



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

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

**Dydd Iau, 28 Ionawr 2010
Thursday, 28 January 2010**

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

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Alun Davies	Llafur Labour
Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Rhodri Morgan	Llafur Labour
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others in attendance

Jeff Godfrey	Cyfarwyddwr yr Adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Director of Legal Services Department, Welsh Assembly Government
Alun Jenkins	Pennaeth Tîm Rheoli Deddfwriaeth, Llywodraeth Cynulliad Cymru Head of Legislation Management Team, Welsh Assembly Government
Elisabeth Jones	Dirprwy Gyfarwyddwr yr Adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Deputy Director of Legal Services Department, Welsh Assembly Government

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

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

Dechreuodd y cyfarfod am 8.59 a.m.
The meeting began at 8.59 a.m.

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

[1] **Janet Ryder:** I welcome Members and members of the public to this meeting of the Subordinate Legislation Committee and remind you that, in an emergency, ushers will indicate the nearest safe exit. Headsets are available for translation and amplification of sound and ushers can explain how they are used if anyone needs an explanation. I remind Members to switch off all mobile devices completely. We have received no apologies for absence; I know that Alun is on his way and will be joining us later.

9.00 a.m.

Offerynnau Na Fydd y Cynulliad yn Cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reolau 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)
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[2] **Janet Ryder:** We have SLC382, the Control of Salmonella in Turkey Flocks (Wales) Order 2010, and SLC383, the M4 Motorway (Junction 24, Coldra Interchange, Newport) (40 MPH Speed Limit) Regulations 2010. Gwyn, do you have a comment on these?

[3] **Mr Griffiths:** Dylwn ddweud gair ynglŷn â SLC383. Nid yw'r pwyllgor hwn fel arfer yn edrych ar Orchmynion sy'n ymwneud â therfynau cyflymder, ond mae'r Gorchymyn hwn yn achos arbennig oherwydd ei fod yn ymwneud â chyflymder mewn darn cyfyngedig o'r draffordd. Felly, mae'r Ddeddf yn dweud bod y broses negyddol yn berthnasol ac, oherwydd hynny, mae'n dod i'r pwyllgor, er mai Gorchymyn yn ymwneud â mater lleol iawn yw—mae'n delio ag ychydig ganllathau o'r draffordd a'r ffyrdd sy'n ymuno ac yn gadael y draffordd yn unig. Dyna paham ei fod o'ch blaen, yn groes i'r patrwm arferol.

Mr Griffiths: I should say a few words about SLC383. This committee does not usually look at Orders relating to speed limits, but this Order is a special case because it relates to a speed limit in a limited area of the motorway. So, the Act states that the negative procedure applies and, because of that, it comes to the committee, although it is an Order relating to a very local matter—it deals only with a few hundred yards of the motorway and slip roads. That is why it is before you today, contrary to the usual pattern.

[4] **Janet Ryder:** Does anyone have any comments? William?

[5] **William Graham:** No, there is no problem.

[6] **Janet Ryder:** Okay. Therefore, are Members content to accept those? I see that you are.

9.01 a.m.

Offerynnau y bydd y Cynulliad yn cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reolau Sefydlog Rhif 15.2 a/neu 15.3, ac Offerynnau sy'n Agored i Gael eu Dirymu yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
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[7] **Janet Ryder:** Gwyn, I understand that there is an issue with SLC373, the Assembly Learning Grants (European University Institute) (Wales) Regulations 2009.

[8] **Mr Griffiths:** Mae un pwynt sylfaenol yma, sef bod y croesgyfeiriadau'n anghywir. Fel y gwelwch, mae'r Llywodraeth wedi derbyn hynny ac wedi cytuno i'w cywiro o fewn chwe mis neu cyn diwedd Medi.

Mr Griffiths: There is one fundamental point here, namely that the cross-references are incorrect. As you can see, the Government has accepted that and has agreed to correct them in six months or before the end of September.

[9] **Janet Ryder:** A yw pawb yn hapus gyda hynny? Gwelaf eich bod. **Janet Ryder:** Is everyone happy with that? I see that you are.

[10] We move on to SLC375, the Official Feed and Food Controls (Wales) Regulations 2009. Are there any issues with these, Gwyn?

[11] **Mr Griffiths:** Mân wallau drafftio sydd yma hefyd. Yn yr achos hwn, fel yn yr achosion dilynol, mae'r Llywodraeth wedi dweud y bydd yn eu cywiro ar y cyfle cyntaf, ond nid yw'n manylu ar ba bryd. Yr ydym wedi cael sgwrs gyda swyddogion y Llywodraeth ac wedi dweud wrthynt bod y pwyllgor yn disgwyl cael rhywbeth ychydig yn fwy pendant. Felly, mae'r Llywodraeth wedi cytuno dychwelyd at batrwm yr adroddiad blaenorol, sef ei bod yn rhoi dyddiad i'r pwyllgor o ba pryd y gall ddisgwyl y bydd y cywiriadau wedi'u gwneud. **Mr Griffiths:** There are minor drafting errors here also. In this case, as in the following cases, the Government has stated that it will correct them at the first opportunity, but does not specify when. We have had a discussion with Government officials and have told them that the committee expects something a little more specific. So, the Government has agreed to return to the pattern in the previous report, which is for it to give a date to the committee for when it can expect these corrections to have been made.

[12] **Janet Ryder:** A yw pawb yn hapus gyda hynny? **Janet Ryder:** Is everyone content with that?

[13] **Rhodri Morgan:** Sorry, I did not catch that.

[14] **Janet Ryder:** Is everyone happy with the points to note on this matter, and that the Government has accepted those points and will correct them in time and will report back to committee?

[15] **Rhodri Morgan:** Nid oeddwn yn hollol glir ynghylch yr hyn yr oedd Gwyn yn ei ddweud. A ddywedasoed bod gwall yn y Saesneg a'r Gymraeg, neu bod anghysondeb rhwng y Gymraeg neu'r Saesneg, neu beth? **Rhodri Morgan:** I was not exactly clear about what Gwyn just said. Did you state that there was an error in the English and the Welsh, or that there were inconsistencies between the Welsh and English, or what?

[16] **Mr Griffiths:** Mae tri phwynt yn codi. Mae'r cyntaf yn wall cyffredin, sef bod cyfeiriad at Lundain nad yw'n berthnasol. Gwahaniaeth rhwng y Gymraeg a'r Saesneg yw'r ail, ac mae'r trydydd yn wall sy'n berthnasol i'r ddwy iaith. **Mr Griffiths:** Three points arise. The first is a common error, which is that there is a reference to London that is irrelevant. The second is a difference between the Welsh and English texts, and the third is an error that relates to both languages.

[17] **Michael German:** Do you think that it would be sensible to keep a record of when the Government states that it is going to revise? We would then know when it was going to revise, could tick it off the list when it was done, and know the sort of time delay.

[18] **Janet Ryder:** We have spoken about this in the past with the committee clerk. Perhaps we need to keep a record and track revisions and perhaps include a report to committee on them in around six months' or a year's time. There have been instances when the Government has responded and said that it will correct at the most appropriate time or at the next opportunity and sometimes that has been a couple of years. You are right that we need to keep an eye on what we have drawn to the Government's attention and on what it has said that it will do. So, if the committee is content, we will keep a record of those and track

them.

[19] **Michael German:** If it said ‘at the earliest opportunity’, then ‘early’ does not mean a couple of years to me.

[20] **Janet Ryder:** That is why we will keep an eye on that. We now move onto SLC376, the Food (Jelly Mini-Cups) (Emergency Control) (Wales) Regulations 2009. I think that it is a wonderful piece of legislation, but, Gwyn, there is an issue with these, is there not?

[21] **Mr Griffiths:** Oes. Unwaith eto, mae mân gywiriadau i’w gwneud. Mae anghysondeb yn y derminoleg. Gelwch fod cyfeiriad yn y Gymraeg at ‘jeli cwpan fach’ a ‘jeli cwpanau bach’ ym mhobman arall. Hefyd, fel yn y Gorchymyn blaenorol lle’r oedd cyfeiriad at Lundain nad oedd yn berthnasol—porthladd Llundain yn yr achos hwnnw—yn yr achos hwn y mae cyfeiriad at siroedd metropolitanaid. Nid ydym erioed wedi cael y rheini yng Nghymru. Eto, oherwydd yr arfer o addasu deddfwriaeth sydd wedi’i ddrfftio yn gyntaf yn Llundain, mae rhywbeth sy’n amherthnasol wedi’i gynnwys.

Mr Griffiths: Yes. Once again, there are some minor corrections to be made. There are inconsistencies in the terminology. You will see that there is reference in the Welsh to ‘jeli cwpan fach’, singular, in one place and to ‘jeli cwpanau bach’, plural, everywhere else. Also, as in the previous Order, where there was a reference to London that was irrelevant—the London port in that case—in this case there is a reference to metropolitan counties. We have never had those in Wales. Again, because of the practice of adapting legislation first drafted in London, something that is irrelevant has been included.

[22] **Janet Ryder:** For me, this demonstrates exactly some of the points that Dewi Llŷr Jones made in his evidence last week, about the problems that can occur when we have cut-and-paste legislation and legislation that is a translation of legislation drawn up in England. This is a good example of that, referring to bodies that do not exist in Wales, as well as the translation issue. Are Members content with the explanation given by Gwyn?

[23] **Mr Griffiths:** Efallai y dylwn ychwanegu bod y pwynt olaf yn un pwysig dros ben. Mae’n ymwneud â’r gosb y gall llys ei roi. Mae un yn dweud mwy na thri mis a’r llall yn dweud llai na thri mis.

Mr Griffiths: Perhaps I should add that the final point is a very important one. It involves the punishment that a court can impose. One states more than three months and the other states less than three months.

[24] **Michael German:** Make sure that you are tried in Wales. [*Laughter.*]

[25] **Mr Griffiths:** Mae’n bwysig bod hynny’n cael ei ddatrys yn gyflym.

Mr Griffiths: It is important that that should be solved as quickly as possible.

[26] **Janet Ryder:** Beth y mae’r Llywodraeth wedi ei ddweud?

Janet Ryder: What has the Government said?

[27] **Mr Griffiths:** Bydd yn cywiro ar y cyfle cyntaf posibl.

Mr Griffiths: It will correct at the earliest possible opportunity.

[28] **Janet Ryder:** That is one that we must track. Perhaps we need to write to the Government again, to point out that that definitely needs to be corrected sooner rather than later. Are Members content with that? I see that you are.

[29] We now move onto SLC381, which is the Private Water Supplies (Wales) Regulations 2010.

[30] **Mr Davies:** There is a drafting defect in these regulations. There was an inconsistency between the regulations and the Schedule. I have spoken to the lawyer at the Welsh Assembly Government and amending regulations are being made straight away; the point was accepted and we expect to consider those next week.

[31] **Janet Ryder:** We are having lawyers from the Welsh Assembly Government in today. It is interesting that some regulations can be corrected straight away, while we have to wait for others to be corrected. There is obviously a priority placed on those regulations, but it would be interesting to look at what is behind that. Do you have a comment on that, Steve?

[32] **Mr Davies:** On this occasion, there was a pretty straightforward omission. A date was not inserted into a Schedule, which made the Schedule uncertain; so, the lawyers knew the answer straight away and were able to make the amendment. I do not know whether different departments have different timetables or time pressures. Perhaps it is just that, on this occasion, they were able to correct it immediately.

[33] **Janet Ryder:** Perhaps that is something that we can explore with the Welsh Assembly Government lawyers when they come in to give evidence.

[34] **Michael German:** Are we clear that these regulations will not be laid and that there will be a wait to lay them until the revised version comes next week?

[35] **Mr Davies:** We have amending regulations in draft. They may have been laid today. If not, they will be laid as soon as possible.

[36] **William Graham:** We will consider the legislation again next week, will we not?

[37] **Janet Ryder:** Yes, we will return to this next week. Are Members content with that? I see that you are.

9.08 a.m.

**Ymchwiliadau'r Pwyllgor: Monitro Canlyniadau Adroddiadau'r Pwyllgor ar
Offerynnau Statudol
Committee Inquiries: Monitoring the Outcome of the Committee's Reports on
Statutory Instruments**

[38] **Janet Ryder:** We have two separate inquiries ongoing. We are monitoring the outcome of the committee's reports on statutory instruments, and we are also conducting an inquiry into the development of Schedule 5 to the Government of Wales Act 2006, including the exceptions to matters. We have held two evidence sessions. We have already taken evidence from the University College London's constitution unit, and last week we took oral evidence from the legal departments of Swansea and Bangor universities. Members who were not here last week will have been sent a copy of the transcript because some interesting points came up in last week's evidence, which may well have an impact on today's questions. I have asked if we can do that, if possible, when the transcripts become available, as it is often useful to have the transcript when we are carrying out an inquiry, just to refresh our memory about what has been said. We will try to copy those to you when possible.

[39] Our witnesses are about to come in. We will give them a few minutes to come in and settle down.

9.10 a.m.

[40] Today we are taking evidence from the Welsh Assembly Government's Legal Services Department, particularly on monitoring the outcomes of the committee's report on statutory instruments, although we may also cover one or two issues that have cropped up in evidence that we have taken from other people. I welcome Jeff Godfrey, Elisabeth Jones and Alun Jenkins. Would you introduce yourselves for the record? We will then ask a series of questions.

[41] **Mr Godfrey:** I am Jeff Godfrey, the director of legal services for the Welsh Assembly Government. I am responsible for the entire legal service that is provided in support of Welsh Ministers, including the preparation of subordinate legislation.

[42] **Ms Jones:** I am Elisabeth Jones, one of Jeff's deputy directors, and I deal with the areas of environment, agriculture and heritage.

[43] **Mr Jenkins:** I am Alun Jenkins, and I head up the legislation management unit within the Legal Services Department. Our particular function is to manage the process from the point at which instruments are introduced to Ministers for making, right through to publication.

[44] **Janet Ryder:** It is nice to meet you, particularly as we have looked at a lot of your work over the years, so it is good to have you at committee. I will start with the first question. The former Counsel General, Carwyn Jones, responded in detail to the committee's analysis of reporting points in a recent letter to me. You provided further detail on that analysis, but could you clarify whether your office prepared the analysis for the Counsel General, or whether that was done by some other Government department?

[45] **Mr Jenkins:** I prepared the papers in respect of both of those exercises. There are differences between the two—the former Counsel General was asked to respond on matters dealing with defects and inconsistencies. The evidence that I provided in this paper deals with the full gamut of reporting points that were raised by the committee during the latest period. There is a difference between the two sets of statistics, based on what was required of the former Counsel General.

[46] **Mr Godfrey:** The letter was drawn up by legal services and policy departments, but the data that went into it was extracted by Alun.

[47] **Janet Ryder:** Last week, we took evidence from Bangor University, and we were told that there has been a significant reduction in reporting points on the Welsh language, but that that implies that there may have been an increase in reporting points on other matters. Do you accept that analysis, and, if so, how significant is the increase? Are there any specific factors that may have led to it?

[48] **Mr Jenkins:** I am assuming that the respondent to this committee was referring to a comparison between the latest set of results and a previous set of results.

[49] **Janet Ryder:** He was referring to the 34 reporting points in 2007-08 falling to 15 in 2008-09.

[50] **Mr Jenkins:** There is a difference between the two periods but, overall, there is a reduction of 55 per cent, both in the reporting points relating to defects and inconsistencies and overall. So, it is 55 per cent for the total range of reporting points.

[51] **Janet Ryder:** So, you are satisfied that the reduction has been across the board, and not just in translation.

[52] **Mr Jenkins:** I can draw the committee's attention to the differences. In the latest period we gained a vires reporting point—none occurred last year. That was the result of a typographical error relating to a particular date, but it was a pretty crucial date to the effect of the Order, so it was properly recorded as a vires matter. In the period prior to that, there was a report on placing a duty on the Welsh consolidated fund, which we did not have this year. However, in all other respects, most of the reporting points show a reduction, and, in some cases, a substantial one. There are a few kinds of reporting points where the results are the same—in four areas, I think, we had one reporting point for each period. Overall, the numbers are telling us that there has been a reduction.

[53] **Mr Godfrey:** The evidence that was submitted focuses on the issues that you raise. Paragraphs 2.3 and 2.4 attempt to list the proportion of drafting errors. On the other points that were put, nothing jumps out as representing an increase in the number of reporting points on those issues. There may have been an increase in one or two cases, but I would not say that the trend in those areas is upward.

[54] **Janet Ryder:** Alun has the next set of questions.

[55] **Alun Davies:** You say in paragraph 3.1 that the vast majority of defects are primarily the result of production errors. What is a production error?

[56] **Mr Godfrey:** A production error is a defect that involves wrong paragraph numbers, wrong headings and so on. It is a lack of attention to detail in respect of how the texts match up or whether the references are consistent, rather than a legal error in respect of the powers that are available, or something substantive. It is about having attention to detail as the documents are prepared and checked, and ensuring that references and headings are correct, and, particularly, that the English and Welsh texts match up in respect of their intended effect.

[57] **Alun Davies:** What structures do you have in place for proofreading these texts?

[58] **Mr Godfrey:** We have a policy in place that involves checking. The instrument is normally prepared in English—that happens in the majority of cases—and would be checked by a second pair of eyes; it would then be translated into Welsh, and there would then be a further check by our legal text editor. At each stage, we would be looking at consistency as well as the legal issues. In the paper, I identify a risk analysis approach with regard to how thorough the additional legal checks are, depending upon the nature of the instrument, how it was produced and its sensitivity. So, there are various stages in the process at which the production errors to which we are referring can be identified. We think that there is improvement in that regard, but we are conscious of the fact that any error is an error, and we need to work harder to eliminate them.

[59] **Alun Davies:** It sounds as though you have a comprehensive structure in place. Have you studied how it works? If errors are consistently getting through what appears, from what you have said this morning, to be quite a comprehensive and robust structure, have you looked to see whether anything else is causing them?

[60] **Mr Godfrey:** We have not undertaken any studies of that kind. The quality assurance paper that is attached to my evidence was produced last year. That was done in order to ensure that we had at least a minimum standard that we could be sure that all the legal teams that prepare these instruments were adhering to. However, we have not gone beyond that to look into having a fine analysis of where the problems are coming from. My impression, and that of my colleagues, is that it relates to the attention to detail, particularly with very long instruments, and to the fact that instruments go through various drafts and that amendments are made. It is about ensuring that people continue to focus on the words on the page and ensure that, as changes are made, consistency is maintained.

[61] **Alun Davies:** I appreciate that and I understand the difficulties involved. I appreciate the issue in relation to numbers and paragraph headings, but we have dealt this morning with two reporting points that relate to references that are not relevant to us, one of which was a reference to the Port of London. While I appreciate that numbers and paragraph headings can slip through the most robust system, it is difficult to escape the conclusion that an element of carelessness is creeping in, where references to the Port of London, for example, are made in Welsh legislation.

9.20 a.m.

[62] **Mr Godfrey:** I acknowledge that that should not have happened. I would be careful in terms of from the outset talking about carelessness. A number of instruments are drafted by working off initial English documents that are put into a Welsh context. There is the potential for errors there. Errors should be picked up, but, occasionally, things get through. Some instruments will legitimately have references to English bodies—you cannot always say that because there is a reference to an English body, it must be wrong. There will be some instruments that will retain that, particularly where you have cross-border issues or where arrangements exist between Welsh and English bodies. However, that is a production error and a legal one. It is a case of maintaining vigilance at each stage of the drafting process to try to eliminate those sorts of things.

[63] **Alun Davies:** Do you have any plans to review this process? It is clear that these issues are consistently coming through. The explanation that you gave in answer to my first question was robust, and, as someone who, in a previous life, was responsible for proofreading myself, I understand the difficulties involved all too well. I have made a number of such errors in a past life. I appreciate all of that and the difficulties involved, but surely it is your responsibility as managers to ensure that the process involved is robust enough to remove these understandable human errors.

[64] **Mr Godfrey:** We have a procedure, which we are all content with, but the procedure is only good enough if it is operating in practice. Some of the data that you see here are reflected in my own delivery agreement to the Permanent Secretary. It has performance measurements that pick up the number of reporting points, and so on. We are looking at the number of reporting points that are generated and we need to take action on what the statistics are saying. We are looking, as the evidence says, at an SI drafting group within the Legal Services Department to try to bear down on common issues that arise in practice. It is about vigilance and keeping people focused. This applies particularly to instruments that may have been adapted from an English precedent where there is not the same degree of ownership of the original drafting and where, when proof-checking, you can tend to read things that are not there.

[65] **Rhodri Morgan:** I have a question on how exactly you go about this issue of improved quality control. In the world of industry, there was a huge shift about 15 or 20 years ago from the concept of quality control—which involved an inspector at the end of the line, crosschecking the work of everyone else, with the specific job of checking for errors—to the Japanese style, where everyone is made responsible for their own quality, where you attempt to dispense with the end-of-the-line quality inspector, whose sole job it is to look for defects. In the second of these, every individual is responsible for being their own quality inspector as they are doing the job. Have you similarly gone from one quality control methodology to another, or did you never have the quality inspector at the end of the production line checking for errors? How do you go about it?

[66] **Mr Godfrey:** I refer to the quality assurance annex to the evidence that I have submitted. The immediate onus is on the drafter of the instrument to ensure that they get it

right, but we recognise that, with the volume of material that we are dealing with, occasions will arise where errors creep in. The checks that follow as part of that procedure are attempts to ensure that errors, where they arise, are identified and rectified. We have a thorough programme of training, during which lawyers are reminded of their responsibilities and how to apply this criteria. I acknowledge that we could introduce further checks on how the instrument is produced, and have further pairs of eyes looking at each instrument. However, if we were to do that, it would have resource implications. We are providing a whole service to Government. The teams of lawyers that prepare the subordinate legislation are also providing advice and instructions on legislative competence Orders and instructions on Measures. What we are trying to do is—

[67] **Rhodri Morgan:** In industry, since the Japanese arrived in large numbers in this country 20 years ago, there has been movement away from having additional pairs of eyes to quality circles: getting people to sit down to look at why errors occur and whether they can eliminate them from the process itself, so that additional pairs of eyes are not needed. Is that how you go about things? Do you have quality circles or anything of that sort, or is it a matter of issuing edicts from time to time saying, ‘This is not good enough’ or whatever?

[68] **Ms Jones:** The quality assurance policy is a quality circle, in the sense that the onus is on the individual legal team to sort out the problem. As Jeff said, the onus is initially on the drafter: we expect people to get it right the first time. I am encouraged that we seem to be getting legal content—vires issues and meaty, substantial legal issues—right, and I draw an amount of comfort from that.

[69] There is also an onus on the team members to help each other to spot and eliminate problems. One way in which we have sought to eliminate errors from the process, as opposed to spotting them when they occur, is through the work that Alun’s team has done with the Stationery Office on the statutory instrument template, to try to produce a situation in which additional errors do not arise in the production process.

[70] **Mr Jenkins:** There used to be problems in the first and second Assemblies as the template used did not align itself particularly well with columniated text. We had difficulties with that, and it created errors. However, those errors were perfectly capable of being edited out before the instruments were signed and laid before the Assembly. So I would not use problems with templates as an excuse.

[71] In matching the analogy given to us, throughout the process, from the very beginning, there have been two elements: there has been self-assurance checking and production-checking at the end of the line. The lawyers and the team leaders of each team were responsible for the legal content and the legal integrity of the text. There was also an editing function at the end of the process. So we have had both of those elements in place from the beginning.

[72] The reason why these kinds of simple mistakes are still occurring, and appear to be the ones that endure, is quite cryptogenic. As Jeff mentioned, it is about paying attention to detail. The errors are not occurring because we are not applying the processes; they are happening despite the processes. As you said, there is a skill involved in scrutinising material in which even the smallest detail has great significance.

[73] Unfortunately, our current system delivers between 75 and 80 per cent success at best, if you take the latest set of figures, when we have a target of 100 per cent. Our target will always have to be 100 per cent, but at the moment we are only achieving between 75 and 80 per cent. We have to reflect on that and improve.

[74] **Janet Ryder:** Ultimately, we could also be considered part of the checking at the end

of the line and of that process. We do pick things up. Alun, are you satisfied with those answers? Do you have any other questions?

[75] **Alun Davies:** Mr Godfrey, I am interested in the increasing proportion of legislation that you will have to generate yourselves rather than taking drafts from Whitehall and recreating them in the Welsh context. As the Assembly accrues greater legislative competence and increases demands on the Government to use that competence to produce proposed Measures and regulations, what impact do you see that having on your work?

9.30 a.m.

[76] **Mr Godfrey:** I hope that you would see a trend downwards as far as the manifestation of errors is concerned. My impression—backed up by data—is that where there is original drafting of subordinate legislation, the likelihood of errors getting into that starts to decline because the drafter has so much more ownership of what is being produced. Clearly, the implications that flow from that are resource implications, because it takes a longer period of time, both from a policy instruction perspective and a legal drafting perspective, to produce the instrument in that way as compared with what has happened in the past. For example, with a lot of instruments, because there is no intention to deviate in policy terms, the English draft is used as a basis for production. We had some statistics some years ago on the number of instruments—I think that the predecessor committee used to log them—that had distinctive Welsh content or were regarded as having Welsh content and we are seeing a gradual rise in those as more Measures are passed. Subordinate legislation powers are contained in the Measures, therefore it is inevitable that you will see an increase in the proportion of instruments drafted to reflect Welsh policy and that are unique to here.

[77] **Janet Ryder:** In his evidence to committee last week, Dewi Llŷr Jones anticipated that, as more instruments are drafted here and are uniquely Welsh, the number of mistakes in that kind of drafting would reduce because, as you said, people would have ownership of it and it is not a question of translating from one language into the other or of translating a law, but of devising something that is uniquely Welsh. What lessons have you been able to learn from the uniquely Welsh Measures that you have already drafted in Wales? Have you learned any lessons from that that could be applied to how you translate?

[78] **Mr Godfrey:** I am not sure that we learned a lot about drafting subordinate legislation coming out of Measures. In many respects, we are still in the early days of doing that. However, it is essentially about building on practices that have developed over time, where, even on the basis of common UK legislation, the subordinate legislation that is produced in Wales is different from that produced in England. Therefore, in the local government and education fields, you will find subordinate legislation, even though it is under the same enabling power, sometimes pursuing different goals. So, where Measures create subordinate legislation powers, I do not think that you are dealing with anything different conceptually, but, inevitably, we will see a continuing increase in the proportion of instruments that are a reflection of Welsh policy and are drafted from scratch in the office.

[79] **William Graham:** In your paper, under note 6, you refer to time pressures on your office. Do you think that your office needs to agree a timetable for the making of legislation and, if so, how does that work in practice?

[80] **Mr Godfrey:** As I mentioned, the lawyers who prepare subordinate legislation are providing a legal service across the board. So, the demands of subordinate legislation have to be balanced against advisory work and work on legislative competence Orders and Measures. That is not a unique issue for the lawyers—wherever decisions are made about priorities and work planning, that will be done in conjunction with the relevant policy areas that are providing the instructions. So, every piece of subordinate legislation will have its own project

plan. So, the timetabling of the individual piece of legislation will be planned, but those individual timetables have to be mapped against other plans that relate to other items of business and—where those processes are most developed—will take account of anticipated points within the forthcoming period, where there may be an expectation for advisory work or where some executive decisions will need to be taken and the timetables will adapt to those. So, it is very difficult to give a simple answer to that because it is a continuing balancing exercise that is not, ultimately, the lawyers' responsibility. We have to reflect the ministerial and policy priorities at that time and fit subordinate legislation into that.

[81] **William Graham:** To what extent do you come under pressure to meet deadlines agreed between policy officials in Cathays park and Whitehall for a common implementation date?

[82] **Mr Godfrey:** As for Legal Services being under pressure, any timetable that is agreed in relation to a piece of subordinate legislation would have to be agreed by the Legal Services Department, which would involve discussion with translators, so that all of the various phases are included. There are sometimes things that are outside either our control or policy control, such as certain types of instrument for which there is a transposition deadline for European legislation, or if we are at risk of infraction proceedings. Sometimes, we do composite instruments, which we need to lay on the same date as Whitehall, and sometimes we are dealing with issues that have cross-border implications. So, for example, if we are producing legislation that will have a bearing on the Environment Agency and England is doing something similar, you would want the implementation to be co-ordinated so that it can operate effectively. I would not say that those are a significant part of the output that we produce, but it is those sorts of scenarios, where you can get pressures coming from outside the Assembly Government, which can affect timetabling. Outside of that, there should be an ongoing dialogue between the lawyer, policy instruction and the relevant Minister as to what timetable we are seeking to achieve.

[83] **William Graham:** Without wishing to lead you, are there any policy areas that are more problematic than others?

[84] **Mr Godfrey:** The European side cannot be overlooked here, so rural affairs and the environment, particularly if there are transposition deadlines that have to be met, are two. In the rural affairs context, if there is any legislation that is dealing with an animal health emergency of some kind, clearly there are potential pressures that can come to bear there, where we very much have to respond to what is going on outside in order to deliver.

[85] **William Graham:** In the first and second Assemblies, all SIs were signed by the Presiding Officer. In the third Assembly, individual Ministers agree to the making of SIs. Do you think that this has contributed to more errors creeping into SIs?

[86] **Mr Godfrey:** I look to Alun on this. I am not sure whether we have compared errors from the pre-2006 Act Assembly with the post-2006 Act Assembly. In the old Assemblies, all subordinate legislation, unless it was urgent, went through an affirmative procedure process and that meant that we had a larger proportion of instruments that were being checked through the checking processes down here, and you would get the opportunity to correct instruments through the memorandum of corrections procedure. That was a slightly different thing. I am not quite sure whether there are more or less. In many respects, our quality assurance procedure comes out of the fact that that element of the process has now gone because a large proportion of instruments now go through the negative procedure. That focused back onto us that we should consider what we are doing within our own teams to ensure that there is sufficient minimum assurance that instruments are being checked. I do not know whether there are any statistics available on that.

[87] **Mr Jenkins:** The current procedures introduced flexibility, but we did not have that previously. Quite often, we were having to prepare and finalise our drafts three months in advance to accommodate the Assembly procedure and there would often be mistakes in the versions that were laid. This committee would consider them and, in the beginning, it very kindly considered a lot of them informally and told us where we were going wrong. We were then able to put them right before they were introduced in draft, in the event, although the committee recognised that it had seen an early copy and that it would have reported on them had it not had an opportunity to see an early copy. That helped us enormously in the beginning. However, the system that we have now lends itself better, because of the flexibility, to the quality control checks that we need to impose. We have more flexibility now.

9.40 a.m.

[88] **Janet Ryder:** The evidence that we had last week assumed that, in the previous Assemblies, when everything was going through the Presiding Officer, everything was working to one timetable, and that moving to a system in which everything would go to individual Ministers would see that one timetable split into 12 or however many timetables. It was further assumed that that would increase the pressure on your department, in that you would have to respond to 12 timetables as opposed to one. Is that a fair assumption, or is it just a case of somebody on the outside looking in and thinking that that is what might be happening?

[89] **Mr Godfrey:** In the old Assembly—if I may use that phrase—and the new one, you would have a project plan for each individual instrument. In the old Assembly, that had to have as its ultimate destination a slot in Plenary, which was pretty well fixed. That still happens with the affirmative procedure instruments, but in relation to the negative ones, that slot is no longer there. The project plan still has to exist, however, and we still have to prioritise and balance the workloads. Ultimately, in either context, you need to come down to the discipline of policy officials and the lawyer dealing with the instrument to make sure that they have realistic timetables in place.

[90] The flexibility with a negative instrument procedure means that, if there is other work that, late in the day, starts to compete for priority or attention and which might impair the process, you have greater latitude to shift the date, because you are not working to the ultimate Plenary slot.

[91] In broad terms, the discipline has to be, and certainly the guidance in the Welsh Assembly Government is, that you need to agree a realistic project plan and adhere to it.

[92] **Janet Ryder:** Are you content with those answers, William?

[93] **William Graham:** Yes, Chair.

[94] **Janet Ryder:** Rhodri, you have the next set of questions.

[95] **Rhodri Morgan:** I want to turn to the issue of European legislation and whether the way of dealing with that is any different from what happens with legislation that originates in Westminster or Wales. Do you want to comment on European legislation and its implications for you?

[96] **Ms Jones:** I will take that question, because an awful lot of the European legislation arises in my areas. In principle, there is no difference. We may make Wales-only European implementing legislation, as we may make Wales-only legislation in other areas. In practice, however, it is true that since the European obligation bears on the whole of the UK, there will

quite likely be a good deal of common policy between us and, at least, England. So it is true that in many cases, we will take an English draft that has been prepared by the UK Government and adapt it to Welsh circumstances. That is one category of cases.

[97] Another, quite large, category of cases involves what may appear to you to be 'England' pieces of legislation that have been adapted for Wales, but which in fact are the product of a long process of negotiation and involvement behind the scenes in which we may have strongly influenced the end result. So, there is a good policy reason for having the same policy either side of the border, but that does not mean to say that it is an 'England' policy. It is something that has been worked out between us.

[98] In other cases still, we will, as Jeff referred to, effectively ask the UK Government to lead on a composite instrument so that the Welsh and the English legislation is made in a single instrument, which ensures a common timetable so that things go through together.

[99] **Rhodri Morgan:** The point that I was thinking of was the pressure on the whole of the Assembly administration, as on Whitehall, as on Scotland, as on Northern Ireland, to meet a percentage of transposition objectives in a timely manner—you know, 90 per cent within six months or whatever it might be. In meeting those transposition objectives, and trying to win the prize for the highest percentage transposed in a reasonable time, how easy is it to handle that relative to other pressures in the office?

[100] **Ms Jones:** It is a juggling act. As you know, more than anyone else, high importance is attached to European transposition, but you will also know that high importance is attached to meeting the unique ministerial priorities in Wales. For policy officials and lawyers, juggling those two is probably the most challenging thing about being a civil servant.

[101] **Mr Jenkins:** If I have understood the question correctly, and to take you back to the first Assembly and the start of the second, the only way in which we were able to achieve a commonality of implementation with England was to disapply the procedures that had been set for the Assembly. There was a feeling that, because the Government of Wales Act 1998 placed a duty on the Assembly not to act in a way that was incompatible with EU law, it was therefore justifiable to disapply Assembly procedure in order to meet transposition deadlines. By the end of the first Assembly, Members were showing dissatisfaction with that particular procedure. They wondered why we should hold the Assembly in contempt to satisfy a European transposition deadline, which, in many cases, had already passed. The process changed at that point. Quite commonly, where the UK was acting, England would act first, Scotland would act shortly after, and then we could be at least eight to 10 weeks behind. That had an effect on the league table; the UK had always been in the top three, but it suddenly dropped to seventh position because it could not sign off its compliance with the directive or regulation until the whole of the UK had acted. So, it impacted on the UK's performance in responding to meeting the transposition deadlines.

[102] **Rhodri Morgan:** What was the answer that you came up with? We were the Johnny-come-lately because we had to wait for Whitehall to produce a basic template and then work off that to adapt it. Was that the problem?

[103] **Mr Jenkins:** It was having to wait until the UK had agreed a common policy. If that happened too late, the only way in which we could have a common implementation date was to disapply procedure, which was considered by Members to be wrong. We then told Whitehall that if we cannot get these things sorted out at least 10 to 12 weeks in advance, to accommodate Assembly procedure, there would be a problem.

[104] **Rhodri Morgan:** When you say 'Assembly procedure', are you referring to the equivalent to the House of Commons procedure for dealing with negative and affirmative

resolutions?

[105] **Mr Jenkins:** We only had affirmative resolutions in those days, so the procedure was elongated.

[106] **Mr Godfrey:** In the old Assembly, there was an affirmative procedure for all instruments, and there was a process at the end of that. That gave rise, at times, to difficulty in respect of late transposition here. The frustration here was also played out at Whitehall. I remember the Department for Environment, Food and Rural Affairs doing an initiative, as a result of an audit exercise, that tried to emphasise Whitehall's responsibility in those days to ensure that, in its own co-ordination of transposition, it took account of the procedures that Wales had to follow. You would find instances where it had not factored in the process that had to be applied here in respect of co-ordinating the implementation. It is not all the fault of the Assembly's process because everyone knew at the outset what would need to be done in each devolved administration to achieve transposition. Again, some departments are better than others at that, and over time we sought to correct that.

[107] Bringing things forward to now, Elisabeth has mentioned that, in a sense, European implementation is a priority that has to be balanced against other ministerial priorities. There is perhaps a further factor that needs to be recognised as you hit the transposition deadlines, and particularly as you get into infractions territory, namely that, with the implementation of the Lisbon treaty, the European Community's own enforcement mechanisms are now speeding up, and the point at which fines can be imposed for failure to transpose comes a lot earlier. So, there will be pressure in the system if deadlines are missed and if there is the potential for infraction cases. A high priority will be placed on getting instruments through in order to avoid the risk of cases in the European court and of fines.

9.50 a.m.

[108] **Rhodri Morgan:** To try to get to the heart of it, what in the third and prospective fourth Assemblies causes us to be behind England and Scotland in getting to the meat of the work of transposing directives? Is it that the Assembly's procedures for dealing with that are slower than those of the House of Commons or the Scottish Parliament, or the Northern Ireland Assembly, for that matter? Is it the translation issue or is it some other issue, such as having to wait for Whitehall to give you the basic meat of it before you can start adapting it to Welsh law, whereas, for example, in Scotland, they do not do that and would start off with a different legal framework? What is the reason for us playing catch-up all the time, so that the pressure on you is greater than that on your equivalents in Whitehall or Edinburgh?

[109] **Mr Godfrey:** I am not sure that I would say that we are playing catch-up all the time. We are now dealing with the same process. We have to address the need to be bilingual and to prepare a Welsh text, but that should not be insurmountable in itself, if it is properly planned. Some directives are prescriptive about what has to be done, so there may be limited room for any administration to go down a different policy route. There are occasions where there is more latitude in implementing a directive and where Welsh Ministers seek to implement it in a different way, which has implications for the timescale because the onus will fall on us to formulate our policy and drafting to give effect to those differences.

[110] **Ms Jones:** At the same time, in the field of agriculture and the environment, the legislation has to fit sensibly with what is happening on the other side of the border, so there is still an element of waiting, even if we are not adapting an English text and doing something that is really Welsh, because it has to make sense. I would like to mention that there is very good practice in DEFRA on the environment side, where, for a number of years, it has had a whole-UK project approach to EU implementation, and has involved the devolved administrations from the start in planning the timetable and in discussions on policy. That

works well, but it does not seem to have caught on more widely.

[111] **Rhodri Morgan:** Okay. What about late changes or sudden lurches in drafting or redrafting in Whitehall coming at you late in the day? How do they impact on you and is less or more of that happening these days than five years ago?

[112] **Mr Godfrey:** If there is a late change, the draft instrument would have to be adapted here. If it has already been translated, the translators would need to change things, so there would be repetition in the areas where there were changes. However, the process would not be different, namely the same quality assurance should be applied to it. I am not sure whether we get more or less of that now than previously. The DEFRA project arrangement that Elisabeth referred to probably came out of the exercise in DEFRA some years ago, which emphasised the need for Whitehall to co-ordinate where there was common implementation across the devolved administrations. The more organised that arrangement is, hopefully, the less you would get late changes, but legislation being what it is, there will always be occasions when things come through late in the day. However, I do not want to offer a comment on whether that is worse now than it used to be.

[113] **Ms Jones:** My experience of it has mainly been in animal-health emergency situations and their fallout, where the pressure on Whitehall was almost as great as it was on us. I have occasionally experienced it where an instrument involves a large number of Whitehall departments and the negotiations between them go on right up to the wire and late changes can result from that. However, that is very occasional in my experience.

[114] **Rhodri Morgan:** I have one last question. Looking forward to the next 10 years, you have talked of time pressures, resource implications and trying to fit a quart into a pint pot over the next five years. In the next 10 years, a lot of pressure on public finances is anticipated, so you talk of managing with no more than the human resource that you have now, or possibly less human resource than you have now—who knows?—where, possibly, the amount of legislation being dealt with might not decrease. The resource would have to be balanced. The challenge for management would be having to be as clever as Toyota managers in the 1970s, thinking of ways of beating the Germans and the Americans at their own game, on efficiency. I know that you are not running a factory but, even so, the challenges may be quite similar, such as having to find ways around the resource implications, the time pressures and the problems caused by late re-drafts in Whitehall or whatever. What are your thoughts about that?

[115] **Mr Godfrey:** Clearly, there is a challenge confronting us. That is not a challenge just to the Legal Services department and the lawyers; it is a challenge that runs across the entire administration. There are programmes in place, through training and through enabling legislation, that are trying to build up instructing and drafting skills. If you say that we will produce more legislation with the same number of lawyers, my response is that that can only be achieved if there are efficiencies throughout the process. The better the quality of the instructions that you get, the better the quality and the more efficient the work of the lawyer at the end. It is a process of continuous improvement, which we have to share with policy colleagues, to find examples of good practice and to try to ensure that they are spread across the administration. Skills are built up. We are becoming, and have the prospect of becoming, a more mature legislature. The way that people perceive their roles within the administration has to move from some of the work that they are doing now to seeing legislation as the ultimate policy tool. It certainly is a challenge but I think that there is—

[116] **Rhodri Morgan:** It could be brutal. Per subordinate piece of legislation that you have to deal with, do you have to take cost out?

[117] **Mr Godfrey:** Yes. The only way to do that is to prioritise what you are doing. You

have to be disciplined in how you do that, and you have to ensure that everyone within the process has the requisite skills to deliver. I think that that is where the emphasis is at the moment, within the Government, to ensure that best practice is maintained and that people are suitably trained to work to that model.

[118] **Janet Ryder:** Are you content with those answers, Rhodri?

[119] **Rhodri Morgan:** Yes.

[120] **Michael German:** I will just pursue the capacity issue. We have had LCOs and Measures now for a small amount of time, you state in your paper that you have had a workload since 2005, and that your team has been together since then. Can you give an indication of how you have scaled up in this Assembly? What sort of capacity increases have you had, or are you still working with the same team? What is the impact of LCOs and Measures on you?

[121] **Mr Godfrey:** With the new Assembly, we created the office of First Welsh Legislative Counsel, so we have created a new drafting team, which Thomas Watkin heads. That was entirely an addition to the previous legal services structure. We also had resources allocated to us to create additional posts. I am trying to think of the number. We did it in two phases. I think that we had around six or seven additional lawyer posts within the department, recognising the increased workload that would flow from LCOs and Measures.

10.00 a.m.

[122] The volume of work that that has generated goes beyond the initial calculations, so, picking up on a previous question, we are already shifting to lawyers having to concentrate their efforts in legislative areas. Over time, as more legislative work is done here, we will hopefully start to have less call on UK Bills—although, in the last session, we did not particularly notice a decline in that sort of workload. There has been an increase in resource; there are around six or seven additional lawyer posts, in addition to the drafting posts. Beyond that, there has been a shift in activity, and the work on LCOs and Measures goes beyond that additional number in the amount of time spent.

[123] **Michael German:** Okay. That completes the issue on capacity I will now turn to annex 1 of your paper, which is part of appendix A in paper 7.1—if that was a piece of legislation, it would be a reporting point. [*Laughter.*] You say that this has been in existence for a year or so, so can you tell me two things? First, what is low, high and medium risk? What do you mean by those terms, and how do you assess them for instruments? Secondly, how far does this quality assurance procedure differ from that of Whitehall?

[124] **Mr Godfrey:** On the risk levels, there is a table in annex 1 that shows how the high-level risk documents are identified. So, that is meant to be a standard approach to assessing where instruments have to go through the higher of the checks.

[125] **Michael German:** I am really interested in how you assess political importance, which is obviously a factor in choosing risk level.

[126] **Mr Godfrey:** Ultimately, when you write words like this, you come back to the judgment of the lawyers and the policy officials as to the nature of the instrument that they are dealing with. The political importance profile will tend to reflect the extent to which the instrument is going to be controversial or may have publicity generated in relation to it. As you know, a lot of subordinate legislation can be dry and technical, but where we bring forward an instrument that is going to engage a political discussion—even though for other reasons, it may not look particularly complicated—we would attach the higher risk level to it,

because there is a premium on getting it right. It would be embarrassing to the Government if there was a problem with its drafting.

[127] **Michael German:** Document A then refers to risk level ‘high’; where is medium and low? Do you just say that, if it is not high, it will be medium or low, or that you make a judgment? I understand what you do with medium and high risk, but I do not quite know how you define it. I have an understanding of high, and now I have an understanding of risk importance, but what I do not understand is what is medium and low. I can see that everything else would fall into another category, but how do you divide that further?

[128] **Mr Godfrey:** That comes down to proportionate importance and the element of judgment. If we could give clearer criteria on the words on the page, we would attempt to do it, but, at the moment, after a discussion with the team leaders who make these judgments, that tends to be a reflection of the judgment that needs to be made against the issues that are identified in the first column.

[129] **Ms Jones:** It is low risk where it is neither of particular legal importance, nor is novel drafting—so it would be an English draft that has been adapted and does not have particular political importance either, in relation to the effect on the people of Wales, ministerial priority or controversiality, and does not carry a high risk of challenge. We will leave a grey area in between where one or other of those factors may be a little higher. However, we are about to review this policy alongside the review of the drafting guide that we referred to, in the light of our experience over the last two years. That is a point that we can take on board, and ask our team leaders whether they are finding it clear. We have not had any complaints, but that is not enough—obviously we should be asking them proactively.

[130] **Michael German:** It helps us to know the procedure that you use.

[131] **Janet Ryder:** The paper says that

[132] ‘the following assumes that the drafting language is English’.

[133] A different approach would be needed where the draft is produced in Welsh or bilingually by the same drafter. How much legislation, if any, is produced originally in Welsh?

[134] **Mr Godfrey:** On original drafting in Welsh, I would say that there is very little.

[135] **Janet Ryder:** Do you envisage a day where original drafting is done in Welsh?

[136] **Mr Godfrey:** Certainly, if the drafter is confident enough to draft in Welsh.

[137] **Janet Ryder:** So, it would depend on the staff that you recruit and their language skills.

[138] **Mr Godfrey:** Yes. We have a number of lawyers with very high levels of Welsh competence, but you need to factor into that the skills of the legislative translators. Even a lawyer with a high level of Welsh competence may still want interaction with the translators. There are examples of instruments that have been drafted in Welsh, but it is down to the confidence of the individual drafter as to whether that option is taken. While we encourage it, it is down to the individual as to how they want to take it forward.

[139] **Michael German:** I will come back to the issue of translation in a moment, but I wonder if you could answer my other question about annex 1—on the comparison with Whitehall’s procedures. How does this compare? Is there no comparison?

[140] **Mr Godfrey:** It is different to the checking process in Whitehall. Whitehall certainly has a checking process, which is probably more straightforward than this, with the second and third pairs of eyes. This one is different—Elisabeth will know more than me, and she can comment—because the structures within Whitehall departments are different. Their teams tend to cover a much narrower range of subject matters, and have depth within them. The teams are headed by grade 5 lawyers, so you have a situation where the drafting can go through a seniority of checking process that is manageable within those teams. In our structure, where teams cover very broad areas by comparison, we have to avoid a situation where the role of the team leader or the deputy director is effectively taken over by checking subordinate legislation work. That drives the risk approach that we take. While the seniority applies in relation to the higher risk instruments, we recognise that there is a category that can be managed without going through that process. So, it is a reflection as much as anything of a mixture of resources and the different structures that we have in place.

[141] **Ms Jones:** We also recognise that the translation—whether it is English to Welsh, or Welsh to English—and the work of the Welsh legal text editor provides an extra level of checking. That is not merely a check of the Welsh; as we have found from experience, they will often pick up errors in the English, because they are having to translate it into Welsh. I am disappointed to see that those checks have not worked on some of the instruments that you looked at, and I will certainly go back, where that has happened in my area, to try to find out why that happened. However, it is true to say that our structure has some advantages, as well, compared with Whitehall.

10.10 a.m.

[142] **Michael German:** That brings me neatly on to the whole area of translation. I was fortunate in the first Assembly to study the Canadian way of dealing with bilingualism. The one that impressed me more than anything was the one in Ontario, where only 8 per cent of the population is French speaking, but all legislation has to be cast in English and French. The number of competent French-speaking lawyers in that province was quite limited. What they go in for, and the process that is now becoming quite widespread in Canada, is co-drafting, where you have two lawyers working alongside each other, who both have language skills of an equal standard. They may draft the original in either language, but the two lawyers would be working alongside each other. Do you have a view on that process? That would obviate the need for so many translators. Has the process been considered for the future, given the increasing amount of Wales-only legislation that is likely to emerge?

[143] **Mr Godfrey:** We have looked at co-drafting in the past. There were visits from the department to various drafting offices in Canada. At one point, during the first Assembly, we attempted a co-drafting trial in the department, dealing with subordinate legislation. Although we identified some benefits from those co-drafting exercises, overall, the lawyers who were involved reported that the disadvantages outweighed the advantages.

[144] The disadvantages came from the constraints that existed around the enabling power—that is, what you could do with the instrument—because we were dealing with subordinate legislation totally at that point in time. There was also the fact that it was a more intensive use of resources, so you were applying more resource to the individual instrument. That takes you back to where the Canadians started with all this, which is that co-drafting has taken place primarily in relation to primary legislation. There are examples in Canada of it filtering down into subordinate legislation, but you are really looking at those situations in which you are starting from scratch to translate policy into legislation, and primary legislation is the obvious place for that to happen.

[145] Although we have looked at co-drafting—and, as I said, our trial goes back some

time—and not continued it for subordinate legislation, the concept is alive in the legislative drafting office. Thomas Watkin has been looking at it in the context of proposed Measures. I know that he is coming to speak to the committee next week, so you may find that he can elaborate more than I can on it. As for the two-lawyer principle and a reduced reliance on translators, I am not sure that that is the direction of travel at present. Where co-drafting is happening in relation to proposed Measures, it takes the approach of having a lawyer and a jurilinguist rather than two drafting lawyers. As Thomas will also make reference to in his paper, he has been doing quite a bit of work scoping the possibility for a qualification in legal drafting, which we hope will be taken forward through the universities. While it will involve more than a single lawyer working on drafting something in English and then passing it to translation, I think that we are moving more towards a model of lawyers working with someone similar to a jurilinguist who has expertise in the bilingual field.

[146] **Michael German:** Can you confirm that that sort of skill is in short supply in Wales at the moment?

[147] **Mr Godfrey:** It is in short supply. Most of the legal translation team who work with us have legal qualifications of one kind or another, and so they make up a specialist translation team. However, we would like to see that being taken a step further to be comparable with the situation in Canadian and European institutions, so that we have mixed legal and linguistic capability, which I label a ‘jurilinguist’. What Thomas has done in scoping the qualification, which we hope the universities will adopt and take forward, is for the benefit of the Assembly Government and the wider public sector, or anyone dealing with legal documents that need to be bilingual.

[148] **Michael German:** When we get that evidence, it would be worth while asking what sort of demand there will be for such skills. There is clearly such a demand, but if you were the only employer in the United Kingdom needing those sorts of skills, it would be a very limited operation if you were not going to expand.

[149] **Mr Godfrey:** Legislation is often about conveying meaning and clarity, and this committee often gets into the issues that arise when two texts do not match. To look at bilingualism from a different perspective, you can operate to improve the meaning and clarity of legislation when preparing texts alongside each other. So, co-drafting is alive. You have to find a way of doing it efficiently, but you can make bilingualism a benefit for the clarity of legislation rather than a potential flaw. Looking at two versions side by side may give a clearer meaning than simply having a single-language instrument.

[150] **Michael German:** We will test that when we come to it.

[151] **Janet Ryder:** I want to take you back to what you said about the possible development of a specific qualification that would equip people to work in your department. I take it from what you have said that you would support the development of a unique qualification of that kind.

[152] **Mr Jenkins:** Yes, we would support that, not least because we hosted the project in-house. Even though the university paid for the research project to be undertaken, we provided the facilities and hosted it, under the tutelage of the First Welsh Legislative Counsel, Thomas Watkin, who will be giving evidence to this committee next week.

[153] **Janet Ryder:** Can you briefly outline what you envisage being a part of that qualification, which you have already touched on?

[154] **Mr Jenkins:** That is where the body of the work now lies, in bringing together the teaching materials, a lot of which would be drawn from the databases that exist within our

existing legislative translating unit. You would also have the standard Welsh textbooks, dictionaries and such like, but a lot of the main body of information that would drive that kind of qualification exists within our legislative translation unit.

[155] **Janet Ryder:** As Mike said, we will probably explore that next time. Going back to one point that you raised with Mike, when you spoke about the degree to which legislation is checked at Westminster, I believe that you said that it is checked there by someone of a higher level and who has a more limited scope of concentration, as it were. That implies that we do not necessarily offer that level here, and that people in your department must have a wider circle of knowledge, because you check legislation relating to far wider fields. Is that through choice or is it a tailoring of the resources that you have available to you to fit?

[156] **Ms Jones:** The last time I did a comparison, I had eight lawyers working on what was covered by 80 lawyers in Whitehall. So, it is dictated by the way in which the Welsh Assembly Government has been set up and resourced as a multifunctional department.

[157] **Janet Ryder:** So, is it dictated by resources?

10.20 a.m.

[158] **Mr Godfrey:** Yes, it is. That is not all bad news, in the sense that Whitehall teams have a narrower field of responsibilities and so checking naturally follows seniority. That has benefits for the resources, and, in our own structure, one benefit that we have obtained from having a broader area of expertise is that I sometimes think that our lawyers are better able to make the connections between different things that are happening because they are not funnelled down to such specific areas of work. To make the system work, when we get into using English drafts as the basis for our own, we draw on the depth of expertise and resource in Whitehall to some extent. More than anything, we are trying to focus on those areas where the Welsh Ministers want to, or where there is a policy instruction to, move away and develop distinct Welsh policy, focusing our attention on those areas. However, there is an advantage there in our lawyers' ability to see beyond very narrow profiles, at times. So, it is not all bad news.

[159] **Ms Jones:** I hope that that is one reason why it appears that there are not many big legal problems in what you are seeing, as there is that cross-fertilisation. However, breadth of experience does not help you to eliminate these proof-reading errors that we are seeing, and we need to make a greater effort with that.

[160] **Janet Ryder:** On that very point, as you have noted, we picked up on a couple of issues this morning, and we have been assured that they will be corrected at the most appropriate time or at the next possible opportunity. Our experience is that that can sometimes take quite a long time. Are corrections given priority? Are they made as soon as possible? Are they prioritised in any way? What should account for the difference in timescales?

[161] **Ms Jones:** Essentially, we have to discuss the matter with our policy colleagues and agree the priority with them, and so it is they who are in the lead role. However, they do look to us for guidance on whether the error in question will have an effect on the people of Wales. If it will, naturally, the matter moves very far up in its level of priority. If it is an embarrassment but one that will not affect people's everyday lives, legal rights and obligations, it tends to take a lower priority, perhaps, than some other legislation that has come along in the meantime.

[162] **Janet Ryder:** Thank you. Do you have anything else to add that you feel we have not touched on today in questions?

[163] **Mr Godfrey:** I do not think that there is anything specific, but I repeat the thanks that are expressed in the document for the support and assistance that we get from the committee and its advisers.

[164] **Janet Ryder:** Thank you very much for the written evidence and for coming along this morning. It has been very interesting. The clerk will send a copy of the Record for you to check. You can check it for correction but you cannot make an addition. Thank you for coming to give your evidence. It has been very useful.

10.23 a.m.

Gohebiaeth y Pwyllgor: Ymatebion y Dirprwy Weinidog dros Wasanaethau Cymdeithasol a'r Cwnsler Cyffredinol i Lythrau'r Cadeirydd: SLC357—Rheoliadau Deunyddiau ac Eitemau mewn Cysylltiad â Bwyd (Cymru) (Diwygio) 2009, a Rheoliadau Cod Asesiad Effaith Rheoleiddiol ar gyfer Is-ddeddfwriaeth

Committee Correspondence: the Deputy Minister for Social Services' and the Counsel General's Responses to the Chair's Letters: SLC357—the Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2009, and Regulatory Impact Assessment Code for Subordinate Legislation

[165] **Janet Ryder:** Members will see that we have a couple of pieces to deal with here. SLC357 is the Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2009. We have had a response to the letter that we wrote, acknowledging that the error that we picked out was a human error. It has been accepted and will be put right before publication. Are Members content with that? Is there anything to add? I see that there is not.

[166] The next piece is the regulatory impact assessment code for subordinate legislation. If you remember, when we looked at this, we were more or less content with it. We wrote to the Counsel General and Leader of the Legislative Programme to tell him that we thought it a good first attempt and that we were looking forward to monitoring it to see how it comes through. The response that we have had is really just a courtesy response to thank us. Are Members content with that? I see that you are.

10.24 a.m.

**Unrhyw Fater Arall
Any Other Business**

[167] **Janet Ryder:** There is no other business.

10.24 a.m.

**Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting**

[168] **Janet Ryder:** The date of the next meeting is 4 February, when we will take evidence from Stephen Laws, the First Parliamentary Counsel, and Thomas Watkin, the First Welsh Legislative Counsel. We shall look at questions arising from today's evidence as well. We are not sure which room we will be in.

10.25 a.m.

Cynnig Trefniadol
Procedural Motion

[169] **Janet Ryder:** If Members are content to do so, so that we can resolve some of the issues that have arisen from the evidence that we have received today, I move that

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

[170] I see that the committee is in agreement.

Daeth rhan gyhoeddus y cyfarfod i ben am 10.25 a.m.
The public part of the meeting ended at 10.25 a.m.