



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

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

**Dydd Iau, 21 Ionawr 2010  
Thursday, 21 January 2010**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg. Mae hon yn fersiwn ddrafft o'r cofnod. Cyhoeddir fersiwn derfynol ymhen pum diwrnod gwaith.

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. This is a draft version of the record. The final version will be published within five working days.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Joyce Watson	Llafur (yn dirprwyo ar ran Alun Davies) Labour (substitute for Alun Davies)

**Eraill yn bresennol**  
**Others in attendance**

Jane Davidson	Aelod y Cynulliad, Llafur (Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai) Assembly Member, Labour (the Minister for Environment, Sustainability and Housing)
Nia James	Adran Gwasanaethau Cyfreithiol Llywodraeth Cymru Legal Services Department, Welsh Assembly Government
Peter Jones	Pennaeth Rheoli Llifogydd ac Arfordiroedd, yr Is-adran Newid yn yr Hinsawdd a Dŵr, Llywodraeth Cynulliad Cymru Head of Flood and Coastal Risk Management, Climate Change and Water Division, Welsh Assembly Government
Nicola Thomas	Pennaeth Polisi Dŵr, yr Is-adran Newid yn yr Hinsawdd a Dŵr, Llywodraeth Cynulliad Cymru Head of Water Policy, Climate Change and Water Division, Welsh Assembly Government
Dewi Llŷr Jones	Darlithydd yn y Gyfraith, Prifysgol Bangor Lecturer in Law, Bangor University
Yr Athro/Professor Tim Jones	Ysgol y Gyfraith, Prifysgol Abertawe School of Law, Swansea University
Neil Yates	Adran Gwasanaethau Cyfreithiol Llywodraeth Cynulliad Cymru Legal Services Department, Welsh Assembly Government

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

Stephen George	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk
Lisa Salkeld	Cynghorydd Cyfreithiol Legal Adviser

*Dechreuodd y cyfarfod am 9.00 a.m.*  
*The meeting began at 9.00 a.m.*

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

[1] **Janet Ryder:** I welcome Members, officials and members of the public to this meeting of the Subordinate Legislation Committee. I remind you that we are not expecting an emergency, but if there is one, please follow the ushers to the nearest safe exit. Headsets are available for translation, which is on channel 1, and amplification, which is on channel 0, and should you need them, the ushers will explain to members of the public how to use them. I remind all Members and officials to switch off all mobile devices.

[2] We have received apologies from Alun Davies, for whom Joyce Watson is substituting, and from Rhodri Morgan.

9.01 a.m.

**Offerynnau Na Fydd 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 Not Invited to Pay Special Attention under Standing Order No. 15.2 and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (Negative Procedure)**

[3] **Janet Ryder:** Gwyn has looked at all of these. We have SLC377, the Food Additives (Wales) Regulations 2009, SLC378, the Food Enzymes (Wales) Regulations 2009, and SLC380, the Preserved Counties of Powys and Mid Glamorgan (Changes in Area) Order 2010. Do you have any comments, Gwyn?

[4] **Mr Griffiths:** Nid oes dim i'w **Mr Griffiths:** There is nothing to add. ychwanegu.

[5] **Janet Ryder:** Diolch yn fawr. A yw pawb yn hapus? Gwelaf eich bod, felly symudwn ymlaen i'r eitem nesaf. **Janet Ryder:** Thank you. Is everyone content? I see that you are, so we will move on to the next item.

9.01 a.m.

**Offerynnau y Bydd y Cynulliad yn Cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhifau 15.2 a 15.3 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 Orders Nos. 15.2 and 15.3 and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (Negative Procedure)**

[6] **Janet Ryder:** The first issue that we must deal with relates to SLC379, the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2010. It is a 21-day letter. Do you have a comment, Gwyn?

[7] **Mr Griffiths:** Y pwynt adrodd o ran y rheoliadau hyn yw'r ffaith mai yn Saesneg yn unig y maent wedi cael eu gwneud. Mae'r cynnwys yn iawn, ac, fel y gwelwch, mae ymateb gan y Llywodraeth sy'n nodi y bydd yn ail-wneud y prif reoliadau yn ddwyieithog dros y flwyddyn hon. Mae hynny'n **Mr Griffiths:** The reporting point with regard to these regulations is the fact that they have been made in English only. The content is correct, and, as you can see, there is a response from the Government noting that it intends to remake the main regulations bilingually over the coming year. That seems

ymddangos yn ymateb derbyniol.

to be an acceptable response.

[8] **Janet Ryder:** A yw pawb yn hapus gyda hynny? Gwelaf eich bod. Symudwn ymlaen i SLC372, Rheoliadau Cynllunio Gwlad a Thref (Asesu Effeithiau Amgylcheddol) (Adolygiadau Amhenderfynedig o Hen Ganiatadau Mwynau) (Cymru) 2009.

**Janet Ryder:** Is everyone content with that? I see that you are. We move on to SLC372, the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009.

[9] We drew this to Members' attention primarily because it has the potential to impose quite heavy levies on businesses and could have an impact with regard to that section. Therefore we drew this to Members' attention as a matter to note. In last week's committee, we delayed the report because the Government had not been able to see our reporting point and to respond to it. It has now seen the reporting point and has accepted the technical issues. The Government has not responded to the point that we raised stating that this is a matter to note, although it has accepted it in a way. It was not a judgmental point—we did not say that it was a good thing or bad thing—it was a merit, in that it is quite a significant piece of legislation and has the potential to have quite a large impact in Wales. That was the reason why we drew attention to the issue. If you remember, we said last week that it might be an idea to start monitoring the merits that we draw attention to, so that we can see the type of merits that we are raising. There will be a merit report on this. Are Members content with that? I see that you are.

9.04 a.m.

**Gohebiaeth y Pwyllgor: Ymatebion y Gweinidog dros Iechyd a Gwasanaethau  
Cymdeithasol i Lythyrau y Cadeirydd  
Committee Correspondence: the Minister for Health and Social Services'  
Responses to the Chair's Letters**

[10] **Janet Ryder:** We have had a response from the Minister for Health and Social Services to a letter that we wrote. This relates to the Welsh Health Specialised Services Committee (Wales) Regulations 2009. The point that we drew to the Minister's attention was that the memorandum and the regulations seem to have a slightly different wording. The regulations seem to be quite prescriptive, stating that it had to be a chief executive who attended these meetings, while the memorandum implied that you could have a deputy. We have raised this issue with the Minister and the Minister has responded by saying that it will be dealt with in the Standing Orders when this body is established. Are Members content to accept that?

[11] **Michael German:** Will we have sight of the standing orders when they are ready, to ensure that it has been done?

[12] **Janet Ryder:** Could we write back to the Minister and ask to see the standing orders? We will have them as a paper to note at a future meeting and take it from there. If Members are content, that is what we will do. The other legislation to consider under this item is the NHS Redress (Wales) Measure. We were looking at the Measures that have been passed and the regulations that have come out of them, and to date no regulations have emerged from the NHS Redress (Wales) Measure, which was the first Assembly Measure to be passed, and which was a major piece of legislation. The Minister has said that we can expect those regulations to come through quite soon, probably in May. At the moment, the Government is preparing the draft regulations and consultation documents. We can, if we wish, ask to look at those draft documents to prepare ourselves for what is coming through.

[13] **Michael German:** If I remember rightly, this was a piece of legislation in which a significant amount was to be dealt with by regulation rather than on the face of the Measure. We were assured all the way through its passage that the regulations would be subject to scrutiny. Clearly, many of the regulations will go to Plenary, because most are subject to affirmative resolution, but that can be more of a routine matter than proper scrutiny, given the amount of time available in Plenary, so it would be helpful to see the draft legislation—particularly as we are trying to see as much legislation in advance as possible, and especially as this was the first Assembly Measure.

[14] **Janet Ryder:** Are Members content with that? I see that you are. We will thank the Minister for her response and ask for sight of the draft documents that are being prepared.

9.07 a.m.

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i'r Datblygiadau yn Atodlen 5 i Ddeddf  
Llywodraeth Cymru 2006, gan gynnwys Eithriadau i Faterion a Monitro  
Canlyniadau Adroddiadau'r Pwyllgor ar Offerynnau Statudol  
Committee Inquiries: Inquiry into the Developments in Schedule 5 to the  
Government of Wales Act 2006, including Exceptions to Matters and Monitoring  
the Outcome of the Committee's Reports on Statutory Instruments**

[15] **Janet Ryder:** We are progressing a bit quicker than last week, so we now begin our first evidence session. We will allow some time for Professor Jones to take his place.

[16] Good morning, Professor Jones, and thank you for joining us. You will be aware that the committee is undertaking an inquiry into Schedule 5, especially looking at exceptions and monitoring the outcomes of the issues that we have raised about statutory instruments. Thank you for the evidence that you have submitted already. We are a little ahead of schedule, so thank you for coming in so promptly. You are welcome to give us a brief introduction, or we can move straight into questions. It is up to you.

[17] **Professor Jones:** I am fine to go straight into questions.

[18] **Janet Ryder:** Perhaps I should ask you to briefly introduce yourself—we know that you are from the School of Law at Swansea University, but please introduce yourself formally for the record, and then I will invite Mike to ask the first question.

9.10 a.m.

[19] **Professor Jones:** I am Tim Jones, professor of public law at Swansea University. I have been teaching there for about 10 years. I have an interest in devolution and its legal consequences. I have published a little on that. That is it.

[20] **Janet Ryder:** You sound well placed to answer some of our questions, so I thank you for coming in. Mike, you have the first question.

[21] **Michael German:** I will start off with section B in your paper and exceptions. You say that several drafting issues have arisen in respect of how best to apply exceptions. Briefly, can you explain to us what you see as the practical problems of using fixed exceptions?

[22] **Professor Jones:** Yes. The fixed exception approach, which I might call 'the prior approach', since it—

[23] **Michael German:** Sorry, did you say 'prior'?

[24] **Professor Jones:** Yes. I call it that since there has been some movement from fixed exceptions to floating or general exceptions. The prior approach is, essentially, based on the idea of a table in Part 1 of Schedule 5 that pinned exceptions to a particular matter. That presented practical problems simply in expanding the table. Pinning exceptions to particular matters led to problematic discussions in terms of determining the scope of LCOs. There is a focus on exceptions. If it is a fixed exception, then questions arise as to whether it is relevant to a matter and what the scope of the matter is. For the drafters, therefore, it is problematic in terms of working out the scope of both an exception and a matter. That has proved to be quite technically complex.

[25] In practical terms, a table of exceptions of that kind would, over time, have become increasingly unwieldy, leading to a rather arcane exploration of the scope of matters and the scope of exceptions. Essentially, however, it is a technical issue that would have led to an increasingly unwieldy document.

[26] **Michael German:** Do I understand you correctly in saying that when you talk about scope, you are worried about exceptions applying to other matters rather than simply being within the matter itself? Is it the boundaries between matters that are the problem with regard to the scope, or is it the scope within a matter that is the problem?

[27] **Professor Jones:** It is the matching of a matter and an exception. If you pin an exception to a particular matter, you need to explore the scope of both. You need to know that the two fit together, because you are not saying that this is some kind of general exception to the legislative competence of the Assembly; you are saying that it is specific to a certain matter. That is the particular issue that has arisen.

[28] **Michael German:** I am just trying to get your reasoning. You are almost explaining the advantages of having floating exceptions, because they apply universally. Is that the primary reason why you think that floating exceptions are more useful than fixed exceptions?

[29] **Professor Jones:** The advantage of the floating exceptions, which is an awkward term, over more general exceptions is that, hopefully, they make clearer the topics that are intended to remain outside the Assembly's competence in all fields. Putting them in Part 2 of Schedule 5, alongside the more general limitations, should improve the accessibility of the document, in that the exceptions are grouped together. They may be different kinds of exceptions, but they would be together in the document. That is the positive side or the advantage. If the question is whether the advantages that I have identified have worked out in practice, some would suggest that the answer is 'no', and if you look at the responses to the earlier version of the proposed LCO on the environment, you will see that it has been criticised for its complexity, even though it emerged after the new approach to exceptions.

[30] **Michael German:** Are you talking about the second version of the proposed LCO, which was almost double the size of the original because of the exceptions it contained, or the original one, which was about four pages long? One was debated by the National Assembly, which was about four pages long and one is about eight pages long, which mostly contained exceptions.

[31] **Professor Jones:** The second one. The latest version of the proposed LCO is not substantively different from the second. Some changes have been made to it, but its approach is not substantively different.

[32] **Michael German:** However, there were significant criticisms of the proposed LCO by the House of Lords Constitution Committee on the issue of floating exceptions. One of the



primary problems that we saw in that was that the exceptions were being applied to fields in which there were no matters. In other words, they were being put into fields in which there were no competencies. So, it was not easily understandable. If the primary purpose is to know where the exceptions are, would you have advocated the system of floating exceptions from the beginning? Is that the right way to approach it?

[33] **Professor Jones:** There is a broader difficulty here, namely the limit to which complexity can be avoided. We are essentially talking about the outcome of political compromise, which has to be turned into a legislative form. If we go back in time to the Government of Wales Act 2006 and look at Schedule 5, we see that the matters that it originally contained were not attended by all sorts of exceptions, whether they were general, floating or whatever kind of exceptions.

9.20 a.m.

[34] It seems that a process has developed whereby, within the proposed LCO, there is a move away from what may have been seen as the original idea of more general framework powers to more specific powers, which are necessarily seen as subject to various exceptions.

[35] **Janet Ryder:** Are you saying that, in your view, the original intention of a proposed LCO was to give broad framework powers within which the Assembly could work, and an introduction of exceptions has altered that and has introduced much more rigid terms within which the Assembly could work?

[36] **Professor Jones:** The impression that many would have had originally was that we were talking about fairly general framework powers to be conferred. However, that is not the way that it has worked out in practice. No doubt there are reasons why that has occurred, but it makes the picture more complicated. I note, for example, that in its most recent review of the LCO process, the Welsh Affairs Committee seems to be calling for more specific LCOs rather than the opposite, and suggests that what is required is more LCOs that are narrower in scope.

[37] **Janet Ryder:** I am aware that someone watching from outside may not be able to understand what we mean when we talk about scopes, fields and exceptions and so on. Are you able to give us a practical example of how this has worked, perhaps using the proposed LCO on the environment, where exceptions have been introduced that have limited it, so that anyone who is looking at legislation will be able to understand the implications of using those LCOs for the Assembly and for people outside? Could you offer us written evidence of an example that we could look at, so that we could trace the history of an LCO to have an illustration of how it all works?

[38] **Professor Jones:** Yes, we could supply some practical examples.

[39] **Janet Ryder:** That would be helpful because we want to try to draw up a report that is accessible to as many people as possible. It is easy in any committee to get wrapped up in the terms that it uses and to forget that there are people outside who are looking at the issue, so, it is much easier if we have examples.

[40] **Michael German:** I would like to ask a broad question to finish. What are the consequences of the definitions being so tightly prescribed in these LCOs?

[41] **Professor Jones:** There are two consequences. One is the narrowing of the potential scope for legislation for Measures. The second relates to the legal complexity of the picture, where the focus is as much upon exceptions in the terminology as upon the matter. This method of working is a very time consuming process, one would imagine, and rather

resource-intensive.

[42] **William Graham:** I will change the order of the questions, if I may. You talked about fixed and floating exceptions and carve-outs. What are the relative advantages and disadvantages of the increasing use of those terms?

[43] **Professor Jones:** The fixed exceptions relate to a specific matter. There is the practical problem, to which I alluded, which is that it would lead to an increasingly large document as a result of matters and exceptions. Each matter would be accompanied by relevant exceptions, whereas the perceived advantage of the floating exceptions is that they can be grouped together in one place and should help to make clearer the nature of the limitations to the competence of the Assembly. In that way, the intended advantage of floating exceptions was to improve the accessibility of Schedule 5. That was the aim.

[44] **William Graham:** I will ask a supplementary question, Chair, if I may. You will recall that the House of Lords was very critical and said that, taken in the round, the proposed LCO was perilously close to the borderline of what is constitutionally acceptable. The proposed environmental LCO started off here at just over three pages and came back as eight with extraordinary exceptions.

[45] **Professor Jones:** The House of Lords committee report is interesting, but having read it, it accepts the explanation for the exceptions and for the use of each kind of exception, but it still reaches the conclusion that it is at the borderline of what is constitutionally acceptable. I am not clear whether the conclusion entirely matches the analysis because it accepts that there are reasons for the format and the use of these kinds of exceptions. Is it constitutionally acceptable? The answer is 'yes', in that some complexity is unavoidable. Legislative competence is a complicated issue.

9.30 a.m.

[46] If you are talking about legislative competence in an area like environmental law, it is a complicated matter. There is some sort of trade off or balance between being precise and being clear. I am not sure that we can have it both ways; we cannot necessarily have precision and something in terms of legislative competence that will be immediately accessible to the general reader. In terms of accessibility, the product of the legislative competence and whatever law actually follows from the power is even more important.

[47] **Joyce Watson:** Following on from what you have just said, what can be done to help clarify the powers that are being developed in Schedule 5? Should any steps be taken to ensure that the Schedule does not become more unwieldy or to improve the user-friendliness of the Schedule?

[48] **Professor Jones:** I am not sure what can actually be done now to clarify or make Schedule 5 more user-friendly. Attempts have already been made to do so, and the move towards floating exceptions and the reason for their location within the Schedule was to improve its clarity and accessibility. In terms of why I am putting forward a negative response, I do not think that much can be done now because of the way that the process has developed.

[49] **Janet Ryder:** Is that because of the introduction of fixed and floating exceptions?

[50] **Professor Jones:** That is due to the increasing use of exceptions. I am viewing the legislative process as an outsider, so I am not exactly sure why we have reached our current position. However, it strikes me that it is one facet of the expanded role for Westminster that is developed in relation to the LCO process. If you take the proposed environmental

legislative competence Order as an example, what I will now describe as version 2 was subject to strong criticism and was, no doubt, taken to heart, but it has not been possible to produce an LCO that looks dramatically different. There have been some changes, but it is not a substantively different document because it is not possible for it to be under the model that has developed. I am not sure that there is a lot that can be done. We may purely be in an interim stage, in any case, before we move to the next model.

[51] **Janet Ryder:** Given what you have just said, if Westminster had not developed this stronger role for itself in the LCO process, and perhaps if the LCO system had worked as may have been intended originally, would it have been possible to come forward with radically different LCOs?

[52] **Professor Jones:** I think that our perception is that the interest from Westminster has led to greater specificity in LCOs. I would refer to the point that I made earlier: that the matters in Schedule 5, as originally enacted, were not subject to sections in the same way. A particular process, model or way of working has developed over the last two or three years, which has resulted in the kinds of LCOs that we have.

[53] **Janet Ryder:** Thank you for that answer. Do you have another question, Joyce?

[54] **Joyce Watson:** Yes; I will remain with Schedule 5. We have had evidence from other witnesses who are concerned that Schedule 5 is opaque and confusing and that it runs against the principles of the rule of law. Do you believe that Schedule 5 runs against the principles of the rule of law?

[55] **Professor Jones:** I do not think that we quite share the apocalyptic view of the rule of law conflict. Clearly, there are issues relevant to the rule of law. Lord Bingham recently talked about the importance of accessibility and intelligibility of law. We might also say that effective government requires that public authorities should know what the law allows and requires them to do. There are issues. The fact that a law might be complex raises issues and concerns but I do not think that we would put it in quite such a dramatic way.

[56] **Joyce Watson:** In your conclusion, you state that the current system in Wales,

[57] ‘reflects a “minimalist” approach to devolution, seeking to define to a degree of certainty the powers conferred, in contrast to the “maximalist” approach’

[58] in Scotland. Could you please expand on those comments?

[59] **Professor Jones:** Those are not necessarily the most elegant terms, but the contrast is between the transfer approach, which is reflected in the Government of Wales Act 2006, where powers are transferred from Westminster to the Assembly and the Government, and the model in Scotland, and probably in Northern Ireland as well, which is one of reserve powers; essentially, everything is given apart from what is reserved.

9.40 a.m.

[60] The extreme example in relation to reserve powers would be the Channel Islands model. The Channel Islands are not part of the United Kingdom and they can do whatever they like, provided it does not impact on international affairs or defence. That is the extreme model. The opposite is when you can only exercise the powers that have been specifically transferred to you, and that is essentially the difference between the two models. So, the model in Wales is one of transfer rather than reserve; the philosophy of the latter is, ‘you can do a lot of things, but we are going to reserve certain powers for ourselves’.

[61] **Joyce Watson:** I will probe a bit further. You used the term 'extreme', which I understand, and then you went straight to the transfer of powers. I need to be clear: are you using the transfer of powers as the other extreme to reserve powers? Is that what you are saying? I was not sure. On a sliding scale, would you say that the transfer of powers is an extreme way of control, as opposed to the Channel Islands, which you said have been granted an extreme version of being allowed to get on with the job? I would like some clarity.

[62] **Professor Jones:** They are models that start from opposite positions: transfer and reserve. Clearly, the two could meet in the middle if you transfer a lot of powers and if you reserve a lot of powers. They can come together. However, the underlying philosophies are quite different. A model based on transferring powers is going to be more complex than one based on reserve powers. If we go back to the 1970s and to the original devolution legislation, the original Scotland Act 1978 was based on transfer. Moving on 20 years, it transformed into a reserve powers model. It was recognised by commentators, even in the 1970s, that a transfer model is inevitably more complicated.

[63] **Janet Ryder:** I would like to go back to what you were talking about in terms of the changing nature of the LCO process. Would it be fair to say that the introduction of floating exceptions means that an LCO, as originally intended, would lead to a number of very broad regulations potentially coming from it, while the LCO process that we are now experiencing, with fixed exceptions, will lead to very limited and extremely specific regulations flowing from it?

[64] **Professor Jones:** Clearly, it is a move away from what I think was originally conceived as broader framework powers, which would have allowed considerable scope and would have been subject to fewer specific exceptions. Clearly, there will be exceptions, because there are general matters that are regarded as being outside the competence of the Assembly. It appears as though we are not talking about exceptions of that nature, but more about what may have been policy-driven exceptions. It is clearly a process of discussion. There are various ways in which there has been a departure from what might have been anticipated. For example, because of the chronology that the LCO process has followed, an LCO does not see the light of day until it has already been the subject of a political discussion and so on. There is clearly a process of negotiation that goes on, which then has to be put in legislative form for a proposed LCO. That then results in this model of exceptions and exceptions to exceptions, which make some kind of sense within that framework of discussion.

[65] **Janet Ryder:** So, could you say that, now, an LCO is the written terms of agreement after lengthy negotiations, much like a peace treaty would be the terms of agreement after lengthy negotiations, where there has been give and take? We do not know the content of the proposed LCO that is coming through now because that discussion is still going on between Governments, and so what the public first sees is the result of all that.

[66] **Professor Jones:** That is how it appears from the outside.

[67] **Janet Ryder:** To some extent, that is important. It is how people see the powers transferring. That is an interesting answer. Thank you very much. We have talked about Schedule 5. What would you envisage happening if Part 4 of the 2006 Act came into force? Would Schedule 5 cease to exist? Would it affect Part 4? What would happen, in your opinion?

9.50 a.m.

[68] **Professor Jones:** If Part 4 comes in, there are some exceptions in Schedule 7 but, essentially, we will be looking at broad descriptions with some exceptions. One would hope

that lessons have been learned in avoiding a repeat. The LCO process, as we know it, will come to an end. Schedule 7 can be modified by Order in Council. Clearly, there would be a danger if exceptions were allowed to develop there, but there is no particular reason why they should be allowed to develop. One would hope that it would be regarded as a new start for the process. It is a further step, or a new stage in the process. If it is regarded as a new start and lessons are taken from what has happened to date, that could be avoided.

[69] **Janet Ryder:** That is very interesting. So, you are saying that it would not be impossible, unfortunately, to repeat the history that we have just lived through with legislative competence Orders.

[70] **Professor Jones:** The precise history is not going to repeat itself because the LCO period would come to an end.

[71] **Janet Ryder:** But with regard to exceptions—

[72] **Professor Jones:** The exceptions would have to be introduced into what would then be Schedule 7. I was talking about this with a colleague, and I hesitate even to talk about it, because I might be planting an idea. [*Laughter.*] Theoretically, there is nothing to stop Westminster from introducing exceptions to the powers, because Schedule 7 can be amended. On the other hand, that is unlikely because it is counter to the model that would develop under that phase of devolution.

[73] **Janet Ryder:** Mike has a further question.

[74] **Michael German:** Let us just look at Schedule 7 in the context of the overarching model that we have, which is one of transfer rather than of reserved powers. Can you envisage a situation in which we start with a clean sheet? So, we have Schedule 7, we know where we are coming from, and the Welsh Assembly Government produces a Measure that, in its view, meets the criteria of Schedule 7. However, in the same way as now, it is the Whitehall process that produces much of the exception process. Someone in Whitehall spots that there could possibly be an infringement, because it is not clearly defined. Then, surely it is possible that we could have exceptions to Schedule 7 put in by a Whitehall or Westminster regime. The nature of the transfer, rather than reserved powers, is that it is not clearly defined—or am I reading that wrongly? It is still the same model, is it not? Schedule 7 is still a transfer model, is it not?

[75] **Professor Jones:** Yes, it is a transfer model, but I guess that there are three possible scenarios. The first is that the argument would transform itself into a legal dispute turning on the interpretation of the legislation, which could be a matter for a court to resolve. So, it could turn into a legal dispute, or it might just be a political dispute that would be resolved in the political arena.

[76] **Michael German:** Would it be resolved by exceptions being put in?

[77] **Professor Jones:** If an exception were made in the scenario that we are talking about, that would change the devolution settlement.

[78] **Michael German:** The point that I was making was that that, in itself, would not provide clarity, because it would still be a transfer model.

[79] **Professor Jones:** I would not necessarily say that it is an issue of clarity. In theory, Schedule 7 should provide less scope in that it confers broader powers. The broader the powers that are conferred, the less scope there should be for dispute over whether something falls within that power. However, it strikes me that it would be quite a strong step for

Westminster to take to introduce an exception into Schedule 7 because it does not like a particular piece of legislation. That would generate a significant constitutional issue—or crisis, even.

[80] **Michael German:** I would not readily use the word ‘crisis’. I am sorry, as I interrupted you before you made your third point. You said that there could be a legal solution through the courts, a political solution, and I interrupted you before the third.

[81] **Professor Jones:** The third is the one that you moved to, which is the legislative solution. However, a legislative solution of changing Schedule 7 without agreement between the parties would be a major issue.

[82] **Michael German:** Under the transfer model, Westminster introducing an exception into the Act would be an overarching threat because there is no redress. The power to do that is elsewhere and not here. That is just a comment. I will let you carry on with your crisis.

[83] **Janet Ryder:** Do Members have any further questions? I see not. Professor Jones, if there is anything that you would like to add, or if you would be willing to find a practical example that we could include in our report to show clearly the effect of exceptions on LCOs, we would very much welcome a submission from you on that.

[84] **Professor Jones:** There are examples running through my head, but I would prefer to put something down on paper.

[85] **Janet Ryder:** That would be lovely. I thank you very much for your evidence this morning. It has been extremely interesting. A transcript of the meeting will be sent to you for you to check. We cannot add or take anything out; it is just for you to check for correctness. Thank you very much indeed for coming in. It has been a very interesting session.

10.00 a.m.

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i'r Datblygiadau yn Atodlen 5 i Ddeddf Llywodraeth Cymru 2006, gan Gynnwys Eithriadau i Faterion a Monitro Canlyniadau Adroddiadau'r Pwyllgor ar Offerynnau Statudol—Prifysgol Bangor**

**Committee Inquiries: Inquiry into the Developments in Schedule 5 to the Government of Wales Act 2006, Including Exceptions to Matters and Monitoring the Outcome of the Committee's Reports on Statutory Instruments—Bangor University**

[86] **Janet Ryder:** I welcome Dewi Llŷr Jones from Bangor University to the meeting. We have already received a written submission from him.

[87] Os dymunwch siarad yn Gymraeg, bydd hynny'n iawn; bydd popeth yn gweithio. Serch hynny, mae'n siŵr gennyf y bydd mwyafrif y cwestiynau yn Saesneg. Should you wish to speak in Welsh, that will be fine; everything will be working. However, I expect most of the questions to be asked through the medium of English.

[88] **Mr Jones:** Ni fydd hynny'n broblem. **Mr Jones:** That will not be a problem.

[89] **Janet Ryder:** Thank you for coming here to take part. One of the main issues that we have been considering has, in fact, been the issue of how we produce and develop a bilingual legislature and legislative body of work. One of the issues that we have picked up is that we were, at the beginning, picking up a high number of technical issues that were occurring

through translation. That number has reduced slightly but it seems to have plateaued out somewhat and we are still picking up a significant level of those. What are your views on the reasons why there has not been a more significant reduction in the number of statutory instruments reported on in the 2008-09 session? Has your research indicated whether there has been any particular trend in relation to the reporting points relating to the Welsh language?

[90] **Mr Jones:** Wrth fy ngwahodd i roi tystiolaeth yn y sesiwn hon, gofynnodd y pwyllgor imi ganolbwyntio ar faterion yn ymwneud â'r iaith Gymraeg. Yn y gwaith ymchwil ar gyfer yr adroddiad, canolbwyntiais ar bwyntiau adrodd a wnaed o safbwynt yr iaith Gymraeg o dan Reolau Sefydlog Rhifau 15.6 a 15.7, a lle na wnaed fersiwn Gymraeg o dan Reol Sefydlog Rhif 15.9. Felly, credaf y byddai'n decach imi ganolbwyntio ar y cwestiwn am batrymau yn y cynnydd neu ostyngiad yn nifer y pwyntiau adrodd ar yr iaith Gymraeg.

**Mr Jones:** In inviting me to provide evidence to this session, the committee asked me to focus on issues relating to the Welsh language. In my research for the report, I focused on the reporting points made regarding the Welsh language under Standing Orders Nos. 15.6 and 15.7, and where no Welsh language version had been provided under Standing Order No. 15.9. Therefore, I think that it would be more appropriate for me to focus on the question about any emerging patterns in the increase or reduction in the number of reporting points on the Welsh language.

[91] Yr ydych yn dweud, yn gyffredinol, fod y lleihad yn y pwyntiau adrodd wedi lefelu. Mae'r ymchwil a wneuthum ar gyfer yr adroddiad hwn yn awgrymu bod lleihad mwy arwyddocaol wedi digwydd yn nifer y pwyntiau adrodd a wnaed ar faterion yn ymwneud â'r Gymraeg, fel yr wyf wedi'u diffinio. Darperais atodiad i'r adroddiad, sydd wedi'i ddsbarthu yn ôl pob golwg. Drwy edrych ar yr atodiad, ac wrth edrych ar y ffigurau ar gyfer 2007-08—rhwng Mai 2007 a Gorffennaf 2008—fe welwch fod pwyntiau adrodd yn ymwneud â'r iaith Gymraeg, yn rhannol neu'n gyfan gwbl, wedi'u gwneud ar 34 offeryn statudol gwahanol. Erbyn 2008-09, yr oedd y ffigur hwnnw wedi gostwng i 15 offeryn statudol. Felly, yn ôl yr ymchwil a wneuthum, cafwyd lleihad mwy sylweddol o ran materion yn ymwneud â'r iaith Gymraeg nag a gafwyd yn gyffredinol. Eto, mae fy ymchwil ar gael ichi ei astudio, ond dyna'r argraff a gefais i.

You state that, generally speaking, the reduction in the reporting points has levelled out. The research that I have carried out for this report suggests that there has been a more significant reduction in the number of reporting points made on issues relating to the Welsh language, as I have defined them in my paper. I have provided an annex to the report, which seems to have been circulated. In looking at the annex, and in looking at the figures for 2007-08—between May 2007 and July 2008—you will see that reporting points on the Welsh language, either partially or wholly, were made on 34 different statutory instruments. By 2008-09, that figure was down to 15 statutory instruments. Therefore, according to the research that I have done, there has been a more significant reduction in issues relating to the Welsh language as compared with the overall reduction. Again, my research is available to you for your scrutiny, but that is the impression that I got.

[92] Os yw hynny'n wir, mae'n awgrymu cynnydd yn nifer y pwyntiau adrodd am faterion nad ydynt yn ymwneud â'r Gymraeg. Efallai mai testun ymchwil pellach yw hwnnw, ond o'm safbwynt i, mae'n dangos gwelliant sylweddol rhwng 2007-08 a 2008-09.

If that is true, it suggests an increase in the number of reporting points on matters unrelated to the Welsh language. That may serve as the subject of further research, but as far as I am concerned, it demonstrates a significant improvement between 2007-08 and 2008-09.

[93] **Michael German:** Can you suggest some practical steps to reduce the number of Welsh language reporting points or general reporting points even further, so that we approach

perfection?

[94] **Mr Jones:** Eto, canolbwyntiaf ar y materion yn ymwneud â'r iaith Gymraeg, gan mai'r rheini y canolbwyntiais arnynt yn yr ymchwil.

**Mr Jones:** Again, I will focus on the Welsh language issues, as they were the subject of my research.

[95] Yn fy adroddiad, yr wyf wedi amlygu neu amlinellu nifer o gamau ymarferol y gellid eu cymryd. Mae'r rhan fwyaf ohonynt yn ymwneud â chynyddu adnoddau ac, yn benodol, cynydd yn yr adnoddau sydd ar gael i'r tîm cyfieithu deddfwriaethol yn Adran Gwasanaethau Cyfreithiol Llywodraeth y Cynulliad.

In my report, I have highlighted or outlined a number of practical steps that could be taken. Most of them are to do with increasing resources and, specifically, an increase in the resources available to the legislative translation unit within the Assembly Government's Legal Services Department.

[96] O'r tu allan, mae'n ymddangos bod llwyth gwaith y tîm cyfieithu deddfwriaethol yn drwm iawn. Maent yn cyfieithu yr offerynnau statudol sy'n dod gerbron y Cynulliad ynghyd â'r offerynnau statudol nad ydynt yn dod gerbron y Cynulliad, yn ogystal â Gorchmynion cymhwysedd deddfwriaethol a Mesurau. Felly, mae'r llwyth gwaith yn drwm, a deallaf mai dim ond pum cyfieithydd amser llawn sydd yn y tîm hwnnw. Eto, a siarad fel sylwedydd o'r tu allan, mae'r llwyth gwaith i'w weld yn un trwm. Un cam ymarferol, am wn i, fyddai darganfod ffordd o gynyddu'r adnoddau sydd ar gael i'r tîm hwnnw, ac yr wyf yn argymhell hynny yn yr adroddiad.

From the outside, it appears that the legislative translation team's workload is very heavy. It is not only the statutory instruments that come before the Assembly that they translate, but the statutory instruments that do not come before the Assembly, too, as well as the legislative competence Orders and the Measures. So, it is a heavy workload for a team that I understand comprises only five full-time translators. Again, speaking as someone on the outside looking in, the workload seems to be heavy. One practical step, I suppose, would be to find a means of increasing the resources available to that team, and I make that recommendation in the report.

[97] Gallwn sôn hefyd am gyd-ddrafftio deddfwriaeth, neu'r posibilrwydd o'i wneud. Gwn, er hynny, fod pwyllgor am symud ymlaen i drafod hynny yn y man, felly fe'i gadawaf am y tro.

There is also legislative co-drafting, or the possibility of doing that. I know, however, that the committee will cover that shortly, so I will leave it at that for now.

[98] Y prif bwynt i'w wneud yma yw y dylid chwilio am fodd o gynyddu'r adnoddau sydd ar gael i'r tîm cyfieithu deddfwriaethol. Mae dau brif reswm dros ddweud hynny. Os oes mwy o adnoddau—hynny yw, mwy o arian i gael mwy o staff—byddai modd i'r cyfieithwyr dreulio mwy o amser efallai ar y cyfieithu ac, felly, o bosibl, leihau nifer y gwallau a gyflwynir. Hefyd, gyda mwy o aelodau yn y tîm, efallai y byddai modd golygu gwaith yn fewnol, ar ôl i destun gael ei gyfieithu.

The main point to be made here is that a means of increasing the resources available to the legislative translation team should be sought. There are two main reasons for saying that. If there are more resources—that is, more money to employ more staff—the translators would perhaps be able to spend more time on the translation and therefore, possibly, reduce the number of errors introduced. Also, with more staff on the team, it might be possible to edit the work in-house once initial translation has taken place.

[99] **Michael German:** I will not touch on the area of co-drafting because I know that other Members will have questions on that later. I have observed co-drafting in Canada, however, within three different administrations. Co-drafting is the procedure recommended



by all the lawyers in all the administrations as being the only one to produce a lower error rate.

[100] I would like to look at the issue of scrutiny, however. There is internal scrutiny and external scrutiny. The internal scrutiny is inside the Welsh Assembly Government, and there is the possibility of having more external scrutiny here if we could see early versions or drafts. Is it your impression that the Welsh Assembly Government does enough internal scrutiny? In other words, does it check its own way? If it does not, would one way of doing it be to have more external scrutiny and invite drafts of statutory instruments here before they are formally laid?

10.10 a.m.

[101] **Mr Jones:** Yn sicr, mae hwnnw'n gwestiwn pwysig iawn. Yn gyntaf, byddwn yn awgrymu bod nifer helaeth o'r gwallau yn y fersiynau Cymraeg y sylwais arnynt wrth wneud y gwaith ymchwil yn wallau eithaf syml ac elfennol ar yr olwg gyntaf. Er enghraifft, cafodd 'local authority' ei gyfieithu fel 'awdurdod addysg lleol' a chafodd 'regulation' ei gyfieithu fel 'paragraff'. Felly, mae enghreifftiau o wallau eithaf syml. Wrth gwrs, byddai modd eu canfod yn gynt drwy fwy o graffu mewnol gan staff Llywodraeth y Cynulliad.

O safbwynt gallu craffu ar fersiwn ddrafft yr offerynnau statudol, credaf ei fod yn dilyn yn naturiol ei bod yn fwy effeithiol i allu craffu ar ddrafft. Mae synnwyr cyffredin yn dweud hynny. Pan oeddwn yn gwneud y gwaith ymchwil, deuthum ar draws pedwar gwall y cawsant eu hadrodd gan y pwyllgor hwn i Lywodraeth y Cynulliad. Cywirwyd y rheini cyn i'r offeryn statudol gael ei wneud yn swyddogol. Y sefyllfa ddelfrydol, felly, byddai cywiro'r gwallau cyn i fersiwn derfynol yr offeryn gael ei gwneud.

[102] Rheswm arall dros ddweud hynny yw'r ffaith y gwelais wallau mewn fersiynau terfynol. Buont yn y ddeddfwriaeth am amser eithaf hir, felly yr oedd fersiynau Cymraeg gwallus a oedd yn gyfreithiol ddilys am amser eithaf hir. Felly, os oes mwy o graffu mewnol yn ystod y cyfnod drafft—yr wyf yn sôn am graffu tebyg i'r hyn sy'n digwydd yn yr Alban, gan bwyllgor tebyg i hwn—yna gorau oll. Mae modd gwneud hynny yn yr Alban, felly mae'n drueni nad oes modd ei wneud yma.

[103] **William Graham:** To concentrate on your evidence on translation, it confirms the Law Society's evidence that over half of all reports are due to inconsistencies between the

**Mr Jones:** That is certainly an extremely important question. In the first place, I would suggest that a substantial number of the errors in the Welsh versions that I noticed were, at first glance, relatively simple and elementary errors. For example, 'local authority' was translated as 'local education authority' and 'regulation' was translated as 'paragraph'. Therefore, there are examples of relatively simple errors. Of course, it would be possible to identify those much earlier through greater internal scrutiny by Welsh Assembly Government staff.

On being able to scrutinise the draft version of statutory instruments, I believe that it follows naturally that it is more effective to be able to scrutinise a draft. Common sense tells you that. When I did the research work, I encountered four errors that had been reported by this committee to the Welsh Assembly Government. Those were corrected before the statutory instrument was formally made. The ideal situation, therefore, would be to correct errors before the final versions of instruments are made.

Another reason for saying that is the fact that I came across errors in final versions. They remained in the legislation for quite a long time and so there was an erroneous but legally valid Welsh version for quite a long time. Therefore, the more internal scrutiny during the draft period—I am thinking about the type of scrutiny that takes place in Scotland, by a committee similar to this one—the better it would be. It is capable of being done in Scotland, therefore it is a shame that it cannot be done here.

texts and that,

[104] ‘the clear majority of the reports result from the need to legislate in both Welsh and English.’

[105] You also expressed surprise that the points reported tend to be minor points rather than ones of legal difficulty. Therefore, what, in your opinion, are the reasons for the seemingly consistent failure to legislate accurately in both languages?

[106] **Mr Jones:** Yn gyntaf, hoffwn ddweud gair am dystiolaeth Cymdeithas y Cyfreithwyr os yw hynny'n iawn. Nid wyf am dynnu'r gymdeithas i fy mhen am eiliad, ond mae gennyf un pwynt i'w wneud am y dyfyniad dan sylw. Deuthum ar draws y dystiolaeth hon wrth baratoi am sesiwn y bore yma, a dywed:

**Mr Jones:** First, I would like to say something about the Law Society's evidence, if that is okay. I do not want to upset it for a second, but I have one point to make about the quotation that you just used. I came across this evidence in preparation for this morning's session, and it says:

[107] ‘the clear majority of the reports result from the need to legislate in both Welsh and English’.

[108] Anghytunaf ychydig gyda'r geiriau, ‘need to legislate’. Yn fy marn i, nid yr angen neu'r gofyniad i ddeddfu'n ddwyieithog sy'n arwain at y pwyntiau adrodd, ond yn syml, y gwallau a wnaed yn y ddeddfwriaeth. Felly, nid yr angen neu ‘the need’ sydd yn arwain at y pwyntiau adrodd hyn, ond y gwallau yn y ddeddfwriaeth hynny. Mae hwnnw'n un pwynt y sylwais arno wrth edrych ar dystiolaeth Cymdeithas y Cyfreithwyr.

I disagree somewhat with the words ‘need to legislate’. In my opinion, it is not the need or the requirement to legislate bilingually that leads to these reporting points, but quite simply, the errors that are made in the legislation. Therefore, it is not ‘the need’ to legislate in both languages that leads to these reporting points, but the errors made within that legislation. That is one point I picked up on in looking at the Law Society's evidence.

[109] Cyfeiriodd eich cwestiwn at ‘consistent failure’. Yr wyf yn cydnabod, ac yn ei wneud yn berffaith glir yn yr adroddiad, fod nifer helaeth o wallau ieithyddol yn cael eu gwneud yn y fersiynau Cymraeg. Fodd bynnag, nid wyf yn siŵr y byddem yn mynd mor bell â'i ddisgrifio fel ‘consistent failure’. Pan atebais y cwestiwn cyntaf a ofynnwyd y bore yma, soniais am y gostyngiad sylweddol a fu rhwng 2007-08 a 2008-09—o 34 o offerynnau statudol yn 2007-08 i 15 yn 2008-09. Felly, ni wn a fyddwn yn mynd mor bell â'i alw yn ‘consistent failure’

Your question referred to ‘consistent failure’. I recognise, and make it eminently clear in the report, that a large number of linguistic errors are made in the Welsh versions. However, I am not sure that I would go so far as to describe that as ‘consistent failure’. When I answered the first question asked this morning, I mentioned the significant reduction that occurred between 2007-08 and 2008-09—from 34 statutory instruments in 2007-08 to 15 in 2008-09. Therefore, I do not know whether I would go so far as to call it ‘consistent failure’

[110] Mae rheswm arall dros ddweud hynny—ac efallai dylwn fod wedi codi hwn wrth ateb y cwestiwn cyntaf—sef, wrth fynd drwy'r offerynnau statudol ar gyfer 2007-08, darganfyddais 44 gwall yn y fersiynau Cymraeg. Cyfrifais i hwy. Yr oedd 44 gwall unigryw. Hynny yw, nid oedd y gwall yn ailymddangos. Felly, yr oedd 44 gwall gwahanol yn 2007-08. Erbyn y flwyddyn

There is another reason for saying that—and perhaps I should have raised this in response to the first question—in that, as I went through the statutory instruments for 2007-08, I found 44 errors in the Welsh versions. I counted them. These were 44 unique errors. That is, not one of the errors reoccurred. Therefore, there were 44 separate errors in 2007-08. By the following year, that number

ganlynol, yr oedd wedi gostwng o 44 gwall i 15. Felly, yr oedd gwelliant sylweddol, sy'n gwneud imi feddwl nad yw'n 'consistent failure'.

[111] Wedi dweud hynny, mae'n rhaid cydnabod ei fod yn fethiant ar brydiau. Mae nifer o resymau posibl i esbonio paham fod methiannau neu wallau o'r fath yn cael eu gwneud—neu, o leiaf, mae'n ymddangos felly i rywun fel fi o'r tu allan. Mae llawer ohonynt yn ymwneud â'r ffactorau yr wyf eisoes wedi eu trafod, er enghraifft, diffyg adnoddau. Mae'r llwyth gwaith yn drwm ac mae'n ymddangos os oes llawer o bwysau ar y tîm cyfieithu deddfwriaethol, maent yn brysio ac felly mae'n bosibl y bydd gwallau'n cael eu gwneud. Yr wyf yn gobeithio fy mod wedi gwneud y pwynt hwnnw'n eithaf clir yn yr adroddiad.

[112] Pwynt arall yr wyf yn crybwyll yn gyflym yn yr adroddiad yw'r newid posibl yn amserlen waith y tîm cyfieithu deddfwriaethol a'r cyfreithwyr sy'n gweithio yn adran Gwasanaethau Cyfreithiol Llywodraeth y Cynulliad. Cyn i Ddeddf Llywodraeth Cymru 2006 ddod i rym, y Cynulliad oedd yn gwneud offerynnau statudol ac yr oeddent yn cael eu cymeradwyo gan y Llywydd. Felly, gan mai ar un diwrnod yr wythnos gan amlaf, am resymau ymarferol, yr oedd y Llywydd yn arwyddo offerynnau statudol, yr oedd pawb yn gweithio i amserlen swyddfa'r Llywydd. Ers i Ddeddf Llywodraeth Cymru 2006 ddod i rym, efallai nid yw'r Llywydd mor bwysig a'r ffaith fod 12 o Weinidogion. Felly, mae'n bosibl bod y tîm cyfieithu deddfwriaethol a'r cyfreithwyr yn gweithio i 12 amserlen wahanol yn hytrach nag un. Mae'n bosibl bod hynny, ar brydiau, yn gallu arwain at fwy o bwysau a mwy o frys i gynhyrchu'r is-ddeddfwriaeth. Ni wn faint o ymchwil sydd wedi ei wneud ar hynny na faint o ystyriaeth a roddwyd i'r pwynt hwnnw. Fodd bynnag, yn fy marn i, fel rhywun o'r tu allan, mae'n sicr yn ffactor y gall fod yn gyfrifol am rai o'r gwallau yn y fersiynau Cymraeg.

had reduced from 44 to 15 errors. Therefore, there was considerable improvement, which leads me to think that it is not a 'consistent failure'.

Having said that, we have to acknowledge that it has been a failure at times. There are a number of possible explanations as to why such failures or mistakes are made—or, at least, it appears as such to someone like me who is on the outside. A number of them relate to factors that I have already discussed, such as a lack of resources. The workload is heavy and it appears that if there is a lot of pressure on the legislative translation team, they will have to rush that work and therefore it is possible that errors will be made. I hope that I have made that point quite clear in the report.

Another point that I raise briefly in the report is the possible change in the timetable for the work of the legislative translation team and the lawyers who work in the Legal Services Department of the Assembly Government. Before the Government of Wales Act 2006 was enacted, it was the Assembly that made statutory instruments and they were approved by the Presiding Officer. For practical reasons, by and large, the Presiding Officer would sign statutory instruments on one day each week and everyone worked to the timetable of the office of the Presiding Officer. Since the Government of Wales Act 2006 was enacted, the Presiding Officer may not be quite as important as the fact that there are 12 Ministers. Therefore, it is possible that the legislative translation team and the lawyers are working to 12 different timetables rather than one. It is possible that, at times, that can lead to more pressure and greater haste in the production of subordinate legislation. I do not know how much research has been done on that or how much consideration has been given to that point. However, in my opinion, as someone from the outside, that could certainly be one of the factors responsible for some of the errors in the Welsh versions.

[113] **William Graham:** What are your views on co-drafting, which was referred to earlier as 'the Canadian model'?

[114] **Mr Jones:** Yn gyntaf, mae'n rhaid **Mr Jones:** First, I should acknowledge that

cydnabod fod ychydig amser wedi pasio ers i mi edrych ar gyd-ddrafftio mewn unrhyw fanylder. Wedi dweud hynny, o'r hyn yr wyf yn ei ddeall ac yn cofio am gyd-ddrafftio, fel y bu ichi ddweud yn gynharach, yr wyf yn gefnogol iawn o'r syniad. Fel rhywun o'r tu allan, credaf y byddai'n llwyddo i leihau'r nifer o wallau y mae'r pwyllgor hwn yn eu gweld—nid yn unig yn y fersiynau Cymraeg, ond hefyd yn y fersiynau Saesneg. Bu ichi grybwyll profiad Canada; mae rhai sydd wedi ymchwilio i gyd-ddrafftio yng Nghnada wedi nodi bod ganddo fanteision amlwg. Yr amlycaf, o'm safbwynt i, yw ei fod yn gwella—yn ôl eu profiad hwy—safon y ddeddfwriaeth yn yr ail iaith, hynny yw, yn Ffrangeg neu, yn ein hachos ni, yn y Gymraeg. Byddai, o bosibl, yn gwella fersiynau Cymraeg y ddeddfwriaeth oherwydd byddent yn cael mwy o sylw.

10.20 a.m.

[115] Hynny yw, wrth gyd-ddrafftio, mae'r fersiwn Gymraeg a'r fersiwn Saesneg yn fersiynau gwreiddiol—nid cyfieithiadau mohonynt—ac felly maent yn cael mwy o sylw. Dyna yw'r fantais gyntaf, sef bod y ddwy fersiwn—a'r fersiwn Gymraeg yn benodol, neu'r fersiwn Ffrangeg yng Nghnada—yn cael mwy o sylw ac felly ceir deddfwriaeth well yn yr ieithoedd hynny.

[116] Mae manteision ehangach a buaswn yn awgrymu bod manteision ar gyfer y fersiynau Saesneg hefyd, am resymau amlwg. Er enghraifft, yn hytrach na chael un drafftiwr yn gyfrifol am yr offeryn statudol, byddai gennych dîm, o ddau neu fwy, yn gweithio ar y ddwy fersiwn o'r offeryn statudol, ac felly, yn y pen draw, gall gyd-ddrafftio arwain at ddeddfwriaeth well yn y ddwy iaith. Dyna'r argraff a roddir gan yr ymchwil yng Nghnada, felly, yn hynny o beth, buaswn yn gefnogol i symud tuag at hynny pe bai'n bosibl.

[117] Trof yn awr at yr ochr negyddol i gyd-ddrafftio gan fod gwendidau hefyd. Y gwendid neu'r effaith negyddol fwyaf yw ei fod yn cymryd mwy o amser i baratoi deddfwriaeth, yn enwedig ar ddechrau'r broses honno. Pan mae'r broses yn newydd, wrth gwrs, fe fydd yn cymryd mwy o amser i baratoi'r ddeddfwriaeth. Mae hynny'n gwbl

some time has passed since I looked at co-drafting in any detail. Having said that, from what I understand and remember of co-drafting, as you said earlier, I am extremely supportive of the idea. As someone on the outside, I believe that it would succeed in reducing the number of errors that this committee sees—not only in the Welsh versions, but in the English versions. You mentioned the experience in Canada; some of those who have researched co-drafting in Canada have noted that it has obvious advantages. The most obvious, from my point of view, is that it improves—in their experience—the standard of the legislation in the second language, that is, in French or, in our case, in Welsh. It might improve the Welsh versions of the legislation because they would receive more attention.

That is, when co-drafting, the Welsh version and the English version are the originals—they are not translations—and therefore they are given more attention. That is the first advantage, namely that the two versions—and the Welsh version in particular, or the French version in Canada—receive more attention and therefore there is better legislation in those languages.

There are broader advantages, and I would also suggest that there are advantages for the English versions, for obvious reasons. For example, rather than having one draftsman responsible for the statutory instrument, you would have a team of two or more working on both versions of the statutory instrument, and therefore, ultimately, co-drafting can lead to better legislation in both languages. That is the impression that is given by the Canadian research, therefore, in that respect, I would support moving towards that if it were possible.

I will now turn to the negative side of co-drafting because there are weaknesses as well. The biggest weakness or negative effect is that it takes more time to prepare the legislation, particularly at the start of the process. When it is a new process, of course, it takes more time to prepare the legislation. That is quite natural and that must be

naturiol a rhaid cydnabod hynny. Felly, os bwriedir symud tuag at gyd-ddrafftio, rhaid sicrhau bod digon o amser yn cael ei ganiatáu er mwyn cyd-ddrafftio'n effeithiol.

acknowledged. Therefore, if you intend to move towards co-drafting, sufficient time must be allowed in order for there to be effective co-drafting.

[118] Wedi dweud hynny, a chydabod y pwynt negyddol hwnnw, gallaf hefyd roi gwrthddadl gerbron. Yn y pen draw, gallai cyd-ddrafftio arbed amser, yn enwedig amser y pwyllgor hwn, oherwydd pe bai safon y ddeddfwriaeth yn uwch, byddai llai o amser yn cael ei dreulio yn y pwyllgor hwn a phwyllgorau craffu mewnol eraill ar sylwi ar gamgymeriadau ac yn y blaen.

Having said that, and acknowledging that negative point, I can also introduce a counterargument. Ultimately, co-drafting could possibly save time, particularly the time of this committee, because if the quality of the legislation were better, this committee and other internal scrutiny committees would spend less time on errors and so on.

[119] **Joyce Watson:** Have you been able to identify any significant difference in the proportion of errors by subject or by policy area, or when the legislation follows a Whitehall draft, rather than being drafted from scratch here in Wales?

[120] **Mr Jones:** Yn anffodus, ni chefais yr amser i edrych mewn unrhyw fanylder ar ail hanner y cwestiwn hwnnw, hynny yw ar darddiad y ddeddfwriaeth. Felly, ni fyddai'n deg imi gynnig sylwadau ar pa un ai a os oes mwy o wallau mewn deddfwriaeth sy'n deillio o Whitehall neu o Frwsel. Ni fedraf ateb y cwestiwn hwnnw.

**Mr Jones:** Unfortunately, I did not have time to look in any great detail at the areas that you covered in the second half of your question, namely where the legislation emanates from. So, it would not be fair for me to comment on whether there are more errors in legislation emanating from Whitehall or Brussels. I cannot answer that question.

[121] O ran hanner cyntaf eich cwestiwn, mae'r patrwm fel y disgwylic. Hynny yw, mae'r offerynnau statudol y bu i'r pwyllgor ddarganfod gwallau ieithyddol ynddynt, o dan Reol Sefydlog Rhif 15.6 a Rheol Sefydlog Rhif 15.7, yn dod o'r adrannau polisi sy'n cynhyrchu'r nifer uchaf o offerynnau statudol. Mae mwy o wallau gan fod mwy o offerynnau statudol. Dywedaf hynny oherwydd imi edrych arnynt yn gyflym a gweld bod 14 o offerynnau statudol â gwallau ieithyddol wedi'u paratoi gan yr Adran Blant, Addysg, Dysgu Gydol Oes a Sgiliau. Yr Adran Iechyd a Gwasanaethau Cymdeithasol sydd nesaf ar y rhestr, gyda 10 offeryn statudol â gwallau ynddynt. Wedyn, daw'r Adran Materion Gwledig a'r Adran Economi a Thrafnidiaeth. Mae'r ystadegau gennyf yn y fan hon os oes ar rywun eu heisiau. Fel y dywedais, mae'r patrwm fel y byddai rhywun yn ei ddisgwyl; mae mwy o wallau yn ymddangos yn is-ddeddfwriaeth yr adrannau hynny sy'n paratoi'r mwyaf o is-ddeddfwriaeth.

On the first part of your question, the pattern is as one would expect. That is, the statutory instruments in which the committee has identified linguistic errors, under Standing Order No. 15.6 and Standing Order No. 15.7, are from the policy departments that produce the highest number of statutory instruments. There are more errors because there are more statutory instruments. I say that because I looked at these quickly and saw that the Department for Children, Education, Lifelong Learning and Skills has produced 14 statutory instruments that include linguistic errors. The Department for Health and Social Services is next on the list, with 10 statutory instruments containing errors. The next departments on the list are the Department for Rural Affairs and the Department for Economy and Transport. I have the statistics here if anyone wants them. As I said, the pattern is as one would expect; more errors appear in the subordinate legislation produced by those departments that produce the most subordinate legislation.

[122] **Jane Ryder:** Should it make any significant difference where the legislation

originates from, whether it is Westminster or Europe? If it is a matter of translating that legislation, should where it originated make a significant difference, or is it, in fact, as you mentioned earlier, the resources that are available to translate it that are the important?

[123] **Mr Jones:** Yn syml, ni ddylai tarddiad y ddeddfwriaeth neu'r is-ddeddfwriaeth wneud unrhyw wahaniaeth. Wedi dweud hynny, nid wyf yn gwybod a oes posibilrwydd bod deddfwriaeth a luniwyd yma yn wreiddiol yn cael mwy o sylw. Dyna pam y dywedais y byddai ychydig yn annheg i mi roi sylwadau gan nad wyf wedi cael cyfle i edrych ar hyn mewn unrhyw fanylder. Fodd bynnag, mae'n debyg mai dyna fyddai fy ateb, sef na ddylai fod unrhyw wahaniaeth ac y dylai'r cywirdeb fod yn gyson rhwng yr holl is-ddeddfwriaeth, waeth beth fo'i tharddiad. Ond, os oes mwy o wallau mewn deddfwriaeth sy'n tarddu o Frwsel a Whitehall—yr wyf yn rhagdybio yn y fan hon—mae'n bosibl y byddai hynny am fod mwy o sylw yn cael ei roi i is-ddeddfwriaeth sy'n deillio o Gymru. Wedi dweud hynny, mae modd i mi edrych yn ddyfnach ar hyn, os yw'r pwyllgor yn dymuno i mi wneud hynny.

**Mr Jones:** Basically, the provenance of the legislation or the subordinate legislation should not make a difference. Having said that, I do not know whether there is a possibility that legislation that is drawn up here is given more attention. That is why I said that it would be a little unfair for me to comment on this because I have not had an opportunity to look at it in any detail. However, it is likely that that would be my answer, namely that there should not be any difference and that the accuracy should be consistent across all subordinate legislation, whatever its provenance. However, if there are more errors in legislation that has been drafted in Brussels and Whitehall—I am making a presumption here—it is possible that that is because more attention is given to subordinate legislation drafted in Wales. Having said that, I could look into this further, if the committee wished me to do so.

[124] **Joyce Watson:** Is it possible to say whether or not legislation that has been consulted upon in draft is more accurate than legislation that has not been subject to consultation, or where there appears to have been a need for it to have been made very quickly? Is it different?

[125] **Mr Jones:** Unwaith eto, yn anffodus, oherwydd prinder amser, nid wyf wedi cael cyfle i edrych ar hyn mewn unrhyw fanylder. Eto, os yw'r pwyllgor yn dymuno i mi wneud hynny, gallaf gyflwyno tystiolaeth ysgrifenedig bellach. Yr unig bwynt y gallaf wneud yw ailadrodd i raddau yr hyn yr wyf wedi ei ddweud eisoes. Mae'n dilyn yn eithaf naturiol, ac yn synnwyr cyffredin i raddau, mai'r mwyaf o graffu mewnol neu graffu gan bwyllgor fel hwn sy'n gallu digwydd, y gorau oll fydd safon y ddeddfwriaeth. Mae hynny'n dilyn yn eithaf naturiol. Yr hyn oll y gallaf i ei wneud yw dweud hynny a'ch annog, os yn bosibl, i ymgynghori ar fwy o ddeddfwriaeth ar sail drafft. Ymddiheuraf nad wyf wedi cael cyfle i ateb y cwestiwn hwnnw'n llawn.

**Mr Jones:** Once again, unfortunately, because of time constraints, I have not had an opportunity to look at this in any detail. Again, if the committee wishes me to do so, I could present further written evidence. The only point that I can make is to repeat what I have already said to some extent. It follows quite naturally, and is common sense to some extent, that the more internal scrutiny or scrutiny by a committee such as this one that can occur, the better the quality of the legislation. That follows quite naturally. All I can do is say that and encourage you, if possible, to consult on more legislation during the draft stage. I apologise that I have not had an opportunity to answer that question in full.

[126] **Joyce Watson:** Would that be the same for drafting in English as well as Welsh?

[127] **Mr Jones:** Mae'n debyg y byddai. Po fwyaf o olygu a chraffu mewnol sy'n digwydd o fewn Llywodraeth y Cynulliad, gorau fydd safon y ddeddfwriaeth. Mae hynny'n sefyll i reswm, ac yr wyf yn gwbl

**Mr Jones:** That is likely. The more internal editing and scrutiny that takes place within the Assembly Government, the better the quality of the legislation. That stands to reason, and I am totally supportive of the

gefnogol i'r egwyddor a adlewyrchir yn eich cwestiwn. principle that is implicit in your question.

[128] **Joyce Watson:** You talk about the training required for legislative translators. Will you expand on the nature of the training that would be necessary and the balance that should be struck between academic expertise and practical training?

[129] **Mr Jones:** Fel y crybwyllasoch, dywedaf ychydig yn yr adroddiad am y posibilrwydd o greu cymhwyster priodol mewn cyfieithu cyfreithiol, ac mi fyddai hwnnw'n gymhwyster ôl-radd. Cydnabyddaf nad wyf mewn unrhyw ffordd yn arbenigwr ar gyfieithu cyfreithiol. Wedi dweud hynny, yr wyf yn ymwybodol bod ymchwil wedi cael ei wneud yn ddiweddar ar y posibilrwydd o greu cymhwyster o'r fath.

**Mr Jones:** As you mention, I say a little in the report about the possibility of creating an appropriate qualification in legal translation, and that would be a postgraduate qualification. I acknowledge that I am in no way an expert on legal translation. Having said that, I am aware that research has recently been undertaken into the possibility of creating such a qualification.

10.30 a.m.

[130] Cynhaliwyd prosiect ar y cyd rhwng adran gwasanaethau cyfreithiol Llywodraeth y Cynulliad a chanolfan datblygu addysg cyfrwng Cymraeg Prifysgol Cymru a oedd yn edrych ar y posibilrwydd o greu cymhwyster o'r fath. Mae adroddiad wedi ei ysgrifennu ynglŷn ag union gynnwys cymhwyster o'r fath. Nid wyf wedi gweld yr adroddiad hwnnw ond deallaf fod argymhelliad ynddo bod y cymhwyster hwn yn angenrheidiol maes o law i unrhyw un a fyddai'n dymuno bod yn rhan o dîm cyfieithu deddfwriaethol Llywodraeth y Cynulliad. Felly, mae trafodaethau wedi bod yn digwydd am hyn ond nid wyf yn gwybod beth yw cynnwys yr adroddiad terfynol ar hynny.

A project was run jointly between the Assembly Government's legal services department and the University of Wales's centre for the development of Welsh-medium education that looked into the possibility of creating such a qualification. A report has been written regarding the exact content of such a qualification. I have not seen that report, but I understand that it contains a recommendation that this qualification would be essential, in due course, for any person wishing to be part of the Assembly Government's legislation translation team. So, discussions have taken place about this, but I am not party to the contents of the final report on that.

[131] O'm safbwynt personol, mae'n bwysig cadw'r pwyslais ar yr ochr ymarferol. Dyna sydd bwysicaf. Wedi dweud hynny, os daw'r cymhwyster hwn yn angenrheidiol i unrhyw un sy'n dymuno gweithio yn y tîm cyfieithu deddfwriaethol, mae'r ochr academiaidd hefyd yn bwysig, hynny yw, y cefndir i ddatganoli yng Nghymru a chyfraith datganoli yng Nghymru. Mae hynny'n bwysig fel cefndir. Os datblygir y cymhwyster hwn, y bwriad yw iddo fod yn brosiect ar y cyd rhwng prifysgolion Cymru, hynny yw, rhwng ysgolion y gyfraith a'r adrannau iaith. Y gobaith yw y byddai'r adrannau iaith yn darparu'r hyfforddiant ymarferol ac y byddai adrannau megis ysgol y gyfraith ym Mangor

My personal point of view is that it is important to retain the emphasis on the practical side. That is what is most important. Having said that, if this qualification becomes essential for anyone who wishes to work in the legislation translation team, the academic side is also important, namely the background to devolution in Wales and devolution law in Wales. It is important to have that background. If this qualification is developed, the intention is for it to be a collaborative project between the universities of Wales, that is, between the schools of law and the language departments. It is hoped that the language departments would provide the practical training and that departments such as the school of law at Bangor would provide

yn darparu addysg mewn cyfraith gyfansoddiadol a hanfodion y gyfraith ac, yn bwysicach na dim, cyfraith datganoli yng Nghymru. Felly, mae angen sicrhau cydbwysedd, ond byddwn i'n rhoi mwy o bwyslais ar yr ochr ymarferol gydag ychydig o astudiaethau academaidd hefyd.

education in constitutional law and the fundamentals of law and, more importantly, devolution law in Wales. So, we need to find a balance, but I would place more emphasis on the practical side, with some academic studies too.

[132] **Janet Ryder:** In your examination of statutory instruments and our reports, you will have noted that a proportion are made bilingually but include effective provisions in English only because they amend earlier legislation, which was made in English only. Do you consider it important that legislation is consolidated bilingually?

[133] **Mr Jones:** Mewn byd delfrydol byddai'n dda pe bai modd gwneud yr holl is-ddeddfwriaeth sydd yn cael ei diwygio yn y Gymraeg. Hoffwn weld y ddeddfwriaeth yn cael ei chydgyfnerthu yn gyfan gwbl drwy gyfrwng y Gymraeg. Wedi dweud hynny, lle nad oes modd gwneud yr holl offeryn statudol o'r newydd drwy gyfrwng y Gymraeg, mae'n bwysig blaenoriaethu, hynny yw, canolbwyntio ar yr hyn y mae Llywodraeth y Cynulliad yn ei wneud yn ddwyieithog ar hyn o bryd, a'i wneud yn dda. Os nad yw'r adnoddau'n bodoli ar hyn o bryd i wneud pob darn o is-ddeddfwriaeth yn gywir, byddwn yn awgrymu peidio â dilyn y trywydd o wneud yr holl is-ddeddfwriaeth sy'n cael ei diwygio yn ddwyieithog a chanolbwyntio ar yr is-ddeddfwriaeth y mae Llywodraeth y Cynulliad yn ei gwneud yn ddwyieithog ar hyn o bryd. Dyna fy marn bersonol. Os nad oes adnoddau digonol, dylid canolbwyntio ar yr hyn sy'n cael ei wneud eisoes tan bod hynny'n symud tuag at berffeithrwydd, fel y dyfynnwyd ynghynt.

**Mr Jones:** In an ideal world, it would be good if it were possible to make all the amended subordinate legislation in Welsh. I would like to see the legislation consolidated entirely through the medium of Welsh. Having said that, where it is not possible to make the statutory instrument in its entirety anew through the medium of Welsh, it is important to prioritise, that is, to concentrate on what the Assembly Government currently does bilingually, and on doing it well. If the resources do not currently exist to make all subordinate legislation correctly, I would suggest that we should not go down the route of making all the subordinate legislation that is amended bilingually and that we should concentrate on the subordinate legislation that the Assembly Government makes bilingually at present. That is my personal opinion. If adequate resources do not exist, we should concentrate on what is already being done until that moves towards perfection, as quoted earlier.

[134] **Janet Ryder:** So, do I assume correctly that when matters such as breaking the 21-day rule need to be done quickly, in response to European or UK legislation, it is acceptable to put those through in English only?

[135] **Mr Jones:** Mae hwnnw'n gwestiwn difyr. Mae'r ateb yn dibynnu ar yr amgylchiadau unigol. Wrth wneud ychydig o waith ymchwil, sylwais fod y pwyllgor wedi gwneud pwynt adrodd o dan Reol Sefydlog Rhif 15.9 yn gymharol ddiweddar, lle yr oedd Llywodraeth y Cynulliad yn dweud bod gormod o frys ac nad oedd modd gwneud yr offeryn statudol yn ddwyieithog. Nododd y pwyllgor mai dim ond tua 548 o eiriau yr oedd angen eu cyfieithu. Ar yr achlysur hwnnw, fel yr wyf wedi nodi yn fy adroddiad, yr oedd yn ychydig o destun

**Mr Jones:** That is an interesting question. The answer depends on the individual circumstances. While doing a bit of research, I noticed that the committee had made a reporting point under Standing Order No 15.9 fairly recently, where the Assembly Government had said that there was too much urgency and that the statutory instrument could not be made bilingually. The committee noted that only around 548 words needed to be translated. On that occasion, as I noted in my report, it was a little concerning that the Assembly Government was unable to



pryder nad oedd modd i Lywodraeth y Cynulliad gyfieithu'r offeryn statudol, gan nad oedd yn ymddangos bod oedd cymaint o frys â hynny. Yr ateb syml yw ei fod yn dibynnu ar yr amgylchiadau, ac efallai fod yr enghraifft honno wedi achosi ychydig o bryder imi pan ddeuthum ar ei thraws.

translate the statutory instrument, as the urgency did not appear to be that pressing. The simple answer is that it depends on the circumstances, and perhaps that example concerned me a little when I came across it.

[136] **Janet Ryder:** Have you ever sought the answer to legal questions using texts that are only available in Welsh?

[137] **Mr Jones:** Fel rhywun sy'n darlithio neu'n addysgu o ddydd i ddydd, anaml iawn yr wyf yn mynd ati i ddatrys problemau cyfreithiol go iawn. Yr wyf yn defnyddio llawer o broblemau cyfreithiol damcaniaethol, ac yn y gorffennol yr wyf wedi rhoi ymarfer i ddsbarth cyfrwng Cymraeg i ddatrys problem gyfreithiol gan ddefnyddio testunau Cymraeg o'r offerynnau statudol y mae Llywodraeth y Cynulliad yn eu gwneud. Felly, yn y cyd-destun hwnnw, yr wyf wedi gwneud hynny, ond nid yn ehangach na hynny. Efallai ei fod yn gwestiwn y gall ymarferwyr ei ateb yn well nag ysgolhaig neu academydd.

**Mr Jones:** As someone who lectures or teaches from day to day, I rarely attempt to solve real legal problems. I use many hypothetical legal problems, and in the past I have set an exercise for the Welsh-medium class to solve a legal problem using Welsh texts of the statutory instruments that the Assembly Government produces. So, in that context, I have done so, but not in a wider context. Perhaps a practitioner could answer the question better than a scholar or academic could.

[138] **Janet Ryder:** Did that academic exercise throw up any examples where differences in translation or texts may be causing a problem?

[139] **Mr Jones:** Na, nid yw wedi gwneud hynny. Efallai fy mod wedi bod yn ofalus i chwilio am offerynnau statudol a oedd yn berffaith yn y ddwy iaith, ond fel dosbarth nid ydym wedi dod ar draws unrhyw anghysondebau felly yn y testunau yr wyf wedi eu defnyddio. Wedi dweud hynny, mae'n bosibl canfod gwallau o'r math hwn, ac mae enghreifftiau o wallau wedi eu nodi yn yr atodiad. Yr wyf yn addysgu cyfraith Ewrop, ac mae tudalen gyntaf yr atodiad yn sôn am SLC21—yr ydym yn mynd yn ôl gryn flynyddoedd. Mae gwall yn y cyfieithiad o '*his or her child or the child's spouse or civil partner*', sy'n golygu bod y fersiwn Cymraeg yn darllen 'ei blentyn neu blentyn ei briod'. Mae i hynny ystyr wahanol ac mae ganddo'r potensial i gyrraedd y llys.

**Mr Jones:** No, it did not. Perhaps I was careful in looking for statutory instruments that were perfect in both languages, but as a class we have not come across any such inconsistencies in the texts that I have used. Having said that, there is scope to find such errors, and examples of errors are included in in the annex. I teach European law, and the first page of the annex mentions SLC21—we are going back some years. There is an error in the translation of 'his or her spouse or the child's spouse or civil partner', which means that the Welsh version reads 'his or her child or the child of the person's spouse'. That has a different meaning it has the potential to reach court.

[140] **Janet Ryder:** Diolch yn fawr iawn. A oes gan unrhyw un gwestiwn arall? Gwelaf nad oes.

**Janet Ryder:** Thank you very much. Are there any other questions? I see not.

[141] It has been a really interesting session, and thank you very much for your contribution. A record will be sent to you of today's proceedings for correction—you cannot

add to it or take anything away. On the research that you mentioned, if you have that time or inclination to carry that out, we would very much welcome the sight of that research in the future.

10.40 a.m.

[142] **Diolch yn fawr iawn ichi am ddod** Thank you very much for coming today.  
heddiw.

[143] **Mr Jones:** Diolch ichi. Gobeithiaf **Mr Jones:** Thank you. I hope my visit has  
fod fy ymweliad wedi bod o ryw fudd. been of some benefit.

[144] **Janet Ryder:** That closes the evidence session, for today, on the inquiry that we are carrying out. The next witness is Jane Davidson, the Minister for Environment, Sustainability and Housing. We are running slightly ahead of schedule, and we could take a few minutes' break if Members are happy with that. Also, at the end of the session, when we have finished taking evidence from Jane Davidson, we could go into private session to sum up some of our thoughts from all of today's evidence, if Members are happy to do so. Specifically, we have the report on the Flood and Water Management Bill, which we are going to ask the Minister about. We have to have that report ready today. However, it would also be interesting to draw together some emerging themes from the evidence that we have taken today. We will take a five-minute break and reconvene when the Minister is here.

*Gohiriwyd y cyfarfod rhwng 10.41 a.m. a 10.48 a.m.  
The meeting adjourned between 10.41 a.m. a 10.48 a.m.*

**Ystyried y Mesur Seneddol ynghylch Rheoli Llifogydd a Dŵr—Tystiolaeth Lafar  
gan Jane Davidson AC, y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a  
Thai**

**Consideration of the Flood and Water Management Bill—Oral Evidence from  
Jane Davidson AM, the Minister for Environment, Sustainability and Housing**

[145] **Janet Ryder:** I would like to welcome Jane Davidson, the Minister for Environment, Sustainability and Housing to the meeting.

[146] I remind Members that we started looking at this Bill in April 2009, when the draft Bill was published, and then it was introduced to the House of Commons in November 2009. It takes forward some of the proposals introduced in the three previous strategy documents by the UK Government. It extends to England and Wales, and provides the power to commence the legislation in Wales, which will rest with the Minister. We considered the Bill at the meeting on 9 December, and we decided to invite the Minister to give oral evidence on the Bill. The Minister has also provided a briefing note to committee members. So, the purpose of our meeting today is to take oral evidence in relation to the Flood and Water Management Bill.

[147] Welcome, Minister. Please could you introduce the officials you have with you?

10.50 a.m.

[148] **The Minister for Environment, Sustainability and Housing (Jane Davidson):** I am very pleased to be with you here today to discuss the Flood and Water Management Bill, which, as Members will be aware, is currently before Parliament. In fact, it is being considered by a House of Commons committee today. That will be the ninth sitting for that Commons committee in consideration of this Bill, which is coming close to the end of its

parliamentary process. I will also be attending the National Assembly for Wales Sustainability Committee this afternoon to discuss the policy implications of the Bill.

[149] Essentially, as our climate changes, bringing increases in the volume and intensity of rainfall, rising sea levels and increased storminess, we know that we will have more frequent and severe flooding events. Coupled with intensified coastal erosion, that means that we need to move from a traditional defence-dominated approach to one that embraces a range of risk-management options. That is the driving purpose of the flood and coastal erosion risk-management provisions in the Bill. These amend existing legislation to ensure that we and other risk management authorities in Wales have the powers that we need to tackle risks and protect our communities.

[150] The Bill also includes provisions in respect of water management, addressing the impacts of climate change on our water supplies and updating legislation in key areas. Those changes are important to enable effective water management and the appropriate regulation of the industry in Wales. There is a range of such provisions in the Bill: requirements for the preparation of national and local strategies on flood risk, setting out the risks and our policies for managing them; powers to designate features that contribute towards flood and coastal erosion risk management; powers to undertake work on flood and coastal erosion risk management; new legislation for sustainable drainage systems; legislation updating the reservoir safety regime, and the arrangements for temporary bans on water use in drought conditions; changes to the special administration regime for water, to bring it in line with other utility companies; and the introduction of a concessionary charging regime for surface water drainage.

[151] The response of the consultation on the Flood and Water Management Bill and the report from the Sustainability Committee's inquiry into the Bill have been reflected in its drafting. We have worked closely with the UK Government on the development of the Bill to ensure that it reflects Welsh priorities and provides the appropriate functions for the Welsh Ministers. In some cases, Welsh policy is the same as in England, but in others there are differences, so there is specific provision for Wales in the Bill, as well as a range of secondary legislative provisions that allow us to tailor provision further to the changing needs of Wales over time.

[152] **Janet Ryder:** Could you please introduce your officials, Minister, just so that we have their names on the record?

[153] **Jane Davidson:** I will ask them to introduce themselves.

[154] **Mr Jones:** My name is Pete Jones, and I am the head of flood and coastal erosion risk management in the Climate Change and Water Division.

[155] **Ms James:** I am Nia James, a member of the environment, planning and countryside team in the Legal Services division.

[156] **Ms Thomas:** I am Nicola Thomas, the head of the water policy branch in the Climate Change and Water Division.

[157] **Mr Yates:** I am Neil Yates of Legal Services, also a member of the environment, planning and countryside team.

[158] **Janet Ryder:** Thank you, and thank you for your introduction, Minister. During pre-legislative scrutiny of the draft Bill, the Environment, Food and Rural Affairs Select Committee recommended that, rather than introduce a slimmed-down version of the Bill, the Government should adhere to Sir Michael Pitt's recommendations for a proper, consolidating

Bill. What is your view of the committee's recommendation?

[159] **Jane Davidson:** The important agenda for us was to ensure that the critical provisions relating to changes and arrangements, as suggested by Sir Michael Pitt, including changes in responsibility, came through in legislation as quickly as possible. There was no opportunity for anything more than a slimmed-down Bill, and we have worked closely with the UK Government to ensure that the Bill currently before the House can address the structural problems with the existing legislation. I am hopeful that a proper consolidating Bill will come forward in due course, and I hope that we will see it post the general election. I was keen to ensure that some of the current problems in relation to flooding, such as the lack of recognition of surface water in existing legislation, were dealt with now in this Bill.

[160] **Janet Ryder:** So, you expect a further Bill to come forward in due course from Westminster.

[161] **Jane Davidson:** If my party remains in Government, there will certainly be a consolidating Bill. However, I hope that there would be a consolidating Bill regardless, because we need to make sure that all these issues are bottomed out and that the legislation comes forward as Sir Michael Pitt proposed. We take the opportunity that is here.

[162] **Janet Ryder:** I want to press you a little more on that. You have clearly had detailed discussions with Westminster, so how have you influenced the content of the revised Bill?

[163] **Jane Davidson:** We have detailed discussions with colleagues in the UK Government on any piece of legislation that affects Wales, but, on this one, as I have said in the paper that I gave to committee, there has, at times, been daily contact between the policy and legal teams to cover all aspects of the Bill. The members of the executive panel that oversees progress on the Bill on a weekly basis have frequent telephone and video-conferences and regular face-to-face meetings in London and Cardiff, and they also participate in the joint Bill training. So, the policy officials and legal representatives of the Welsh Assembly Government have had a very close relationship in taking this agenda forward. [*Interruption.*]

[164] **Janet Ryder:** I must apologise, as there seems to be a sound coming from somewhere outside this room. Let us carry on and hope that we can solve the problem somehow. I now call on Mike.

[165] **Michael German:** What legislative power competence, if any, will come to the National Assembly for Wales as a result of this Bill?

[166] **Jane Davidson:** Although we always seek to obtain legislative competence from every primary legislative opportunity as a matter of standard policy, the way forward is made on a case-by-case basis with the UK Government. For this Bill, because it is a slimmed-down Bill and because it is moving forward on a specific number of areas, obtaining executive powers directly for the Welsh Ministers will enable us to take immediate action on those responsibilities. As I have done in the Proposed National Assembly for Wales (Legislative Competence) (Environment) Order, I have sought legislative competence alongside the areas of executive responsibility to Ministers. However, if further opportunities arise following a consolidating Bill, for example, I hope that we could seek legislative competence. However, this Bill does not provide that.

[167] **Michael German:** This Bill does not give any competence to the National Assembly for Wales, only executive competence to Ministers. Did you or your officials have any discussions to see whether you could acquire legislative competence for the National Assembly for Wales in this Bill?

[168] **Jane Davidson:** Our starting basis is always to see whether legislative competence can come alongside the executive competence, as I said. That is how the Assembly Government likes to do business, because it is much easier doing it in the Bill at the outset than seeking legislative competence for the functions later.

[169] **Michael German:** So, there was a discussion between you, your officials and Whitehall officials to seek legislative competence for the National Assembly.

[170] **Jane Davidson:** Yes, and we were told very early on that, because of the need to deliver a slimmed-down version of the Bill, the focus would be on the traditional, with the Bill giving executive competence.

[171] **Michael German:** Where would you have sought that legislative competence, if you could have had it?

[172] **Jane Davidson:** As I have said, the broad principle of the Assembly Government is to seek legislative competence that reflects executive competence. That is the position from which I started.

[173] **Michael German:** Right. You were told early on that you could not have it so you decided not to pursue it.

[174] **Jane Davidson:** At this point, yes. As I said in my introduction—and I think that it is important for Members to take this fully into account—there are such major flaws in the existing legislation, particularly relating to flooding, that it was critical to have the executive competence to put the appropriate arrangements in place, following the floods in 2007 and the identification of those legislative issues.

[175] **Michael German:** So, I assume that we will have to wait for Schedule 7 to come into force because I presume that that will give the legislative competence required. Schedule 7 will provide the additional competence.

[176] **Jane Davidson:** My assumption is that that would be the case.

[177] **Michael German:** Sorry, but could I have a ‘yes’ or a ‘no’ answer, rather than nodding?

[178] **Jane Davidson:** Sorry. I always look to the lawyers for confirmation. [*Laughter.*]

11.00 a.m.

[179] **Mr Yates:** I am not certain that we would have to go through Schedule 7.

[180] **Michael German:** No, but Schedule 7 would provide the legislative competence.

[181] **Mr Yates:** Without having a copy of the Schedule in front of me, I could not definitely say, but I think that it is likely.

[182] **Michael German:** Would it be possible to have a short note, saying ‘yes’ or ‘no’ to that question?

[183] **Mr Yates:** Of course.

[184] **Michael German:** Thank you. My question could be easily directed towards clauses

8(1) and 8(2) and 10(4), which basically prescribe what the strategy must contain, and there would be no way in which the National Assembly could prescribe what the strategy could contain at the present moment. That is the issue that I was looking at.

[185] I will move on to the powers of the Environment Agency. In clause 7, the Environment Agency in England is given a duty to monitor the application of the national flood and coastal erosion risk management strategy, but there is no such duty on Welsh Ministers. Could you explain why that is the case?

[186] **Jane Davidson:** Effectively, what has happened in England is that the Ministers are delegating the responsibility for the delivery to the Environment Agency, and we are not doing that in Wales. That is why the Bill reflects the different arrangements in the two countries. The Assembly Government will set out detailed plans for monitoring the effectiveness of the strategy and for updating it in the statutory guidance required under clause 8 of the Bill. The Environment Agency will, of course, have a major role in the delivery of the agenda and its existing monitoring role will inform Welsh Ministers in the context of the ‘reporting to Welsh Ministers’ function under clause 18 of the Bill. However, the implementation strategy will fall to a number of risk management authorities across Wales. In addition to any monitoring that the Environment Agency would do—and we do that ourselves through our own officials, in the same way as we monitor all strategies—I would also expect progress on implementation to be a regular item in our discussion with those authorities.

[187] **Michael German:** I understand the good intention, and I do not question that at all; I just find it strange that there is no requirement on Ministers to monitor the strategy, although I would expect you to do so, but there is no requirement. Why is there no requirement on you or on any subsequent Ministers to monitor the strategy when there is such a duty for the Minister in England?

[188] **Jane Davidson:** It is not for the Ministers in England, but for the Environment Agency. That is a critical issue. It reflects the fact that what we operate in Wales—and this is very much with the Assembly in mind—is the principle that national priorities will be laid by Government and will be monitored and scrutinised through the normal arrangements, through the Assembly. There will be a period of review in terms of the delivery of the national strategy, which is required to be laid before the Assembly, and it will be reviewed every six years. Each time the review is completed and the national strategy revised, the revised strategy is, once again, laid before the Assembly. So, we have our normal arrangements for doing business in Wales.

[189] **Michael German:** Clause 8(7) states that

[190] ‘Welsh Ministers must lay the strategy before the National Assembly for Wales.’

[191] Laying a strategy does not require any revisions—we cannot provide a strategy except through an amendable position. What do you think the arrangements—following the laying of a strategy—would mean for the Assembly’s ability to amend the strategy?

[192] **Jane Davidson:** Our understanding of this is that every time the strategy is revised, that would then be laid before the Assembly. In a sense, the extant strategy has to be the strategy that is laid before the Assembly.

[193] **Michael German:** So, it is every time you make a revision.

[194] **Jane Davidson:** Yes, every time a revised strategy is produced, it would become the national strategy and therefore would be laid.

[195] **William Graham:** Under clause 10, there is no requirement in England for flood or coastal erosion risk management strategies to be submitted to Ministers. In Wales, these strategies have to be submitted to Welsh Ministers. Could you outline the reason for the difference in approach?

[196] **Jane Davidson:** Once again, it is about ensuring that if we were to have a national strategy for Wales drafted following consultation by the Assembly Government and then laid before the National Assembly for Wales, it is essential that the local strategies complement it. One of the big issues in this debate has been whether different organisations are pursuing different policy objectives through different arrangements, as it were. We need therefore to ensure that the local strategy complement the national strategy, which will be prepared by the Welsh Minister. So, under clause 10, we ensure a link between the national strategy, produced by the Welsh Assembly Government, and the local strategies, produced by local authorities. Those local authorities' strategies will, therefore, be submitted and assessed by Welsh Ministers in exactly the same way as we assess other aspects of local authority strategies and their relationship with national objectives.

[197] **William Graham:** Turning to clause 15, could you tell us why there is no limit on the maximum amount at which the fine can be set? Given the potential effect on an authority of a substantial rise in the current maximum amount, would the affirmative procedure not be a more appropriate way to change the penalty?

[198] **Jane Davidson:** I can understand that the issue of when it is appropriate to use the affirmative or the negative procedures will exercise committee members, because a large number of areas are process driven or technically driven in content in clauses where the proposition is to use the negative procedure. Where there are policy or content changes, however, the policy is to use the affirmative procedure. In the context of this particular clause, although there is no upper limit for the fine, any changes in the level of the penalty are likely to be very small, and it does not seem to be an effective use of Assembly time to require a debate on each change. Also, we would consult on any regulations made to change the level of the penalty. That is why the proposition is to make the regulations subject to the negative resolution procedure. That means that any Member can, in fact, require a debate if there are sufficient concerns. We in Government would have to ensure—and we would—that the negative resolution procedure still requires all Members to be notified, so notification would still take place, and on that basis, any concern could be raised.

[199] **Janet Ryder:** Is there an upper limit to how high the fine can be set?

[200] **Jane Davidson:** My understanding is that there is no upper limit for such a fine.

[201] **Janet Ryder:** An upper limit has not been set. Thank you.

[202] **William Graham:** Clause 18 requires the Environment Agency to report on flood and coastal erosion risk management to Welsh Ministers who may, by way of regulations, specify the times or intervals of the report being made and the information it should contain. Is there any reason why a reporting structure could not have been set out on the face of the Bill?

[203] **Jane Davidson:** Once again, William, it is a process issue for how the reporting structure operates. If it were on the face of the Bill—we are in new territory here—and it was then found not to be fit for purpose, it would involve a major change. What we have tried to do, particularly in the context of the slimmed down Bill, is to ensure that there is an opportunity to set up the appropriate structures for the appropriate delivery, and not to set in stone inflexible arrangements that would not be appropriate for the future.

[204] **William Graham:** Clause 29 gives Welsh Ministers the power to amend the Bill, or any other Act, by Order to reassign the responsibilities of local flood authorities—the wonderfully named Henry VIII powers. These are very wide ranging. Can the Minister explain why they are needed?

[205] **Jane Davidson:** The divisions of responsibilities set out in the Bill have been discussed and considered with stakeholders as being appropriate and effective at this point. However, we are moving into some potentially very different territory in the context of flooding and coastal erosion. We are therefore concerned that these decisions may need to be altered in the light of experience or in the face of changes and circumstances, which might alter the bodies best placed to manage either flood or coastal erosion risks and the functions that they have to manage them.

11.10 a.m.

[206] This issue was raised by the Westminster Environment, Food and Rural Affairs Committee in its pre-legislative scrutiny, and this provision allows for such a reassignment of functions. This is a completely different area of responsibility and import from the previous clauses that we have discussed, and that is why this Order would need to be made by affirmative resolution, which recognises the scope of the power and the need to provide the National Assembly for Wales with the opportunity to scrutinise debate and vote on any proposed changes to the allocation of responsibility.

[207] **Joyce Watson:** Moving on to clause 30, it introduces Schedule 1 to the Bill, which allows authorities, such as the Environment Agency, local councils and integral drainage boards, to designate certain structures or features that affect flood or coastal erosion risk. Once designated, a person may not alter, remove or replace the feature without consent of the authority. Paragraph 15 provides that the Welsh Ministers must make regulations providing for a right of appeal, to which the negative procedure will apply. Given the Government's response to the pre-legislative scrutiny of the draft Bill, can the Minister confirm why it was ultimately decided that regulations made under paragraph 15 in Schedule 1 are to be made by way of the negative procedure?

[208] **Jane Davidson:** In a sense, it is the same issue again, because paragraph 15 provides that Welsh Minister may make regulations providing for the right of appeal. The issue is that there is a right of appeal—we must comply with our human rights obligations in that sense. I have been reassured by our legal advisers sitting at the table that in all of those appeal mechanisms, which will be developed subsequent to the passing of the legislation, we would be mindful of our human rights obligations. So, the issue is not whether or not there is a right of appeal, but how the right of appeal is executed. That is why the proposition is for it to operate under the negative procedure.

[209] **Joyce Watson:** Okay. Clause 32 in Part 2 introduces Schedule 3, on sustainable drainage. Paragraph 14 requires Welsh Ministers to make an Order to provide for the enforcement of the requirement for approval under this schedule. The Order can be used to make provision for taking enforcement action in cases where construction starts without approval of its drainage system, where any of the conditions of that approval are breached, or where construction of the drainage system does not follow the approved proposals. Given the potential effect of sanctions under Schedule 3(14), why is the regime not clear on the face of the Bill?

[210] **Jane Davidson:** There is a range of issues here in the elements around sustainable drainage. From your policy position of strongly supporting sustainable urban drainage approaches, you will appreciate that there must be powers of enforcement. Those enforcement



measures may need to change over time, as knowledge and understanding of the approval process develops. It will also allow enforcement provisions to be tailored over time to ensure that they are effective without imposing a disproportionate burden on developers. Therefore, it is appropriate to see the precise nature of those provisions in secondary legislation. If it would be helpful to the committee, the powers of enforcement envisaged are similar to those in the Town and Country Planning Act 1990.

[211] **Joyce Watson:** That is helpful, because I was going to ask whether you could confirm the enforcement regime intended.

[212] **Jane Davidson:** We will be consulting on the details as appropriate, but I thought that that would be helpful in terms of looking at similar enforcement measures.

[213] **Joyce Watson:** Clause 36 replaces section 76 of the Water Industry Act 1991, with a similar power to allow water companies to temporarily prohibit or restrict specific uses of water that is supplied by that undertaker. The new section 76(3) will enable the Welsh Ministers to add other uses of water to the list in section 76(2), thus extending the water undertakers' powers. What specific uses of water does the Minister envisage such regulations covering?

[214] **Jane Davidson:** Issues around water are incredibly complex, not least because a number of aspects of our powers in relation to water are exercised by water companies whose supplies are wholly or mainly in Wales, so these issues do not even follow geographical boundaries. However, as to how we would look to exercise the powers, much depends on the water situation at the time as to whether the Orders might need to be specific about a location, because some areas might be more water stressed than others, and the effectiveness of other mechanisms for conserving water supplies at that time. So, those issues would need to be taken into account. Limiting the types of uses on the face of the Bill would severely restrict our flexibility to manage this important resource during times of shortage. We are already seeing massive differences across the UK with water shortages in the south-east of England, compared with Wales. Limiting the regulations at this point would be unhelpful if we need to be flexible and quick to deliver in this area.

[215] **Janet Ryder:** Are you satisfied with that answer, Joyce? I see that you are. To move on to a more general aspect, Minister, can you confirm the timetable for bringing forward the consolidation of the legislation applying to flood and water management?

[216] **Jane Davidson:** I do not think that one can ever confirm a timetable for legislation when a general election is in the offing. I can continue to affirm that, from the Assembly Government's perspective, we considered that the provisions in the full consultation in autumn 2009 on the draft Bill needed implementation and we were fully behind that. Therefore, we will continue to promote to the new Government that that should be the case.

[217] **Janet Ryder:** Can you confirm whether there is still an opportunity to amend this particular Bill as it progresses through the House of Lords?

[218] **Ms James:** There is a limited opportunity, but we would have to have a good reason to put forward an amendment at this stage.

[219] **Janet Ryder:** Clauses 44 and 34 appear to provide you, Minister, with a veto on any legislation that is recommended by the Secretary of State, even if it were only to apply to England or water companies that operate wholly or mainly in England. Can you confirm whether that is the case?

[220] **Jane Davidson:** Yes, it is the case.

[221] **Janet Ryder:** Would you like to expand on that?

[222] **Jane Davidson:** It has been important that the Secretary of State should seek Welsh Ministers' consent before exercising powers. Clause 34 introduces amendments to the special administration regime and several subordinate legislation-making powers are conferred upon the Secretary of State. These relate principally to the application of insolvency legislation to that regime. That is not devolved, although aspects of the special administration regime are. So, it was considered inappropriate to confer the subordinate legislation-making powers on Welsh Ministers, but we wanted to retain a degree of control, so we required the consent of Welsh Ministers.

[223] **Janet Ryder:** I would like to take you back to clauses 38 and 39. I understand that no appeals process is built into clauses 38 and 39, but clause 38(8) and clause 39(12) require the Welsh Minister to make an Order applying the compulsory purchase, powers of entry and compensation provisions of the Water Resources Act 1991 to those sections. Are you able to confirm whether an appeals process will be built into any order via clause 38(8)?

11.20 a.m.

[224] **Jane Davidson:** Once again, the issue is that we must ensure that we comply with our human rights imperators. Nia, do you want to add anything?

[225] **Ms James:** In the time available, we are unable to take you through exactly how this provision would work, but essentially the provisions in relation to compulsory purchase, powers of entry and compensation, which are already in the Water Resources Act 1991, and which also build on the powers in the Compulsory Purchase Act 2004 and the Acquisition of Land Act 1981, will help to ensure that landowners and occupiers of land are treated fairly. There are all sorts of processes in there, and in the event that an Order would be made under this provision, we would ensure that the European Convention on Human Rights is fully complied with.

[226] **Jane Davidson:** It is probably worth pointing out to Members that some amendments have been tabled on this clause in the committee stage at the House of Commons, and that some of those are in relation to the appeals process. It is to be hoped that our colleagues in Westminster will discuss these clauses this afternoon.

[227] **Janet Ryder:** So we may well see an appeals process coming through. More generally with regard to an appeals process, will you confirm why the appeals provisions could not have been set out on the face of the Bill, and why the negative procedure for this has been used in each case?

[228] **Jane Davidson:** The matters that the regulations may prescribe are limited to setting out who the appeal authority is and the procedure to be followed. The details of the regulations are not important to the extent that they cannot affect the fundamental right of people to pursue an appeal. The regulation-making power makes it clear that a right of appeal must be available at all times. So that is why we are where we are with that process, but as I say, in the context of further discussions to enshrine that right of appeal, we may end up with a different resolution.

[229] **Janet Ryder:** So we may see that still coming through.

[230] **Jane Davidson:** Until the Commons finishes its deliberations, we will not know what final amendments have been accepted by Government in this context.

[231] **Janet Ryder:** Do Members have any further questions? I see that they do not. Minister, is there anything further that you would like to add?

[232] **Jane Davidson:** No. Thank you very much.

[233] **Janet Ryder:** Thank you very much for coming and giving evidence. There will be a transcript for you to check for accuracy. Thank you for your time.

[234] We do not have any other business. The next meeting of this committee will be on 29 January.

### **Cynnig Trefniadol Procedural Motion**

[235] **Janet Ryder:** In order to draw up the recommendations, I propose that

*the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 10.37(vi).*

[236] **Janet Ryder:** I see that the committee is in agreement.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11.23 a.m.  
The public part of the meeting ended at 11.23 a.m.*