as well, an operational group—. There is a strong view that we have to have consistency, and particularly in terms of England and Wales, the legislative powers that we've got. So, yes; a read across.

[77] **Suzy Davies:** Okay. That's very helpful, because I wanted to ask you, then, about the powers that Welsh Ministers have under section 183 in particular—actually, they arise in sections 184 and 185 as well—to modify regulations that Welsh Ministers might—. Well, first of all, there are powers to introduce modifications to what's already in the Act, and that's done by affirmative procedure, which is great, but also you can introduce modifications via those regulations. What kind of modifications would you introduce by those regulations?

[78] **Jane Hutt:** I think circumstances when those powers might be exercised do relate to criminal offences set out in the Bill—examples are destroying documentation or disclosing taxpayer information. They could be exercised in relation to tax evasion offences that could be created in tax-specific Bills. But these things, I think, would very much subject to public consultation, wouldn't they, Sean? Do you want to say a bit more about that?

[79] **Mr Bradley:** So, what Part 9 will do, as the Minister has said, is put the Welsh Ministers in the same position, and WRA in broadly the same position, as HMRC. So, there will be regulations that will specify—this is the intention—which powers, under the Police and Criminal Evidence Act 1984, can be exercised by officers of WRA. So, this is the same mechanism as exists in the UK at the moment. So, for HMRC, they use their own officers to investigate criminal activity, and they can exercise the powers that are listed, which are broadly the same as police powers. This will put WRA in the same position, and what will follow is a consultation on what police-type powers should be exercisable by WRA officers in relation to these two taxes. So, that would be a separate exercise. We don't know yet which powers will be needed. It's probably not going to be as extensive as the powers that HMRC have because they carry out a much wider range of activity, but there will be a public consultation on that, with regulations to follow that will set out which type of police powers the WRA officers will be able to exercise.

[80] **Suzy Davies:** That's very helpful, because what I hear is that, longer term, you're looking at consistency with other legislatures, but I'm just concerned about the openness of the drafting of 183—I'm going to ask you; it's 181 to 185—where it just says that you can modify—. Subject to consultation, I understand that, but that does leave us open to the possibility of new investigatory powers that go beyond those that have already been human-rights-proofed, if you like.

[81] **Mr Bradley:** Okay. That wouldn't be possible with the set-up that we have because section 183 will amend the Police and Criminal Evidence Act and it will allow the Welsh Ministers to apply whichever of the powers are set out in that Act to WRA officers. So, they'll be plugging in to a familiar, consistent framework for criminal investigation powers that already operates throughout England and Wales, which is ECHR-proof, and it goes with codes, for example, that say how things should operate. So, it's basically plugging in to something that already exists and that people know and are familiar with, rather than building something completely new in this Act.

[82] **Suzy Davies:** So, it's self-limiting, effectively?

[83] **Mr Bradley:** Yes.

[84] **Suzy Davies:** Because, obviously, there's reference to 'any functions conferred' in all these as well. The word 'any' is obviously going to set off alarm bells as it could mean anything in the future. That's really helpful. Obviously, particularly with these, you've got the affirmative procedure, which offers some protection, but you don't have that for the modifications that arise under sections 184 and 185. Can you explain the difference?

[85] **Jane Hutt:** Yes. Can I just go back to the earlier point that you made about under which circumstances powers would be used to modify? This goes back to the fact that we will be developing policy and legislation for landfill disposals tax, and that's going to be very crucial in terms of what powers would be needed, really, to deliver on legislation that hasn't yet come forward. So, I think it is very important that we've got the basis in terms of the Police and Criminal Evidence Act and the Criminal Justice and Police Act 2001, but we need to be aware of the fact that there will be new needs for that criminal investigation to take place once we get that legislation. On 184, I think, Sean, you were going to respond to that.

[86] **Mr Bradley:** Yes. So, 184 and 185 are similar but slightly different. So,

we're looking at different pieces of legislation here. What we're doing, again, is plugging in to the Proceeds of Crime Act 2002 and the Regulation of Investigatory Powers Act 2000. What this will confer is a power on Ministers to nominate a certain category of officers in WRA who can exercise the powers under that Act. So, it's much smaller in scope than the first criminal investigatory power in the Police and Criminal Evidence Act. It's a kind of technical step that follows from the decision that needs to be made when scrutinising the Bill as to whether it's appropriate for these powers to be exercisable by these officers. So, the Proceeds of Crime Act will allow certain officers, if there is a prosecution, for example, to try and recover some of the wealth or assets of a person who's been convicted of something. That will happen in accordance with the very tight framework that's set out in that Act.

[87] The Regulation of Investigatory Powers Act, which you may be a bit more familiar with, is about powers of surveillance in more limited circumstances. Again, it's tightly regulated. It's regulated by the Office of Surveillance Commissioners; it's not the Welsh Ministers who would be doing that. But, again, it's consistent with HMRC in terms of the enforcement powers that the officers should have.

[88] **Suzy Davies:** So, in short, it's just identifying who has the power to do a certain thing rather than anything to do with the depth or breadth of powers that are exercised by whoever they're exercised by.

[89] **Mr Bradley:** Yes.

[90] **Suzy Davies:** Okay. That's very helpful as well. Just finally from me, section 186. I think you can almost guess what I'm going to ask you. Consequential transitional provisions: the way that this power is set out on the face of the Bill at the moment does allow for the amendment of primary legislation without affirmative procedure being applied. In fact, it doesn't look like any procedure is applied. Can you tell us why, and why you've chosen this particular version of words when there are other Bills being presented by Government at the moment with different versions of the consequential transitional, and so on, powers?

[91] **Jane Hutt:** Well, I think again it's when and why would the delegated power be needed that helps to inform what procedure we would then set out in legislation. So, again, going back to when would this power be used, it would only be used for matters like making changes to other legislation needed as a consequence of the provision of this Bill, or to deal with any

unforeseen details that arise out of implementation of the new system. So, it's important that it's included within the Bill to identify that this could happen, but it's very limited, how this power could be used. It can't do anything that's contrary to the provisions of the Bill. The Assembly, obviously, is considered, and, if the Bill's made law, the Assembly has approved. So, it's very limited, and that's why the negative procedure is prescribed.

[92] **Suzy Davies:** Well, thank you for the explanation. I mean, it's not that I object—. I don't object in any way to there being a provision for this. It's just the particular form of words. You said it yourself: it does allow for the amendment of primary legislation, and, just as a principle, amendment of primary legislation is something that should come before the Assembly however quickly it might proceed through the Assembly.

[93] **Jane Hutt:** Yes. I don't think—. Do we want to write to the committee on this point to clarify the matter further, if that would be helpful?

[94] **Mr Bradley:** Yes, we can. I think it follows on from the discussion that we had earlier about what is appropriate, and negative is.

[95] **Suzy Davies:** Yes; I don't want to revisit it.

[96] **Mr Bradley:** I suppose what we would say is that it is a very limited power. Again, it's a tidying up, kind of tweaking-type of power. It won't, by itself, make any substantial changes to the law that do not follow from the Bill that you are considering at the moment. So, I suppose we would say that it's getting the scrutiny that it needs now and doesn't then need to come back for affirmative procedure.

[97] **Suzy Davies:** Okay. I hear what you say. Thank you.

[98] **David Melding:** Do we have any other questions? Then, thank you very much, Minister, for your attendance this afternoon to give evidence, and also thanks to your officials.

[99] **Jane Hutt:** Thank you.

14:13

**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**

[100] **David Melding:** Item 3 is instruments that raise issues to be reported under our Standing Orders. There's a negative instrument: the Zootechnical Standards (Wales) Regulations 2015. I think the Government's written explanation has now being circulated to you. I'm not sure it does very much to mitigate our concerns. So, I think, you know, our report stands. Okay. I don't think anyone's contradicting me there.

[101] **Lord Elis-Thomas:** May I just ask one point on the Government explanation?

[102] **David Melding:** Yes, sure.

[103] **Lord Elis-Thomas:** It does concern me that, yet again, there's a time lag, or indeed one might even ask—. There's time chaos, actually, one might suggest, between what the three levels of legislating authorities do—in other words, the European Commission, the European Parliament, the European Union, the UK and Wales. Since we are living under three jurisdictions—or arguably four, if you look at the national obligations—when are we going to get this right, as it were? I think that that is a question that Government should address. There must be simpler ways in which there can be early warning of what's happening, and that there could be a codification that looks reasonable between all the jurisdictions.

14:15

[104] **David Melding:** I'd be quite happy to reflect that in the report and just tweak the wording a bit to say how disappointed we are. I almost thought you were going to say there's no shame in the Government's approach here, because there's really no explanation for what's happened and then on the transposition issued from the EU, it just says, 'Well, we don't normally do this, so we've not done it in this case', despite an overwhelming—it would seem—reason to do so. No, it's not accurate, so I think they should realise we do pick these things up, and that sometimes, we can bark and bite.

Papurau i'w Nodi
Papers to Note

[105] **David Melding:** Okay. There's a paper to note on the pre-legislative scrutiny of the draft Wales Bill: the terms of reference, the Welsh Affairs Committee. We might want to note that, and it may well come up in any discussions we have about our forward work programme in the private session. There's a paper to note on the report produced by the Wales Governance Centre on delivering the reserved-powers model. I think it was a very apposite report. It had a good level of coverage and interest when it was launched last Thursday, and I'm sure Members will find that report of great interest.

14:16

**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**

Cynnig:

Motion:

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

accordance with Standing Order 17.42(vi).

Cynigiwyd y cynnig.

Motion moved.

[106] **David Melding:** I now move the relevant Standing Order that we conduct the rest of today's meeting in private unless any Member objects. I don't see a Member objecting, so please switch off the broadcasting equipment and clear the public gallery.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 14:16.

The public part of the meeting ended at 14:16.