



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

**Y Pwyllgor Is-ddeddfwriaeth
The Subordinate Legislation Committee**

**Dydd Mawrth, 11 Tachwedd 2008
Tuesday, 11 November 2008**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Kate Cassidy	Pennaeth, Materion Cyfansoddiadol a Rheoli Deddfwriaeth Head, Constitutional Affairs and Legislation Management
Carwyn Jones	Aelod Cynulliad, Llafur (Cwnsler Cyffredinol ac Arweinydd y Tŷ) Assembly Member, Labour (Counsel General and Leader of the House)

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Anna Daniel	Clerc Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Joanest Jackson	Cynghorydd Cyfreithiol Cynorthwyol Assistant Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 8.14 a.m.
The meeting began at 8.14 a.m.

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

[1] **David Lloyd:** Croeso ichi i gyd i gyfarfod diweddaraf y Pwyllgor Is-ddeddfwriaeth. Croesawaf fy nghyd-Aelodau, swyddogion, ac aelodau'r cyhoedd sy'n llifo i mewn i'r oriel gyhoeddus. Estynnaf groeso arbennig i'r Cwnsler Cyffredinol ac Arweinydd y Tŷ, Carwyn Jones, a hefyd i Kate Cassidy. Clywn mwy ganddynt ychydig yn nes ymlaen.

David Lloyd: I welcome you all to the latest meeting of the Subordinate Legislation Committee. I welcome my fellow Members, officials, and members of the public who are flooding into the public gallery. I also extend a special welcome to the Counsel General and Leader of the House, Carwyn Jones, and to Kate Cassidy. We will hear more from them a little later.

[2] Os bydd argyfwng, bydd y tywyswyr yn ein harwain at yr allanfa agosaf.

In the case of an emergency, the ushers will guide us to the nearest exit.

- [3] Gellir defnyddio'r clustffonau i glywed y cyfieithiad ar y pryd ac i addasu lefel y sain. Gall y tywyswyr ddangos i'r cyhoedd sut i'w defnyddio. Headphones can be used to hear the simultaneous interpretation and to adjust the volume. The ushers can show members of the public how to use them.
- [4] Rhaid diffodd ffonau symudol yn llwyr. Mae'r pwynt hwnnw fel arfer yn fwy perthnasol i mi nag i neb arall. All mobile phones must be switched off completely. That point is normally more relevant to me than it is to anyone else.
- [5] Mae cyfieithiad ar y pryd o'r Gymraeg i'r Saesneg ar gael ar sianel 1, a gellir clywed cyfraniadau yn yr iaith wreiddiol ar sianel 0. Simultaneous translation from Welsh to English is available on channel 1, and contributions can be heard in the original language on channel 0.
- [6] Ni chafwyd unrhyw ymddiheuriadau. No apologies have been received.

8.15 a.m.

Offerynnau Drafft na Fydd y Cynulliad yn Cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2, ac Offerynnau Drafft sy'n Agored i Gael eu Cymeradwyo yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Gadarnhaol)

Draft Instruments in Respect of which the Assembly is not Invited to Pay Special Attention under Standing Order No. 15.2, and Draft Instruments Subject to Approval Pursuant to a Resolution of the Assembly (the Affirmative Procedure)

- [7] **David Lloyd:** Bu Joanest yn craffu ar SLC215, Rheoliadau Anffurfio (Triniaethau a Ganiateir) (Cymru) (Diwygio) 2008. A oes rhywbeth i'w adrodd, Joanest? **David Lloyd:** Joanest has been scrutinising SLC215, the Mutilations (Permitted Procedures) (Wales) (Amendment) Regulations 2008. Is there anything to report, Joanest?
- [8] **Ms Jackson:** Nac oes. **Ms Jackson:** No, there is not.
- [9] **David Lloyd:** Yr ydych wedi gweld yr adroddiad. A yw pawb yn hapus? Gwelaf eich bod. **David Lloyd:** You have all seen the report. Is everyone happy? I see that you are.

8.16 a.m.

Offerynnau y Bydd y Cynulliad yn Cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2, ac Offerynnau sy'n Agored i gael eu Dirymu yn unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)

Instruments in Respect of which the Assembly is Invited to Pay Special Attention under Standing Order No. 15.2, and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (the Negative Procedure)

- [10] **David Lloyd:** Bu Joanest yn craffu ar SLC213, Gorchymyn Ardrethu Annomestig (Rhyddhad Ardrethi i Fusnesau Bach) (Cymru) 2008, ac SLC214, Gorchymyn Iechyd Planhigion (Cymru) (Diwygio) 2008. A oes unrhyw beth i'w adrodd yn ogystal â'r adroddiad sydd **David Lloyd:** Joanest has been scrutinising SLC213, the Non-Domestic Rating (Small Business Relief) (Wales) Order 2008, and SLC214, the Plant Health (Wales) (Amendment) Order 2008. Is there anything to add in addition to the report that is before us, Joanest?

gerbron, Joanest?

[11] **Ms Jackson:** Nid oes dim i'w ychwanegu. **Ms Jackson:** There is nothing to add.

[12] **David Lloyd:** Yr ydych wedi gweld yr adroddiadau. A yw pawb yn cytuno â'r pwyntiau a nodwyd? Gwelaf eich bod. Diolch yn fawr. **David Lloyd:** You have seen the reports. Does everyone agree with the points that have been noted? I see that you do. Thank you very much.

Ehangu'r Gwaith Craffu ar Is-ddeddfwriaeth—Ymchwiliad i'r Gwaith Craffu ar Is-ddeddfwriaeth a Phwerau Dirprwyedig: Y Cwnsler Cyffredinol ac Arweinydd y Tŷ

Enhancing the Scrutiny of Subordinate Legislation—Inquiry into the Scrutiny of Subordinate Legislation and Delegated Powers: the Counsel General and Leader of the House

[13] **David Lloyd:** Bydd Aelodau yn gwybod mai dyma bedwaredd sesiwn y pwyllgor i gasglu tystiolaeth lafar ar gyfer yr ymchwiliad i'r gwaith o graffu ar is-ddeddfwriaeth. Yr ydym wedi cymryd tystiolaeth gan Gymru Yfory a Chymdeithas y Cyfreithwyr ymysg eraill, ac yr ydym hefyd wedi ymweld â phwyllgorau yn Nhŷ'r Arglwyddi. Byddwch yn cofio'r cefndir, sef bod pwerau newydd o dan Ddeddf Llywodraeth Cymru 2006 i ehangu cylch gorchwyl y pwyllgor hwn yn benodol fel ei fod yn gallu edrych ar feysydd craffu ehangach na'r hyn y mae wedi'i wneud yn draddodiadol. **David Lloyd:** Members will know that this is the committee's fourth oral evidence-taking session for the inquiry into the work of scrutinising subordinate legislation. We have received evidence from Tomorrow's Wales and the Law Society among others, and we have also visited committees in the House of Lords. You will recall the background, namely that there are powers under the Government of Wales Act 2006 to extend the remit of this committee in particular, so that it may look at wider scrutiny fields than those that it has undertaken traditionally.

[14] Craffu technegol yn unig yr ydym wedi'i wneud yn y pwyllgor hwn dros wyth mlynedd gyntaf y Cynulliad. Yn awr, mae cyfle i ehangu ar y gwaith ac i edrych ar waith craffu rhagoriaethol yn ogystal. Mae'n bosibl i'r pwyllgor hwn wneud gwaith pump o bwyllgorau San Steffan, fel a welsom yn Nhŷ'r Arglwyddi. Yr ydym wedi nodi hwnnw. Er ein bod yn nodi ehangder posibl cylch gorchwyl y pwyllgor hwn, yn naturiol, mae cyfyngiadau o ran nifer yr Aelodau a'r staff—nid cyfyngiadau ar y dalent anferthol sydd o'n cwmpas, ond ar eu niferoedd a'u hamser. Felly, diben yr ymchwiliad yw edrych ar yr hyn sy'n ymarferol i ni fel pwyllgor ei wneud gyda'r pwerau newydd sydd gennym o dan Ddeddf Llywodraeth Cymru 2006. This committee has undertaken only technical scrutiny over the first eight years of the Assembly. Now, there is an opportunity to expand the work and also to look at merits scrutiny. It is possible for this committee to do the work of five Westminster committees, as we saw at the House of Lords. We have noted that. Even though we have noted the possible extension of the remit of this committee, there are, naturally, limitations with regard to the number of Members and staff—not limitations on the incredible talent that surrounds us, but limitations on their number and their time. Therefore, the purpose of the inquiry is to look at what is practical for us as a committee to achieve with the new powers that we have under the Government of Wales Act 2006.

[15] Felly, gyda'r cefndir hwnnw, croesawaf y Cwnsler Cyffredinol ac **Therefore, with that background, I welcome the Counsel General and Leader of the**

Arweinydd y Tŷ, Carwyn Jones, a Kate Cassidy, pennaeth yr uned materion cyfansoddiadol a rheoli deddfwriaeth. Yr ydym eisoes wedi derbyn adroddiad ysgrifenedig y Cwnsler Cyffredinol. Mae amser ychydig yn brin, felly symudwn yn syth ymlaen at y cwestiynau sydd wedi'u paratoi gan ein gwasanaeth ymchwil rhagorol.

House, Carwyn Jones, and Kate Cassidy, the head of the constitutional affairs and legislation management unit. We have already received a written report from the Counsel General. Time is running short, so we will move directly to the questions that have been prepared by our outstanding research service.

[16] Gofynnaf y cwestiwn cyntaf, yn Gadeirydd. Fel y bu i mi ei grybwyll eisoes, yr ydym wedi cymryd tystiolaeth gan nifer o gyrff eraill. Dywed Cymru Yfory y gall Llywodraeth Cynulliad Cymru, o dan y system bresennol, weithredu fel rhyw fath o geidwad y porth i bwerau cyfreithiol ac i bwerau Gweinidogion y Cynulliad.

I will ask the first question, as the Chair. As I mentioned earlier, we have taken evidence from a number of other bodies. Tomorrow's Wales said that the Welsh Assembly Government could, under the present system, act as some sort of gatekeeper of legal powers and of the powers of Assembly Ministers.

8.20 a.m.

[17] Dywed y gall Gweinidogion y Cynulliad drafod gydag adrannau yn San Steffan yn breifat, heb yn wybod i weddill y Cynulliad—ac, efallai, heb gytundeb gweddill y Cynulliad—gan wadu'r cyfle i'r Cynulliad cyfan graffu ar bwerau sy'n effeithio ar Gymru.

It notes that Assembly Ministers can discuss with Westminster departments in private, without the knowledge of the rest of the Assembly—and, perhaps, without the agreement of the rest of the Assembly—thereby denying the whole Assembly the opportunity to scrutinise powers that affect Wales.

[18] A gytunwch â'r gosodiad hwnnw, a beth y credwch y dylid ei wneud amdano?

Do you agree with that statement, and what do you believe should be done about it?

[19] **Y Cwnsler Cyffredinol ac Arweinydd y Tŷ (Carwyn Jones):** Na, nid wyf yn cytuno â hynny. Mae'n bosibl i unrhyw bwyllgor ystyried unrhyw ran o Fesur sy'n mynd drwy San Steffan er mwyn craffu ar y Mesur hwnnw. Fodd bynnag, yr hyn sy'n bwysig i'w gofio yw, tra bo Mesur yn mynd drwy San Steffan, y gall sefyllfa Llywodraeth y Cynulliad newid, fel mae amgylchiadau yn newid.

The Counsel General and Leader of the House (Carwyn Jones): No, I do not agree with that. It is possible for any committee to consider any part of a Bill passing through Westminster in order to scrutinise that Bill. However, what is important to remember is that, while a Bill is passing through Westminster, the Assembly Government's situation can change, as circumstances change.

[20] Felly, ni fyddai'n wir dweud ein bod yn gwybod ar y dechrau pa bwerau y byddem am eu cael o Ddeddf, er ein bod yn ceisio gwneud hynny yn y ffordd fwyaf effeithiol. Fodd bynnag, tra bo Mesur yn mynd drwy San Steffan, mae amgylchiadau'n newid, ac felly mae safbwynt Llywodraeth y Cynulliad yn newid ynglŷn â phwerau ychwanegol, a sut mae'r pwerau hynny yn cael eu rhoi mewn Deddf.

Therefore, it would not be true to say that we know at the outset which powers we would wish to gain out of an Act, although we try to do that in the most effective manner. However, during a Bill's passage through Westminster, circumstances change, so the Assembly Government's standpoint changes regarding additional powers, and how those powers are incorporated into an Act.

[21] Nid yw'n bosibl dod â Mesur i'r Cynulliad bob tro y mae newid yn San Steffan ynglŷn â pha bwerau fyddai'n dod i Weinidogion Cymru. Mae hyn yn rhywbeth i Lywodraeth y Cynulliad a'r Gweinidogion ddelio ag ef; maent yn atebol i'w pwyllgorau ynglŷn â sut y maent wedi delio â Mesurau.

It is not possible to bring Bills to the Assembly every time there is a change in Westminster regarding which powers would come to Welsh Ministers. This is something for the Assembly Government and the Ministers to deal with; they are accountable to their committees as regards how they have dealt with Bills.

[22] **Eleanor Burnham:** Mae Cymru Yfory yn cymharu'r drefn yn yr Alban, sef confensiwn Sewel—lle mae'n rhaid cael caniatâd Senedd yr Alban—â'n trefn ni, lle mae angen cael caniatâd gan Senedd San Steffan ynglŷn â'r materion sydd wedi cael eu datganoli. Beth yw eich barn ynglŷn â pha mor addas fyddai cael trefn gryfach—debyg i gonfensiwn Sewel—yn y Cynulliad?

Eleanor Burnham: Tomorrow's Wales compares the Scottish system, namely the Sewel convention—where the Scottish Parliament's assent is required—and our procedure, where the UK Parliament's assent is required in areas that have been devolved. What is your view on how appropriate it would be to have a stronger procedure—similar to the Sewel convention—in the Assembly?

[23] **Carwyn Jones:** Mae gennym gonfensiwn Sewel eisoes yng Nghymru, fwy neu lai, o dan Reol Sefydlog Rhif 26. Nid yw Senedd San Steffan yn pasio Deddfau lle mae gan y Cynulliad rym yn y maes polisi hwnnw heb fod y Cynulliad yn caniatáu hynny. Er enghraifft, yr ydym wedi cael sefyllfa eisoes yn y byd addysg, lle yr oedd yn rhaid cael caniatâd y Cynulliad cyn bod San Steffan yn pasio rhan o Fesur a oedd yn berthnasol i Gymru mewn maes a ddatganolwyd. Felly, mae gennym rywbeth tebyg i gonfensiwn Sewel eisoes yn ein rheolau sefydlog.

Carwyn Jones: We already have a Sewel convention in Wales, more or less, under Standing Order No. 26. The Westminster Parliament does not pass Acts where the Assembly has powers in that policy area without the Assembly's permission. For example, we have already been in a position in the education field, where permission from the Assembly was required before Westminster could pass part of a Bill relevant to Wales in a devolved area. Therefore, we already have something similar to the Sewel convention in our standing orders.

[24] **Joyce Watson:** Good morning, Carwyn. You suggest that the draft legislative programme will aid the committee in ensuring timely and effective consideration of UK Bills by the committee. This is open to public consultation. To what extent has the Welsh Assembly Government consulted on it before it is published?

[25] **Carwyn Jones:** I am sorry, but I missed the last bit, Joyce.

[26] **Joyce Watson:** To what extent has the Welsh Assembly Government consulted on it before it is published?

[27] **Carwyn Jones:** Do you mean the UK's draft legislative programme?

[28] **Joyce Watson:** Yes.

[29] **Carwyn Jones:** It is a matter for the Secretary of State to represent Wales at Cabinet level in Westminster with regard to that issue. When the draft legislative programme is published, it is a question of ensuring that, where there are framework powers that might be passed to the Assembly Government, or to the Assembly proper, we flag up, as quickly as possible, where those powers could be. However, it is inevitably a matter for the UK Government as to how it consults with the Secretary of State with regard to the draft legislative programme, in the same way as the Assembly Government's draft legislative

programme is not, as it were, given beforehand to the UK Government, in order for the UK Government to give its view. When the programme is published, that is the time for the administration to make its representations in terms of what framework powers would be appropriate for Wales.

[30] **Joyce Watson:** Following on with the same theme, the Secretary of State for Wales issued a written ministerial statement following the Queen's Speech, setting out which parliamentary Bills were of primary interest to Wales. You state that he is obliged to consult the Assembly on the UK Government's legislative programme under section 33 of the Government of Wales Act 2006. What is your understanding of the process by which the Secretary of State consults the Assembly?

[31] **Carwyn Jones:** That is done when the Secretary of State comes to address the Assembly. There is a full debate, under section 33, on the legislative programme. The Secretary of State is able to listen to the views of Assembly Members in the course of that debate, thereby informing him of those views so that they might be passed back as part of the consultation process on the draft legislative programme.

[32] **Alun Davies:** Are you content with this process? Do you think that it works well?

[33] **Carwyn Jones:** Yes.

[34] **Alun Davies:** In your answer to Joyce Watson, you said that the Secretary of State is consulted on the draft Queen's Speech and that at no point prior to its publication is the Assembly consulted.

[35] **Carwyn Jones:** No, but I would not expect that, because it is the UK Government's legislative programme. It is for the UK Government to consult among its Cabinet with regard to what the legislative programme should look like. Once that is published, it is then for the Assembly Government to consider what framework powers might be included in the legislation that is proposed under that programme. It is reasonable for the UK Government to produce its draft programme and then look to take views on it, in the same way that it is reasonable for the Welsh Assembly Government to publish its draft legislative programme and then seek views after the programme has been published.

[36] **Alun Davies:** Does the Secretary of State consult with the Welsh Assembly Government?

[37] **Carwyn Jones:** The Secretary of State consults regularly with the Welsh Assembly Government on many issues.

[38] **Alun Davies:** Very good, Counsel General, but does he consult regularly with the Welsh Assembly Government on the draft legislative programme?

[39] **Carwyn Jones:** The consultation is done once the programme is published. There are two ways in which it is done: first, with the Welsh Assembly Government, in meetings with Welsh Ministers and, secondly, with the Assembly itself by way of the debate that is held on a regular basis when the Secretary of State addresses the Assembly and listens to the views put forward by Assembly Members.

[40] **Eleanor Burnham:** The Secretary of State, as you know, does not formally consult the Assembly on the UK Government's draft—we have discussed that briefly—but do you think that that would be an appropriate way to enhance the discharging of its duties under section 33 of the Government of Wales Act 2006?

[41] **Carwyn Jones:** No, I think that it is important that the UK Government is able to produce a draft legislative programme that it then consults on, in the same way that the Welsh Assembly Government can produce its draft legislative programme and then consult on it once it is published. That is a reasonable way forward. However, it is important that there is opportunity for the Assembly Government and its Ministers, and for the Assembly as an institution, via the section 33 debate, to offer views on that legislative programme once it is known.

[42] **Eleanor Burnham:** Cymru Yfory has acknowledged that publishing the draft legislative programme provides earlier notice, although Public Affairs Cymru has raised concerns that there may not be sufficient detail in the statement. What views do you have on the level of detail required by stakeholders to ensure that they can properly engage with the forthcoming legislation?

[43] **Carwyn Jones:** The Queen's Speech broadly outlines what legislation is forthcoming. There is then ample opportunity, as that legislation is fleshed out through the parliamentary stage in the House of Commons, for stakeholders to engage with that process. There is often pre-legislative consultation—we know of that in terms of Green Papers and White Papers in Parliament. There is ample opportunity to engage, but I do not think that it would be reasonable to expect the Queen's Speech to provide a great level of detail of what the legislative programme will contain in terms of what will be in the proposed Bills. It is reasonable that people know what is proposed for the forthcoming year, because they can then engage in the detail of those Bills as they go through Parliament.

[44] **Alun Davies:** You seem to describe the role of the Welsh Assembly Government as an external stakeholder to all of this.

8.30 a.m.

[45] **Carwyn Jones:** No, we have the ability to express our views on the draft legislative programme, as indeed the UK Government would have the opportunity to express its views on our draft legislative programme. I think that it is important that Governments are in the position of being able to publish a draft programme and then, of course, to seek the views of Assembly Members and MPs, as far as we are concerned, and, indeed, the wider public. The key to this is the fact that when we talk about a legislative programme, we talk about a draft legislative programme. We move on, of course, as far as we are concerned as a Government, to producing detailed LCOs and Measures and then there is a very public level of engagement, I would argue, where stakeholders and Members can express their views and propose amendments as the legislation passes.

[46] **Alun Davies:** You seem to be drawing a comparison, Counsel General, between the publication of the Welsh Assembly Government's draft legislative programme and the UK Government's draft legislative programme. I would reject that comparison, because we are not legislating for England, but the UK Government is legislating for Wales. I do not think that you can make that comparison. The concern is that, in guidance note 9, there is a requirement to consult with the Welsh Assembly Government on the development of UK legislation that affects Wales; however, if that consultation effectively starts with the publication of a list of Bills and, prior to that, only includes the Secretary of State, who is clearly not a member of the Government here, do you not think that that is a weakness?

[47] **Carwyn Jones:** No, I think that the UK Government is perfectly free and able to publish its legislative programme for the forthcoming year. What is important is that we then have input once the proposed legislation is published. It certainly is not the case that Bills are published and then there is no input from the Welsh Assembly Government until the very last moment—we are engaged very early on. As soon as we know what Bills are proposed, the

first thing that we will look at is whether it is appropriate to include framework powers in one or more of those Bills and we will engage with the appropriate Whitehall department in order to do that. The Marine Bill that is still going through its parliamentary process was one Bill where there was very early engagement indeed, and that is not unusual. When we see a Bill that presents an opportunity for there to be an appropriate level of devolution of power, we will grasp that as early as possible.

[48] **Alun Davies:** The reason that I ask these questions is that I sat on the Proposed Affordable Housing LCO Committee and we all know the situation that has been reached with that LCO. There was a very great sense in that committee that, if the Welsh Assembly Government had a closer relationship with the UK Government department—the Department for Communities and Local Government, in this case—it would probably have been possible for those powers to have been included in the Housing and Regeneration Bill that went through Parliament broadly at the same time. We were going down the LCO route because the relationship between the Welsh Assembly Government and the UK Government was not close enough, not simply one, two, three, four or five months before the publication of Bills, but at the stage prior to that, when the Bills were actually generated within departments. Do you not believe that there is room for improvement and that guidance note 9 really does imply and demand a far closer relationship between UK Government departments and the Welsh Assembly Government in the generation of legislation, rather than simply in the publication of legislation?

[49] **Carwyn Jones:** When there is a Bill passing through the UK Parliament where we believe that framework powers to transfer powers to us would be appropriate, we will seek to do that. Obviously, if there is a vehicle that is passing by, we will look to get onto that vehicle in order to reach our destination. There will be occasions, however, when there is not an appropriate parliamentary vehicle in Westminster for us to achieve what we wish and so we will go through the LCO process. With regard to the affordable housing LCO, my understanding is that it was required because the scope of the Housing and Regeneration Bill was not wide enough in order to give us the powers that we wished to see. Therefore, it was inevitable that an LCO would be the procedure that would be followed. I think that it is worth emphasising that when an appropriate Bill is passing through Parliament, clearly we would look to obtain framework powers via that Bill rather than ignoring it and going down the LCO route. Clearly, that would not be the quickest and most efficient way of doing things.

[50] **Alun Davies:** I appreciate that, Counsel General. However, my question was whether it would not be easier and more appropriate for the Welsh Assembly Government to maintain a closer relationship with UK departments during the generation of policy and legislation rather than coming in after the parliamentary stage, which seems to me to be a bit late. You can jump on these passing bandwagons, but really, you should be there at the beginning of the process and not halfway through.

[51] **Carwyn Jones:** It is important to remember that Bills start life as ideas. They are then fleshed out as time goes on. Once the idea for a Bill is in place, our role is to ensure that, as the Bill is fleshed out, we include the framework powers that we see as appropriate for Wales. It should be emphasised to the committee that it is not the case that, somehow, we as a Government are brought in at a late stage. As soon as the proposal for a Bill is published, we seek to engage with UK Government departments to ensure that we get clauses into the Bill that deliver framework powers. That is done at an early stage. There will be occasions, of course, when Bills change, and we may have to change our position to look for new clauses, but we do engage at the earliest possible opportunity.

[52] **David Lloyd:** Moving on, Mark has problems with another Bill.

[53] **Mark Isherwood:** My question is about delegated powers more broadly. You say

that it is not always possible within the timescale, but that the Assembly Government aims to consult on proposals concerning new powers for Welsh Ministers. In other words, you may, or you may not. Contributors to this review have used the Planning Bill as an example of a lack of Assembly Government involvement at a sufficiently early stage. Public Affairs Cymru referred to

[54] ‘The mystery of the process by which Measure-making powers are included in UK Bills’,

[55] referring to that as a challenge.

[56] We have seen insufficient information about powers delegated to Welsh Ministers and framework powers on the face of the Bill. Changes were introduced too late to allow adequate scrutiny, and there has been difficulty in keeping up with changes as the legislation has developed.

[57] How do you respond to these concerns? Do you not feel that we need to tighten up the process to address them?

[58] **Carwyn Jones:** As I have said already, it is possible for this committee or any other committee here to examine the sections of UK parliamentary Bills as is felt to be appropriate. There is no difficulty in committees expressing their views. However, we should remember that we are talking about the parliamentary process of the UK Parliament. It is therefore a matter for the UK Parliament to scrutinise the Bill, and it is ultimately for the UK Parliament to determine whether framework clauses should be passed into law via an Act as the Bill progresses through Parliament. The Bill is always in the hands of the UK Parliament, and therefore it is a matter for the UK Parliament to scrutinise the Bill to see whether the framework powers proposed in it are appropriate. In the same way, there is a role for the UK Parliament in determining LCOs. The difference between LCOs and looking for framework powers in UK Bills is that, when we look for framework powers, we look to get them via a Bill that is at all times the responsibility of the UK Parliament and not of the Assembly.

[59] **Mark Isherwood:** Last week, the Law Society gave evidence to us, and, among other things, it indicated the apparent tendency of the Assembly Government to seek executive powers through UK Bills rather than through Measures. In fact, last Monday, this committee visited the House of Lords Select Committee on Delegated Powers and Regulatory Reform. In our meeting, it became apparent that it was not scrutinising powers being delegated to Welsh Ministers. The UK Government provides this committee with a delegated powers memorandum on each Bill, which does help scrutiny. However, what consideration, if any, have you given to a consistent approach by which the Assembly Government would inform or consult the Assembly where it has requested the UK Government includes proposals for framework powers or powers delegated to Welsh Ministers in Bills?

[60] **Carwyn Jones:** We need to examine the situation in which we find ourselves currently compared to the situation before 2007. Delegated legislation in London and in Edinburgh is normally made by a Minister without parliamentary input.

8.40 a.m.

[61] There is a procedure in Parliament, as there is in the Assembly, to bring delegated legislation to the floor of the Assembly if a certain number of Members wish for that to happen. However, where powers are devolved through delegated legislation, it is reasonable that they are devolved straight to Ministers; if those powers are then used to produce delegated legislation that Members are concerned about, the procedure exists in the Assembly for Members to examine that delegated legislation on the floor of the Assembly.

[62] The point that I think that you are making, Mark, is whether there should be a system where the Assembly expresses a view as to whether it is appropriate for Ministers to receive powers to make delegated legislation or subordinate legislation in certain areas. I think that that is a matter for Ministers, because it would ultimately be a matter for Ministers in London and Edinburgh, so it is a matter for Ministers in Cardiff as to what powers they would seek in terms of making subordinate legislation, although the Assembly is ultimately able to scrutinise subordinate legislation where it feels that there is a concern about it.

[63] **Mark Isherwood:** Therefore, why is it appropriate for the House of Lords committee to scrutinise the delegated powers of UK Ministers, but you feel that it is inappropriate to have the equivalent scrutiny of delegated powers to Welsh Ministers?

[64] **Carwyn Jones:** Forgive me, but I thought that you said that the House of Lords committee said that it did not scrutinise.

[65] **Mark Isherwood:** It does not scrutinise delegated powers to Welsh Ministers, but it does scrutinise delegated powers to UK Ministers; that is its function.

[66] **Carwyn Jones:** Where an Act of Parliament delegates powers to Welsh Ministers, before the Act becomes law, as it passes through both Houses of Parliament, it is open to the House of Commons or the House of Lords to examine whether the delegation of those powers to make statutory instruments, for example, would be appropriate. That is a matter for them, because at that stage it is still in the hands of Parliament as to whether Welsh Ministers receive that power. Once that power is received by Welsh Ministers, the way in which they seek to exercise that power is ultimately—via the praying against procedure, to use the parliamentary shorthand—a matter for scrutiny by the Assembly if the Assembly feels that the legislation should not be made.

[67] **Alun Davies:** Powers must be delegated to Ministers and not simply taken by Ministers. I would be concerned to see powers transferred from the UK Government to the Assembly Government without the Assembly's having any role. You say that the Assembly can scrutinise Ministers in the exercise of their functions, but is the whole essence of scrutiny not the extent to which those powers are delegated in the first place, and not simply the exercise of those powers, but their depth and breadth? It is essential in a democracy that those powers come to the Assembly first, and are subsequently delegated to Welsh Ministers, rather than moving directly to Welsh Ministers.

[68] **Carwyn Jones:** As a rule, delegated legislation is given to Ministers as a result of an Act of Parliament. The Act of Parliament will lay down what needs to be done, but it will often leave it to Ministers—in our case, Welsh Ministers—as to how regulations are made and the detail of how the objective is to be achieved. Subordinate legislation that Ministers make begins life as a power delegated to Ministers via an Act of Parliament. Therefore, there should be the ability to scrutinise that Act of Parliament when it is still a Bill. So, it would be possible for Parliament to examine whether the legislative powers being delegated to Welsh Ministers are sufficient. It would also be open for any Assembly committee to examine the proposed delegation of powers to express a view as to whether those powers are sufficiently broad. So, there is an element of input, but it would be done during the passage of the Bill through Westminster, and the Bill would then seek to delegate powers to Welsh Ministers in the Assembly.

[69] **Alun Davies:** Surely the Assembly must have a role in the determination of the extent of the powers devolved to Welsh Ministers?

[70] **Carwyn Jones:** No, because, at that stage, we are still talking about a Westminster

Bill. At that stage, the formal and legal responsibility for scrutiny lies with Parliament. That is not to say that the Assembly does not have a role at all, because, as I have said many times, Assembly committees have the ability to look at Bills or clauses of Bills going through Parliament in order to express a view as to whether they feel that it is appropriate to devolve that power, and, secondly, whether that power has been devolved broadly enough.

[71] **Eleanor Burnham:** Last week, the Law Society gave evidence on the difficulties of identifying key provisions for Wales, saying that they are not well identified, for instance, in the explanatory memoranda provided by the UK Government. Others have commented on how patchy the information is on the implications of UK Bills for Wales, despite what you said earlier, as it comes in a mix of Cabinet statements, UK Government memoranda and papers to scrutiny committees. In your opinion, how can the Welsh Assembly Government or, possibly, the UK Government, identify in detail the particular implications of Bills for the powers of the Assembly or Welsh Ministers, and what can you do to improve this and ensure that this information can be found easily by the public and stakeholders? I will ask you another question on the draft Marine Bill in a minute, but a body that gave evidence to us, I forget which, said that it had delved for some considerable time before it discovered any information on Welsh provisions in what I think was the draft Marine Bill. So, it is a genuine concern.

[72] **Carwyn Jones:** First of all, it is ultimately a matter for the UK Government as to what information it provides when Bills are published. Coming back to the point that I made earlier, we should remember that, when Bills are published, they are not published in their full form. Bills are worked on over time, and consultation takes place with Government Ministers here to look at what needs to be included in the Bill from a Welsh perspective. So, it should not be seen as unusual that a Bill is published without a full transcript of what it would eventually look like. If that were the case, the accusation would be made, fairly, that consultation was a sham. So, because Bills are published without the full transcript being available, proper consultation can take place, and negotiation and discussion can take place between Ministers here and Ministers in London in order to ensure that what is seen as appropriate for Wales is included in the Bill. That is the normal process that is always followed.

[73] **Eleanor Burnham:** You are curtailing the entire procedure, because you are basically talking about understanding between Government Ministers. With regard to the draft Marine Bill and the Planning Bill, many concerns were raised. For instance, Wales Environment Link raised concerns with regard to the draft Marine Bill about the apparently low level of understanding among members of the joint committee in Westminster that scrutinised the draft Bill, particularly of its importance to Wales. It was also concerned that the Assembly Sustainability Committee's recommendations were not given particular attention. How does the Assembly Government ensure that not only your views, but the wider views of the Assembly and other key Welsh stakeholders are taken fully into account at the earliest possible stage of the legislative process?

[74] **Carwyn Jones:** I cannot comment on the alleged lack of knowledge of Members of Parliament in Westminster. That is a matter for them to explain. I do not accept that there is a low level of knowledge among Members of Parliament. They make it their business to acquire as much knowledge as possible before they sit on Bill committees. It is important to emphasise that the role of Welsh Ministers is to discuss the issues at Government level. To take the draft Marine Bill as an example, during the course of the Bill, it has become clear that there are issues that affect Wales that need to be included in the Bill that were not thought of at the beginning of the process. That is normal, and it shows that the system can be flexible. It is certainly not the case when a Bill is published that, somehow, no notice is taken of Welsh Assembly Government Ministers—far from it. Ministers are fully able to engage with colleagues at Westminster; Ministers are fully able to suggest the insertion of clauses in

Bills, and those clauses are inserted.

[75] Once a Bill is published, there is full engagement as far as the Welsh Assembly Government is concerned. We examine the Bill to see whether framework powers that are appropriate to Wales can be included in that Bill and that the scope of those powers is wide enough for our purposes, and then the Bill can be taken forward. The time to make representations with regard to including Welsh clauses is once the Bill is published, and that is done as quickly as possible. It is certainly not the case that, right at the end of the Bill process, there is a flurry of suggestions on the part of the Assembly Government. As soon as the Bill is published, Ministers begin to work on what might be made available to Wales via framework powers.

8.50 a.m.

[76] **David Lloyd:** We will now move on to Joyce and to the process of bringing forward new regulations once an Act of Parliament receives Royal Assent.

[77] **Joyce Watson:** Subordinate legislation to implement UK Acts of Parliament is not being brought forward in a timely fashion, according to Wales Environment Link. It claims that

[78] ‘simple framework clauses in effect say “and Wales can implement this as it sees fit”. In many cases the WAG has not engaged with stakeholders to start discussions on how the equivalent legislation would be put into practice in Wales and so the Act is made and simply lies on the statute without being implemented in Wales.’

[79] It goes on to state that stakeholders

[80] ‘often do not have the resources to start a new campaign targeted on the implementation at the Senedd.’

[81] So, Wales Environment Link argues that implementation in Wales can be delayed, and it cited limited resources, in the case of the Commons Act 2006, or matters simply lying on the statute without being implemented. Does the Assembly Government acknowledge that what Wales Environment Link claims is indeed the case?

[82] **Carwyn Jones:** No. We must understand that the Government here will prioritise legislation according to its priorities. With regard to individual items of legislation, that is best dealt with by the appropriate Minister, who can give reasons as to why the legislation has not been implemented, if it is correct. I must emphasise that it is not the case that the Welsh Assembly Government is a cumbersome beast that can only bring forward legislation at a leisurely pace, and two examples of where legislation has been moved forward quickly come to mind. The first is the consultation that is currently taking place on the proposed ban of the use of electric dog collars. That was done following representations made at the beginning of last year by animal welfare groups. As a result of those representations, we have begun the consultation process on introducing legislation. Similarly, some years ago—admittedly, this was under our previous structure—legislation was introduced within, I think, a week to deal with the fact that members of the public in Newport were being charged to cross common land in order to access their homes. That situation had not arisen before, so there needed to be a change in legislation in Wales in order to prevent that from happening. That was done quickly under the old executive procedure of our previous structure. So it is the case that we can be brisk when we need to be, and I would say that that is something that we do more often than not.

[83] Secondly, it is the case that, where an issue has been raised, we can move forward to

deal with that issue and to consult on legislation at the right pace. So I do not think that it is the case that somehow legislative power is passed to us and then nothing happens for a long time or that it takes a great deal longer in Wales to implement legislation that is being passed in England. Ministers will prioritise according to what they see as appropriate for them to do in the course of the legislative year, and, of course, as I have illustrated, there are examples that once an issue is raised, the process can be taken forward at an appropriate pace in order to produce legislation.

[84] **Joyce Watson:** Some UK Government departments set out their plans for bringing forward the required new regulations whenever a new Act of Parliament receives Royal Assent. To what extent does the Welsh Assembly Government do the same?

[85] **Carwyn Jones:** I understand that there is an informal process whereby proposed subordinate legislation is shared with this committee as soon as possible. I also understand that there is informal liaison between the lawyers supporting this committee and the legal services department of the Assembly Government, with a view to there being no surprises, as it were. It is, however, inevitable that, during the course of a year, some subordinate legislation will be made without the same period of notice, as circumstances arise. We endeavour to give as much notice as possible about proposed subordinate legislation, but there will be occasions when a long period of notice is not possible.

[86] **David Lloyd:** I am conscious of the time, but Alun has a couple of questions about statutory instruments.

[87] **Alun Davies:** Could you characterise the processes that you use to consult on statutory instruments?

[88] **Carwyn Jones:** I would argue that there is a great deal of consultation. First, there is written consultation, which usually takes 12 weeks. Then there are other means: focus groups, public meetings and citizens panels. There are often two levels of consultation: first on the policy itself, and then on the draft statutory instruments. So, I would argue that there is ample opportunity during the consultation process for members of the public, in particular, to put their views forward.

[89] **Alun Davies:** Is the Assembly Government content with the way that these processes are operated?

[90] **Carwyn Jones:** The level of consultation is more than appropriate. I do not think that we could possibly be accused of under-consulting. Perhaps, in the past, we have been accused of over-consulting, but I do not think that failing to engage the public is an allegation that can fairly be levelled at us. Similarly, as Measures, in particular, but also LCOs, pass through the Assembly, it is right to say that the level of consultation is more than ample to allow 'stakeholders', to use the buzzword of the noughties, to put forward their views to influence legislation.

[91] **Alun Davies:** I was specifically asking about statutory instruments, but does the Welsh Assembly Government plan to undertake post-legislative assessment of the impact of regulations?

[92] **Carwyn Jones:** We would do that as a matter of course. There is a review process that would be built into the production of the legislation, and, normally, there is a review after two years, which looks at the effectiveness of the legislation.

[93] **David Lloyd:** Turning to matters of transparency, Mark has a couple of questions.

[94] **Mark Isherwood:** You referred to all consultations being published on the Assembly Government website, but the Law Society stated that whereas Whitehall departments make legislation available on their websites, there is no corresponding access from the Assembly Government. It added that access to subordinate legislation made in Wales is patchy, and at the draft level is almost impenetrable.

[95] Although consultations are published on the Assembly Government website, as you stated, concerns have been raised that it is not always clear whether the consultations are on policy or legislation, and it is difficult to identify appropriate subordinate legislation. Has the Assembly Government made any assessment of the ease with which such information can be accessed, and what thoughts do you have on how to improve that?

[96] **Carwyn Jones:** First, with regard to affirmative procedure statutory instruments, of which there are now, admittedly, few, those statutory instruments are published on the National Assembly for Wales website, because they are in the hands of the Assembly. Therefore it is appropriate that they sit there, rather than on the Government website.

[97] We are required to publish statutory instruments via the Office of Public Sector Information, and that is an important step in the legislative process—they are not valid, or rather, they cannot come into force, until they are published by OPSI. Validity is a slightly different concept.

[98] It is possible for lawyers and members of the public to find all statutory instruments on the OPSI website, so they are readily accessible from that point of view. However, it is worth considering whether there should be simultaneous publication, or slightly delayed publication, on the Welsh Assembly Government website, in order to provide another portal through which members of the public are able to access statutory instruments.

[99] **Mark Isherwood:** The delegation of powers to Welsh Ministers and legislative powers to the Assembly is complicated, as you fully appreciate, with different processes for LCOs, Bills and Measures. How do you respond to the Law Society's suggestion that there should be a legislative co-ordinator in the Assembly Government?

9.00 a.m.

[100] **Carwyn Jones:** I am not sure what a legislative co-ordinator would do. As an Assembly Government, we look to have Measure managers, who are responsible for the passage of Measures through the Assembly, in the same way as there are Bill managers responsible for the passage of Bills in Westminster. I am not sure what a legislative co-ordinator would do as far as the Assembly Government is concerned.

[101] **David Lloyd:** Finally, we have questions on EU legislation from Joyce.

[102] **Joyce Watson:** With regard to implementing EU legislation, you suggest that mechanisms are in place to enable early engagement. However, the Countryside Council for Wales suggests that consultations tend to be on broad principles rather than on detailed drafting and that tailoring EU legislation to the needs of Wales is somewhat varied. Would you agree with the countryside council's view? If so, why does it appear that EU legislation is not tailored more specifically to Welsh needs?

[103] **Carwyn Jones:** Without having examples of that, it is difficult to comment. It is a matter for this committee and others to determine how it can best fulfil its remit with regard to European legislation. I know that that is under active consideration as part of the committee's investigation. Welsh engagement with the making of European legislation is largely done via the Welsh Members of the European Parliament. If the Welsh Assembly Government, for

example, had a particular concern about proposed European legislation, the MEPs would be notified, but we as a Government also engage with European Union institutions and departments at a very early stage. I know that when I was the Minister responsible for agriculture—as I was for a substantial number of years—there was a great deal of day-to-day contact between us as a Government and many organisations in Brussels and, particularly, the commissioner responsible for agriculture, through the office that we have in Brussels and the full-time member of staff that dealt with agriculture. So, it is not the case that legislation is proposed and then there is no way for us as a Government to express our views on it; we have the opportunity to do that. It is a matter for the committee to determine how best to do it. However, I do not think that it is fair to say that European legislation is produced and that there is no way that we in Wales can make representations with regard to amending it for Welsh circumstances. That certainly is done; proposals are put forward. Sometimes they are accepted and sometimes they are not, but there is a mechanism for doing it.

[104] **David Lloyd:** Eleanor will now round things off.

[105] **Eleanor Burnham:** If I remember correctly, the Law Society's view about the legislative co-ordinator was that it would ensure that all of this runs far more smoothly. In their oral evidence to the committee, its representatives argued beyond that and said that transposition notes are essential when applying EU law. As you know, transposition notes are currently produced for Westminster, and their argument was that, with regard to tailoring EU law to Wales, transposition notes are essential for implementation and make for a much simpler and more transparent process. Is there any reason why revised versions of transposition notes are not produced for Wales?

[106] **Carwyn Jones:** The issue has been raised, and I will look forward to examining the committee's report on this issue. I will examine how we could clarify the situation with regard to transposition notes and Wales once the committee publishes its report. I look forward to the committee's view on that.

[107] **David Lloyd:** Mae'r amser ar ben. Diolchaf i Carwyn Jones, y Cwnsler Cyffredinol, a Kate Cassidy am eu presenoldeb a'u cyfraniadau. Bydd y clerch yn anfon trawsgrifiad drafft o'r trafodion atoch i'w wirio cyn iddo gael ei gwblhau. **David Lloyd:** Our time is up. I thank Carwyn Jones, the Counsel General, and Kate Cassidy for attending and for their contributions. The clerk will send a draft transcript for you to check before it is finalised.

[108] Hoffwn hysbysu aelodau'r pwyllgor y byddwn yn ystyried materion allweddol yr ymchwiliad hwn yn ein cyfarfod ar 25 Tachwedd. Yr ydym yn bwriadu cyflwyno ein hadroddiad ym mis Rhagfyr. I would like to inform committee members that we will consider the key matters of this inquiry in our meeting on 25 November. We intend to present our report in December.

9.04 a.m.

Unrhyw Fusnes Arall Any Other Business

[109] **David Lloyd:** Nid oes gennym unrhyw fater arall i'w drafod. **David Lloyd:** There are no other matters to discuss.

Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting

[110] **David Lloyd:** Bydd y cyfarfod nesaf **David Lloyd:** The next meeting will be on
ar 18 Tachwedd. Diolch yn fawr am eich 18 November. Thank you for your
presenoldeb. attendance.

Daeth y cyfarfod i ben am 9.05 a.m.
The meeting ended at 9.05 a.m.