



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

# Cofnod y Trafodion The Record of Proceedings

## [Y Pwyllgor Cyllid](#)

## [The Finance Committee](#)

03/02/2016

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from the Meeting

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

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

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

Peter Black <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Christine Chapman <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Jocelyn Davies <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Mike Hedges <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Ann Jones <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Julie Morgan <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Nick Ramsay <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Ceidwadwyr Cymreig Welsh Conservatives

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

Andrew Hobden	Economegydd, Llywodraeth Cymru Economist, Welsh Government
Syr/Sir Derek Jones	Ysgrifenydd Parhaol, Llywodraeth Cymru Permanent Secretary, Welsh Government
Marion Stapleton	Pennaeth Uned Gyflawni'r Prif Weinidog a'r Rhaglen Ddeddfwriaethol a'r Uned Lywodraethu, Llywodraeth Cymru Head of First Minister's Delivery Unit and the Legislation Programme and Governance Unit, Welsh Government

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

Bethan Davies	Clerc Clerk
Helen Jones	Y Gwasanaeth Ymchwil Research Service

Gerallt Roberts	Dirprwy Clerc Deputy Clerk
Joanest Varney- Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

*Dechreuodd y cyfarfod am 09:01.  
The meeting began at 09:01.*

### **Cyflwyniadau, Ymddiheuriadau a Dirprwyon Introductions, Apologies and Substitutions**

[1] **Jocelyn Davies:** Good morning everybody and welcome to a meeting of the Assembly's Finance Committee. Can I remind anybody that's got a mobile device with them—? Well, I'd be very grateful if you just switched it to 'silent'; you don't have to switch it off. We haven't had any apologies, so we are expecting Christine Chapman to join us shortly.

### **Papurau i'w Nodi Papers to Note**

[2] **Jocelyn Davies:** We've got 10 papers to note. Are Members content with that?

09:02

### **Ymchwiliad Etifeddiaeth: Sesiwn Dystiolaeth Legacy Inquiry: Evidence Session**

[3] **Jocelyn Davies:** We'll move straight on then to our first substantive item on the agenda, which is our legacy inquiry. We're taking evidence this morning from the Permanent Secretary. This is in relation to the cost of legislation. Would you like to introduce yourself for the record, and then, if it's okay, we'll go straight to questions?

[4] **Sir Derek Jones:** Fine. Thank you, Chair. Bore da, bawb. I'm Derek Jones, Permanent Secretary, Welsh Government, and, on my left, Marion.

[5] **Ms Stapleton:** Marion Stapleton, legislative programme unit and delivery unit.

[6] **Sir Derek Jones:** And on my right, Andrew.

[7] **Mr Hobden:** Andrew Hobden, Welsh Government economist.

[8] **Jocelyn Davies:** Right, thank you. As I said, this is for our legacy inquiry. Just really because we wanted to include something about the calculation of costs of legislation. So, just a general question really from me to start with then: how effective do you think the Welsh Government's process for undertaking the regulatory assessments of Bills in the Fourth Assembly has been? Sir Derek, do you want to start us off?

[9] **Sir Derek Jones:** Thank you, Chair. It's a simple enough question to put. I think it's a massive question, so I'll try and give a concise answer in the round to a very big question, and I'm sure we'll explore aspects of it as we go along. I think I mentioned when I wrote to you that the legislative programme's achievement in the Fourth Assembly has been a very, very significant one indeed, I think, for everyone involved, and I'm certainly very proud of the civil service's contribution to achieving that. I think we're on 24 Welsh Acts on the statute book now. I don't think there were any when I started in this job, but it has been the first programme of primary legislation. I think I described it in my letter to you as a steep learning curve, and I think even that is probably a bit elegant as a metaphor for the lived experience. Certainly, for some of my staff and teams, it's felt a bit more like having a tiger by the tail at times—you know, very pressing deadlines and controversial policy options being explored. And so there's just a huge amount to reflect on and learn about for the programme as a whole, but not least for the regulatory impact assessment process, and that's what we've been doing.

[10] I think that this committee, and other committees, have actually been quite critical of some of the regulatory impact assessment work that's come forward. I'd accept that, in some cases, it's not been good enough, not always of a consistent quality, sometimes rushed and sometimes we've had to have another go at it. I think there's more that has been good quality and fit for purpose, but I'm not in any doubt that we need to take the opportunity now to reflect, look back on what we've learnt—which, I think, is a lot—and build those lessons into improved processes for the fifth Assembly, which is what we're doing.

[11] **Jocelyn Davies:** I don't think that we've been critical for the sake of it, because, obviously, the better our scrutiny, the more confident that the

Government can be in terms of what it's presenting. And so, in fact, our criticism is very helpful to you, I think.

[12] **Sir Derek Jones:** Some of it, Chair, is just damned hard, actually, if I can put it that way. And it isn't just staff work at civil service level in the Welsh Government. I mean, where we've felt we might be lacking some expertise, and wanted to get it elsewhere, we've gone to private sector companies, with international reputations in these areas. And they too, in some cases, have actually struggled to come up with precision in assessing regulatory impact. So, I think, sometimes, it is genuinely difficult territory, but we've made a lot of progress, learnt a lot, and we've got an improvement plan ready to go.

[13] **Jocelyn Davies:** You can learn a lot from making mistakes. I mean, one of the benefits of making a mistake is that you can learn from it, and we all get things wrong from time to time. So, how are you making sure that, if there are improvements that can be made, people actually accept, 'Well, we could have done that better, and, to learn from that, we have to accept that we could have done that better'? How are you ensuring that that's the attitude that officials have towards this?

[14] **Sir Derek Jones:** I suppose that's a question about learning culture, in a way, and I don't normally have any difficulty with my staff realising when, you know, things haven't gone very well. The team is, invariably, the first group of people to know that that is the case and take it on board. But I'm not actually leaving much to chance on the regulatory impact assessment, nor legislation. So, we do have a training and development programme. We train Bill managers. Over the last few years, we've developed a cadre of people who do now have some experience in this area, and we'll deploy them.

[15] **Jocelyn Davies:** You mentioned the commissioning of experts, if you don't have that expertise yourselves. Can you explain a little bit about the process that you undertake before you commit yourself to a commission?

[16] **Sir Derek Jones:** Well, I think it's probably horses for courses, Chair. I'm not sure that there's a standard process. The responsibility for the RIA falls on the policy team that's leading on the Bill, although it may be that they lack some capability, or expertise, and this is where the chief economic adviser's department comes in, and our knowledge and analytical services, which will come in behind and alongside the policy team, and help and

advise them. But then, during the course of that process, the judgment would be made that, actually, we could do with some external expertise. And we've done that on a few occasions. It hasn't always, actually, done the job.

[17] **Jocelyn Davies:** Oh, hasn't it? Oh, right, okay. So, Andrew, perhaps you can explain to us: at what stage do you get involved?

[18] **Mr Hobden:** In the RIA process, it's from the outset. I have an initial discussion with policy teams to explain the process and, in broad terms, what will be expected of them, and the final output. In terms of engaging with external consultants, generally, where we've done that, it's been in recognition that there is expertise, or specific knowledge outside of the Welsh Government that we think can inform the regulatory impact assessment.

[19] So, for example, with the Environment (Wales) Bill, we commissioned Eunomia to do a piece of work, looking at waste modelling, and their model has been peer reviewed and it's widely respected. And so, that was very beneficial in respect of that particular RIA. Similarly, on the draft Public Health (Minimum Price for Alcohol) Bill, we commissioned Sheffield University to do a piece of work, looking at potential impacts around various different policy proposals. And Sheffield University have done similar work on behalf of the Scottish Government and the UK Government. So, again, they've got pedigree in this area.

[20] **Jocelyn Davies:** Okay, thank you.

[21] **Sir Derek Jones:** Can I just say that I mentioned earlier that we could probably do with some more consistency of quality, but the RIA, when ready, has to be signed off by the chief economic adviser? So, that is one of the key ways at the moment that we try to establish what you might call quality control across what is a very wide range of policy departments, with variable experience, I guess, in producing RIAs. So, it's a key role in helping and informing the process but also at the end—a sign-off. That's because we do the regulatory impact assessment for legislation basically in the same way that we would do an evaluation of another policy programme or project that wasn't related to legislation but where you had to assess the same sort of criteria. Basically, we use the Treasury Green Book appraisal.

[22] **Jocelyn Davies:** Okay, thank you. Nick, shall we come to your questions?

[23] **Nick Ramsay:** Thanks, Chair. Good morning.

[24] **Sir Derek Jones:** Morning.

[25] **Nick Ramsay:** Following the Auditor General for Wales's report in December 2014, which reviewed the RIA of the Well-being of Future Generations (Wales) Bill, how did you respond to the recommendation to review and strengthen arrangements for the development of RIAs in future?

[26] **Sir Derek Jones:** The wellbeing Act, I would acknowledge—well, when it was a Bill—was one of those where the RIA work in the first instance wasn't really good enough. It was a very difficult area of work that we did need to look back on. We had input from the committees as well as from the auditor general, took stock of that and produced an improved piece of work, which went through. But I think the auditor general's input for that Bill is of more general application as well. He made a number of suggestions about our presentation of impacts, about cost analysis and benefit analysis. So, Chair, I didn't mention it earlier, but, not least in the light of this committee's work, I've asked for a review of our regulatory impact assessment work and processes so that we'll be ready with some improvements for the fifth Assembly, and we are discussing that with the auditor general pretty much as we speak, I think.

[27] **Nick Ramsay:** In the case of the wellbeing Bill, what do you think was the main problem with that RIA? Do you think there was one specific area or do you think it was multiple small problems?

[28] **Sir Derek Jones:** I think it was one thematic problem, really, which is the extent to which you can, in the best way that you can, assess administrative costs over a very, very wide range of public business. The requirements of the wellbeing Act applied to every public body in Wales, and they apply in every aspect of every piece of work of every public body in Wales. So, when asking the question, which, on the face of it, is fairly straightforward—'What are the administrative cost and benefit implications of that?'—you have to make some fairly heroic judgments, and I think it's about the basis on which you make those judgments. So, there was debate with the Wales Office, for example, on the extent to which requirements of the Act would or wouldn't replace existing work.

[29] Within the Welsh Government, I'm taking the wellbeing Act as a great

opportunity to simplify some of our procedures—so, not to just add wellbeing Act requirements but to sweep away some other things and replace them. So, if successful in doing that, not only would there not be an administrative cost, there might actually be an administrative net saving. Not everybody saw it that way. So, I think that was the main area of discussion with the AGW.

[30] **Nick Ramsay:** I'll phrase this question very carefully. I wouldn't ask you to comment on whether a piece of legislation should be there or not, but do you think, in terms of that particular piece of legislation—the wellbeing legislation—that that was asking your people to do too much, really, and that trying to have that requirement over all those areas was never going to be possible?

[31] **Sir Derek Jones:** No, I've got no problem with that. It's a challenging ask, but I've got no fundamental problem with it. It's never going to be a nice, simple, neat, concise piece of cost-benefit analysis, I don't think, for something like that piece of legislation.

09:15

[32] **Nick Ramsay:** Bringing back memories of discussions on it and debates in the Chamber where I think we made similar points about the complexity—.

[33] **Sir Derek Jones:** We might be able to sell some of this, it seems to me, in future. I think it was the United Nations that commented that, in respect of the wellbeing Act, what Wales is doing today, everyone else will be doing tomorrow. If, come tomorrow, we've developed some expertise in these areas, I shall go into the consultancy business. [*Laughter.*]

[34] **Nick Ramsay:** We obviously did it a bit too early. Okay, two quick questions. First, do you feel that the quality of the impact assessments has improved over the fourth Assembly? Secondly, can you explain the variability and the quality of the financial information contained in the RIAs?

[35] **Sir Derek Jones:** I think the quality has improved. Certainly, our professionalism has improved a lot over that period of time, but I wouldn't say the improvement was a nice, steady, linear increase, because it very much depended on the degree of difficulty of the individual pieces of legislation. So, it isn't the case that I could certainly say that, tomorrow, the

piece of work would be easier or better than the one the day before. It will depend. So, I would rather say that we've developed quite a bit of expertise. We've learned a lot. It was a bit of a rollercoaster, but we've got plans to improve both quality and consistency for the fifth Assembly—and simplicity, which I think would aid everyone.

[36] **Nick Ramsay:** Great. And the second question, on the variability and the quality of the financial information.

[37] **Sir Derek Jones:** I probably need a few examples, but I'm not sure I can say anything beyond what I already have.

[38] **Jocelyn Davies:** Do you think it's been consistent across all departments?

[39] **Sir Derek Jones:** No. I think I've said that greater consistency is one of the things that we'll look for. I think if we improved the consistency of presentation, it will almost inevitably improve the consistency of the quality of the financial information as well. This is something that the AGW's got a view on—I think perhaps oversimplified, from my point of view—but we may be able to agree a standard template so that, regardless of the subject matter, every RIA will have its cost-benefit analysis set out in a standard template. That then will help to eliminate some of the variation that the committee's noticed.

[40] **Nick Ramsay:** Is there a central team that signs off each RIA?

[41] **Sir Derek Jones:** Yes, the chief economic adviser's department does. Not an enviable task. But usually, as Andrew said—the team has been involved from a very early stage, so signing off is not a matter of starting from scratch. It's usually just a cumulative process of becoming satisfied that this has been done to a good standard.

[42] **Jocelyn Davies:** Peter, did you have a supplementary on this point?

[43] **Peter Black:** Just in terms of the quality of the information in the RIA, I'm trying to dredge my memory now from the public health Bill, and I think when we had that in front of us there was some criticism about the way it was set out in terms of cash benefits, or cash costs and non-cash costs—you know, the projected savings, in terms of, 'You give up smoking, this is going to happen'. They seem to be mixed up in the tables. Is that something that

you've taken on board?

[44] **Sir Derek Jones:** Yes, it is. What we do—and, as I say, this is standard Treasury green book discipline—is we look at costs, obviously, but we look at benefits and then aim to monetise them. That can be quite difficult, depending on the nature of the benefit, but it's a good discipline and it allows you to set financial benefits against financial costs. The auditor general's view is that, at least in some RIAs, this hasn't been presented very helpfully, and I think we can carry on our discussions with the audit office on that, although we will continue to look at benefits. Sometimes we feel a bit pushed towards just cost analysis by the audit office, but the benefits are absolutely crucial. You mentioned smoking, but there are some classic cases here: legislation to require mandatory fitting of seatbelts in cars. You know, a cost analysis would have looked at the cost of fitting those seatbelts. The benefit analysis—you know, a huge range of benefits, some of which you could monetise; you know, savings in the national health service and so on.

[45] **Peter Black:** I don't think we've ever had a problem with you monetising the benefits. I think the issue was the way it was mixed in with the cost and looking to offset. It would have been better set out in a different way and a clearer way. I think that was the issue we had as a committee.

[46] **Jocelyn Davies:** I think it was because it was in the same table—that it might lead to having to explain it, and therefore, presenting it simply in the same table was a confusion.

[47] **Sir Derek Jones:** I think, in the public health Bill, and in another Bill that I can't remember—the environment Bill—

[48] **Jocelyn Davies:** I think it was the environment Bill.

[49] **Sir Derek Jones:** We did actually go back and separate them and re-present them.

[50] **Mr Hobden:** We've done it for the environment Bill, and we're in the process of doing it for the public health Bill; you know, recognising your concerns about the presentation. We are going to amend that.

[51] **Peter Black:** Right. Okay. Thank you.

[52] **Jocelyn Davies:** Julie, shall we come to your questions?

[53] **Julie Morgan:** Yes. Thank you. Good morning. I know you've mentioned that it's recommended that separate RIAs are produced for each proposal and that this does lead to quite lengthy and complicated explanatory memoranda. How are you planning to make that shorter in length and more accessible?

[54] **Sir Derek Jones:** This is for separate RIAs for different aspects of the same Bill. We're aware of the difficulty and the dilemma. We haven't actually got a developed position yet, I don't think, in terms of what we might aim to do for the RIAs in the fifth Assembly. At one level, it should be helpful. So, in a large Bill, if you've got discrete areas of provision to look at the impact in that area and present it individually, it should be helpful. But then, if it's a stonking Bill and there are a lot of areas like that, you end up with a very, very long memorandum and, arguably, the risk of some repetition as well. I think Andrew's trying to catch my eye, so I'll bring him in in a moment. But that's the dilemma. I'm not sure there's ever going to be a completely simple answer to it.

[55] **Mr Hobden:** In terms of the length and complexity, from our perspective, we need to balance the need to meet the requirements of Standing Orders and value for money responsibilities, but we recognise that we need to ensure that these documents remain accessible to stakeholders, to yourselves and so on. So, it is something that we are looking at. I know that the Auditor General for Wales has made a number of recommendations or suggestions around how the situation could be improved—for example, better signposting of key financial information and the adoption of a standard summary table across each regulatory impact assessment or Bill—and those, I think, are things that we are going to consider, as the Permanent Secretary mentioned. We are reviewing our processes, and that's something that we are going to consider.

[56] **Julie Morgan:** Yes. So, it's really a balance between being too complicated and being accessible. That's what you're working on, basically, is it?

[57] **Sir Derek Jones:** I don't know whether it would be consistent with Standing Orders for an explanatory memorandum or RIA to signpost the reader, as it were, to information elsewhere, which would be optionally available, but not bulk out the RIA itself. I hadn't thought of that before. We'll put it on the list.

[58] **Julie Morgan:** Right. Thank you. I think you've mentioned the cost estimate summary template from the auditor general. We have a copy of that here. So, that is something that you are going to use, or are considering using.

[59] **Sir Derek Jones:** Yes, we're discussing it with the audit office, with a view to coming up with an agreed template, which we then aim to use consistently.

[60] **Julie Morgan:** Right. Then how do you decide on the appropriate time period to use for forecasting the impact of each individual Bill?

[61] **Sir Derek Jones:** All of these, on the face of it, are simple questions. I think it's almost as much an art as a science. We use, as a benchmark, five years. Why? Because by five years on, normally, the business in hand will have reached some kind of steady state, but not in every case. The further you look beyond five years, the more tentative estimates are going to become. So, you might be in danger of implying a degree of precision over 10, 15 or 20 years that doesn't actually exist. I think that we've, at least in the case of one Bill, accepted that 10 years was better than five. Was this the wellbeing Act again, Andrew?

[62] **Mr Hobden:** Yes, following a recommendation from the Auditor General for Wales.

[63] **Sir Derek Jones:** So, I think I would answer the question by saying that, on the basis of advice from our economists, we make a presumption that five years would be the norm, but be prepared to consider—it's not likely to be shorter—prepare to consider longer where that seems right.

[64] **Julie Morgan:** So, there's one—the wellbeing Act—that you say will be 10 years. Are there any others that have come up where you think 10 years, or longer than five, would be appropriate?

[65] **Mr Hobden:** The environment Bill also uses a 10-year period to reflect the long-term nature of that Bill and the period over which some of the benefits from that Bill would be expected to be realised.

[66] **Jocelyn Davies:** Mike, did you want to come in on this point?

[67] **Mike Hedges:** Isn't there a danger that, if you take it over 10 years, that subsequent legislation comes in and would muddy the waters, as it were, in the calculations? So, you'd have to work out what is in the first Bill and what is in the second. I'll give you a couple of predictions now: we'll have another environmental Bill in the next five years. I don't think that anybody doubts that, whoever wins the election, we'll have one of those. So, what comes in then may well produce a new set. Do you see what I mean? So, the danger of going too long is that other Bills come in and, when you come to look back on it, you're trying to work out which Bill has cost what.

[68] **Sir Derek Jones:** I look forward to the next environment Bill in the next session. Yes, I agree, and that is one example of the sort of risks that you begin to undertake if you try to make estimates far into the future, because the further you go, the less predictable or secure the estimates are likely to be, and the more vulnerable to change of one kind or another.

[69] **Julie Morgan:** Mike mentioned legislation, but there are other things that are going to happen that would have a big impact, presumably, as well, in terms of economic situations and recessions—this sort of thing—which is not possible to predict.

[70] **Sir Derek Jones:** Indeed. Do discount rates change over that kind of period?

[71] **Mr Hobden:** Discount rates wouldn't change over that period, but, yes, certainly, as the Permanent Secretary said, the longer you look, the more uncertain the analysis becomes, so there is a trade-off.

[72] **Sir Derek Jones:** Just a simple calculation of time preference to produce a cash figure now for a flow of money over a long period of time—the further you extend that, the more speculative it is.

[73] **Jocelyn Davies:** Yes, and it becomes pointless. Okay, Peter.

[74] **Peter Black:** I was thinking that five or 10 years is quite a short term for a future generations Act, but I understand. One of the frustrations, I think, that many of us find in scrutinising legislation is when a lot of the costs are put into subordinate legislation. There have been a number of Bills where there's been a lot of supplementary legislation, where all the detail is in that. So, it's very difficult to properly assess the cost of a Bill because you haven't got that subordinate legislation in front of you. So, how do you

ensure that RIAs for subordinate legislation are produced in a consistent manner?

[75] **Sir Derek Jones:** It's something of an anomaly, in a way, that the requirements for regulatory impact assessments for secondary legislation are actually set out on the face of the Government of Wales Act 2006, because at the time the 2006 Act was being put through, it was only secondary legislative powers that we had. The Act requires the Government to draw up a code of practice—Marion, is that the right phrase?

[76] **Ms Stapleton:** Yes.

[77] **Sir Derek Jones:** —a code of practice for the production of regulatory impact assessments for secondary legislation. We've done that; it's published and it provides a good basis for a reasonable degree of consistency in RIAs for secondary legislation. Part of the anomaly is that the Act also defines regulatory impact in respect of secondary legislation, and it defines it differently from the Standing Orders requirement in 26.6. So, the Act for the secondary legislation defines a regulatory impact assessment as an analysis of the costs and the benefits of the secondary legislation; the Standing Orders requirement only refers to costs. There's potentially a bit of tidying up that could be done for the next session.

09:30

[78] **Peter Black:** Okay. Are there any exceptions where an RIA will not be required for secondary legislation?

[79] **Sir Derek Jones:** Yes. There's a list of exceptions. I'm not going to reel it off. Not because I couldn't, Chair—[*Laughter.*] But the committee wouldn't be interested.

[80] **Peter Black:** It's a very long list, then.

[81] **Sir Derek Jones:** But there are things like—

[82] **Jocelyn Davies:** If you could send us a note on it, there are some people here that would—.

[83] **Sir Derek Jones:** One of my colleagues might have the list in front of them, but, for example, where the secondary legislation is simply, I don't

know, up-rating a fee or a very simple, straightforward piece of business, then it's a legitimate exception for an RIA. They are defined, but I'd be very happy to send the list to the—. I could in fact send you the whole of the—

[84] **Jocelyn Davies:** Marion will know that some people on this committee are so sad that they would be very interested in that.

[85] **Peter Black:** Well, I was always very interested in the Egyptian potato regulations.

[86] **Jocelyn Davies:** No, potatoes originating in Egypt; it's a different thing. *[Laughter.]*

[87] **Peter Black:** Okay.

[88] **Jocelyn Davies:** Peter.

[89] **Peter Black:** Do you actually calculate the cost to the Welsh Government of developing secondary legislation, as in the case of the RIA accompanying the Regulation and Inspection of Social Care (Wales) Bill?

[90] **Sir Derek Jones:** It was done in that case. 'No' is the general answer, though. Secondary legislation is very much business as usual for the Government, and we don't attempt to assess those costs.

[91] **Peter Black:** Okay. I think the other issue I'm interested in—. Because, where you have a Bill that has a lot of secondary legislation in terms of actually getting the Bill delivered, how do you budget for that Bill? I mean, you actually haven't developed the secondary legislation at the point of the Bill going through. How do you actually plan for that yourselves in terms of your own budgeting process?

[92] **Sir Derek Jones:** Well, we have to, and, actually, the finance Minister, naturally enough, insists on it. So, within Government, if a proposed Bill is going to make it into the programme, then any finance Minister is going to want to know what the financial implications for the Government might be as a result of that legislation, and that is fairly early days. So, internal business, although we have started to publish some of those estimates now in the budget narrative, it can only be at that stage the best assessment that we can make of costs, and it's not detailed down to what the primary legislative effects would be and what the secondary legislative effects would be.

[93] **Peter Black:** This brings me back to Mike's frustration, because we're faced with a Bill and an RIA that says that all this will be developed later on as you develop the secondary legislation, and yet you have an estimate of those costs in your head, but we don't see them as scrutinising Members.

[94] **Sir Derek Jones:** Yes. [*Laughter.*]

[95] **Peter Black:** Do you think you might want to look at that in the future, perhaps?

[96] **Sir Derek Jones:** Yes, I'll certainly take that away.

[97] **Peter Black:** Okay, thanks.

[98] **Jocelyn Davies:** Okay, then, Mike.

[99] **Mike Hedges:** I've two questions. The first one is, in your paper, you mentioned that it is too early to undertake post-implementation reviews. Will you be publishing a timetable of when you'll be undertaking these post-implementation reviews, and will you be reporting them back to a future finance committee?

[100] **Sir Derek Jones:** Well, this really is new business. I think it is too soon, so, post-legislative evaluation of impact would begin after provisions had been brought into force, and, for many of the Acts passed in this Assembly, that would still be some time off. But there have been a lot of Acts passed. We've been looking at this, actually, in terms of benchmarking against the Scottish Government in particular and what their practice has been, but also the UK Government. I don't myself think that we should try to automate post-legislative evaluation so that every piece of legislation gets put into some kind of a slot. I think it needs to be more selective than that.

[101] The Government has an evaluation programme running at all times. Not everything that Government does that needs to be evaluated is related to legislation, so our knowledge and analytical services have a constant programme discussing with policy divisions what their priorities would be for policy evaluation, and that would include legislative areas but also non-legislative. I think that what we should do is build the post-legislative impact evaluation into the broader programme of policy evaluation, which I think we do publish—although I couldn't quite get an answer to this, but I'm very

happy to publish our programme of evaluation—which, as I say, reflects our policy departments' view of priorities for evaluation. Certainly, the Scots do not just routinely carry out a post-legislative evaluation on every piece of legislation—they're very selective.

[102] **Mike Hedges:** Could I talk about two pieces of legislation in particular then? Two fairly early ones. One was the bye-laws Act, which should produce a saving, but it's used so infrequently that that saving will occur very infrequently within different local authorities. So, for that it would be difficult to predict how much the savings were going to be over a period of time, and the savings themselves would be small. And the other one, which is, I think, much more complicated, is the scores on the doors for eating places legislation. That's happening at the same time as cutbacks are taking place in local government and within environmental health departments. So, the actual cost of environmental health is reducing across local authorities, so wouldn't it be very difficult to work out what the actual cost of that is within a declining expenditure?

[103] **Sir Derek Jones:** Yes, it would. Maybe Marion can help me with this, I'm not sure how to respond on the bye-laws. I think the scores on the doors legislation is actually in line for a very early impact assessment regardless of where it's at in the programme. I think, actually, the legislation there had built into it—. Certainly the regulatory impact assessment for that piece of legislation spoke about the need to quite quickly start to try and evaluate the impact, but more, I think, in terms of the impact on hygiene standards in food outlets than, 'Well, what's the overall balance of administrative cost and saving?' I don't think I can answer that off the cuff, Chair.

[104] **Mike Hedges:** I'm just saying about the difficulty. The other thing is that some legislation, I think that's a classic example, the Food Hygiene Rating (Wales) Act 2013, that even if there was a net cost, I think most people believe it's been such a very good piece of legislation that's worked so well in improving food hygiene, it would be worth it anyway.

[105] **Sir Derek Jones:** But if you monetised some of those benefits, again, which would require some assumptions, but if there were real gains for health—if it was keeping people out of accident and emergency—then you might find actually that it was paying for itself.

[106] **Mike Hedges:** Actually, I think that trying to monetise savings in health against expenditure anywhere is fraught with difficulty. I don't want to argue

that with you now, I'll argue that with other people in other places. But I don't think any of these things actually have made a net saving to health.

[107] **Jocelyn Davies:** It's just that you say—. But you will spend it on something else in health, I think that's the—. You won't have that saving in your pocket, I don't think.

[108] **Sir Derek Jones:** No.

[109] **Jocelyn Davies:** Can I ask you, do you read the regulatory—? Because it sounds to me as if you actually read these RIAs.

[110] **Sir Derek Jones:** What, as a routine matter?

[111] **Jocelyn Davies:** Yes, you yourself.

[112] **Sir Derek Jones:** No, I don't.

[113] **Jocelyn Davies:** For each Bill—.

[114] **Sir Derek Jones:** No.

[115] **Jocelyn Davies:** You seem to have a knowledge of them.

[116] **Sir Derek Jones:** Well, I've been—

[117] **Jocelyn Davies:** Have you swotted up for today?

[118] **Sir Derek Jones:** —preparing to come to this committee, Chair, if I'm perfectly frank. It's a terrible thing to say, I suppose, but 'I read them when they're in trouble' would, I think, be the honest answer to that. [*Laughter.*] But this has been a big piece of business; I think there's about 1,700 pages of regulatory impact assessment that have been produced so far.

[119] **Jocelyn Davies:** Well, Peter's probably served on more Bill committees than any other Assembly Member, so he's probably read the most—

[120] **Peter Black:** And produced my own RIA.

[121] **Jocelyn Davies:** Yes, and produced his own.

[122] **Sir Derek Jones:** I defer to Peter Black's greater knowledge.

[123] **Peter Black:** It's not easy—it wasn't easy.

[124] **Jocelyn Davies:** Mike, have you finished your questions?

[125] **Mike Hedges:** Yes.

[126] **Jocelyn Davies:** Ann, shall we come to yours?

[127] **Ann Jones:** Yes, thanks. As somebody else who has gone through that process, Peter, I don't envy anyone who is having to set up an RIA.

[128] Draft legislation and pre-scrutiny by committees. The Children, Young People and Education Committee that I chair was quite critical of the draft regulatory impact assessment that accompanied the additional learning needs Bill when we tried to do a piece of pre-legislation scrutiny. Now, I just wonder, do you intend to strengthen the RIAs on draft legislation, rather than leave it with insufficient funding or insufficient detail of funding?

[129] **Sir Derek Jones:** Yes, a very legitimate concern to raise. I think the ALN Bill, in the end published as a draft Bill for consultation, was a first-go at regulatory impact—. Actually, it was one of those cases where we had opted for some external expertise—I won't name the consultancy, but an international business—and I think the result, nevertheless, was unsatisfactory. But, fortunately, we're at a stage where we can pick that up again. So, what's happening at the moment is that my team are working with the Welsh Local Government Association, so that, by the time the Bill comes back, we will have a better grasp on the impact than at first publication. In future, I think the First Minister has already made a commitment that, when Bills are published in draft for consultation, they will be accompanied, effectively, by an RIA financial memorandum.

[130] **Ann Jones:** So, I suppose for the fifth Assembly, if a draft RIA will accompany a draft Bill, you expect it to get stronger, or you expect it to be a better piece of work, rather than how—

[131] **Sir Derek Jones:** Yes, I think so. We're just getting better at it and it's a general point for improvement that assessing the costs—this is the point that Peter Black was making earlier, essentially—and the benefits of a piece of legislation is really fundamental to the business case for whether to proceed

with it or not and should therefore be early work. What's tended to happen, I think, just because of pressure of business, is that some assessment of costs and benefits have to be made early on, but the precision that's required by the regulatory impact assessment has been left to rather later in the day, or becomes rushed. If we can improve on that so that there's a rather more seamless process where the overall cost-benefit analysis that is part of the business case for the legislation moves seamlessly into a technical and published regulatory impact assessment, then that would be a great improvement. And it should mean that, right at the early stage of the publication of a draft Bill, we have a good financial memorandum alongside it. Can I ask—

[132] **Jocelyn Davies:** Yes, of course. Andrew.

[133] **Mr Hobden:** I think the difficulties in relation to the draft RIA for that particular draft Bill relate to the subject matter. It's a difficult area to obtain information on the costs. I could point to an alternative example—I mentioned it before—of the minimum unit pricing of alcohol where the draft regulatory impact assessment was much more detailed, because we had the information to inform that assessment.

[134] **Ann Jones:** Okay, thanks.

[135] **Jocelyn Davies:** Before you go on, how long does it take to prepare? When do you, you know—?

[136] **Ann Jones:** It took me a long time.

[137] **Jocelyn Davies:** How long does the process take? Marion, have you got a—?

[138] **Ms Stapleton:** It is quite significant, because, quite often, they're extremely complex and it's highly dependent, also, on the availability of information. So, they start pretty much straight away, really.

[139] **Ann Jones:** I'll hasten to add that the Children, Young People and Education Committee were attempting to be a critical friend, rather than criticise. Could I move on to cumulative cost, and could I ask you, will you continue to include assessments of the additional cost of legislation to Welsh Government in the budget narrative?

[140] **Sir Derek Jones:** Yes.

[141] **Ann Jones:** You will.

[142] **Sir Derek Jones:** Well, I think, fundamentally, that will be a ministerial decision, but we are not aware of any plans by the current Government to change that—well, they can't now—and I would certainly recommend it being there. I think we've done it over the last two years now, and I think this committee has welcomed it. I can't think why another Government wouldn't take the same view. It's work that needs refinement.

09:45

[143] **Ann Jones:** Okay.

[144] **Jocelyn Davies:** Okay?

[145] **Ann Jones:** I'm fine, thanks.

[146] **Jocelyn Davies:** Chris, shall we finish with your questions?

[147] **Christine Chapman:** I just want to understand better how you feel Welsh Government is doing in comparison with other jurisdictions. I know, in your paper, you note that the Public Policy Institute for Wales have been commissioned to review the impact assessment processes in Wales. First of all, have the findings from this review been published?

[148] **Sir Derek Jones:** No, it's not finished yet.

[149] **Christine Chapman:** Right, okay.

[150] **Sir Derek Jones:** It's been a bit delayed. I think we originally expected it would be finished last month. I think it's nearly there; the author's been seeking views and comments from my colleagues, and I think now is in the process of incorporating those into the report. The report will be to Ministers, but I'm sure it will be published.

[151] **Christine Chapman:** So, any idea of timescale?

[152] **Sir Derek Jones:** Um—. I'm only hesitating because of the election. It—

[153] **Christine Chapman:** Would you get back to us on that?

[154] **Sir Derek Jones:** It might be best if it's published with comments by Ministers in the next administration, but there's nothing at all secretive or controversial about it. It's a piece of work that's done not out of legislative impact assessment work, but about my concerns on impact assessment on policy work generally in the organisation. It's become a very, very demanding task for any policy maker now. I think there are about 17 individual impact assessments that have to be made for any piece of policy work—some of them statutory; some of them we've adopted ourselves to reflect the Welsh Government's values—and so every piece of policy work needs to be checked against that particular value. All of which is good, but it has become a very complex scene internally for policy makers, and so the remit to Clive Grace, from the PPIW, was to look at what we were doing, look at what's done elsewhere, and see if recommendations could be made, primarily for simplification and reducing the staff hours that are having to be put into this kind of work, because our staff are reducing as well.

[155] **Christine Chapman:** So, just to be clear then, it won't be before the election. You mentioned possibly for the next Assembly that there would be more information.

[156] **Sir Derek Jones:** I think so.

[157] **Christine Chapman:** Okay. I think you mentioned Scotland as a place of best practice. Have you proactively looked at other jurisdictions to see how they are doing it? There are some good examples there. Have you looked at that at all?

[158] **Sir Derek Jones:** We have looked at the UK Government, as well as Scotland. I'm not sure we've looked further afield than that. Andrew, have we?

[159] **Mr Hobden:** Northern Ireland as well—*[Inaudible.]*

[160] **Christine Chapman:** Do you intend doing that at all? I'm just thinking how we benchmark ourselves against other places.

[161] **Sir Derek Jones:** I don't have a plan to do that. You phrased the question 'how were we doing compared to other administrations?' to which my stock answer is 'brilliantly'. *[Laughter.]* But, in a way, I guess the Scottish

Parliament and the Scottish Government are the most natural benchmark for us—another devolved nation, but which has been exercising primary legislative powers for longer. I think that’s our first and most natural place to go to benchmark. Having done a bit of it, I don’t think we’ve got anything to be concerned about fundamentally in terms of our own processes and procedures, which I think—

[162] **Christine Chapman:** I might come on to that later on. That was my last question.

[163] **Sir Derek Jones:**—in terms of rigour, stack up pretty well.

[164] **Christine Chapman:** Okay. Another question: are you planning to publish your revised RIA guidance contained in the legislation handbook on Assembly Bills? Are you going to publish that in the public domain?

[165] **Sir Derek Jones:** Yes, and that’s where the results of the review that I’ve asked for, the work that’s going on now—to the extent that we can find ways to improve our processes, those will then be incorporated in the guidance for staff, which is published now, I think—Marion will certainly publish the update.

[166] **Christine Chapman:** Okay. Going back to your point, Derek, you talked about that you felt that the Welsh Government is doing particularly well on this, but we did have—

[167] **Sir Derek Jones:** Sorry, I was being a bit facetious there.

[168] **Christine Chapman:** Yes, I know. [*Laughter.*] But we did have one comment, or a number of comments, regarding stakeholders and this is about whether there is a need to improve consultation with stakeholders. I’ll give you an example of this: during the scrutiny of the Environment (Wales) Bill, there were consultation responses from the Association of Manufacturers of Domestic Appliances, the Catering Equipment Suppliers Association, and I think it’s Mechline Developments Limited, and they, actually, were looking at this and they said that

[169] ‘no experts from our industry were consulted’

[170] in the preparation of the RIA. That’s just one example. Now, you may not have full details of that to hand, but do you feel that that would merit

some discussion? Do you think that you are effectively working with stakeholders during the development of RIAs?

[171] **Sir Derek Jones:** I think we can and should improve depth and breadth of consultation. I am aware, actually, of that particular case and I think the Government had something to say for itself in terms of business organisations that it had consulted. But, clearly, there were some who felt left out.

[172] Now, at root, the only way you're going to get a really, really good assessment of the impact of a piece of legislation is by having a very, very good understanding with the people that it's going to affect. That, therefore, needs to be—. You know, the quality of that consultation and stakeholder engagement—which is what it tends to be called, but really it's just listening to the people that are going to be affected and allowing enough time for that—that is going to be the bedrock for building up the assessment of impact. I think we can improve. Some of the difficulties in the fourth Assembly have just been pace and quantity, I think.

[173] I suppose this is a very strategic point, but I do strongly believe that the quality of impact assessment work that we can do will be related to the overall volume of legislation. I think the First Minister, in responding to the Constitutional and Legislative Affairs Committee, has said that he thinks we should legislate rather less and that any future Government should be willing to be sufficiently disciplined to manage a proportionate legislative programme, and also that the hurdle of readiness for any individual piece of legislation should be quite high. If we could do that, so we don't try to legislate too much and that the Bills that come forward are well prepared, then that will allow more of that space for consultation with stakeholders, which is inevitably going to improve the RIA and, actually, the stakeholder's confidence in it.

[174] **Christine Chapman:** Okay, that's fine. Thank you.

[175] **Jocelyn Davies:** Nick, did you have some questions?

[176] **Nick Ramsay:** Yes. Just to be clear—. That's a very interesting point that's just been made. Are you saying that you're confident that less legislation in the future would result in better quality legislation?

[177] **Sir Derek Jones:** I think there is a trade-off, yes, between the volume

of legislation that you try to get through and the RIAs that need to accompany it. You use the time and resources available to do that to the best possible standard. It seems inevitable to me that there'll be a trade-off there.

[178] **Nick Ramsay:** That's interesting. Thanks.

[179] **Jocelyn Davies:** One of the difficulties there, of course, is, before we had legislative powers, Ministers—who will be wanting to do things—then create special grants instead, and then we've got too many special grants. So, you can either do things by the law, you can do things by policy or you do things with money and there is a temptation, then, to create other mechanisms, and parties, political parties, will not give a rat's arse about how difficult it is for you—

[180] **Sir Derek Jones:** I'm glad you said that, Chair, rather than me. [*Laughter.*]

[181] **Jocelyn Davies:** How it is for you to produce regulatory impact assessments when they put forward their manifestos that they take out to the country, I don't think it's going to be—. Well, it certainly wouldn't be on the top of my agenda. So, it is difficult isn't it, when you're outside of Government, and you're in parties, to have that as a top priority? I wish you well with that, but—

[182] **Sir Derek Jones:** My response to Nick Ramsay was an administrator's response, I guess, and I think when I wrote to you, Chair, before this session, I did say that fundamentally the legislation that's brought forward by the Government is a matter of political judgment for that Government and there are huge pressures, and there will be huge pressures, I'm sure, during the election campaign and immediately after, to bring forward legislation in the fifth Assembly.

[183] **Jocelyn Davies:** Well, I don't know. It may be that we produce manifestos that say we'll repeal legislation instead of saying that we'll pass laws. [*Laughter.*] I don't know; we'll see.

[184] **Sir Derek Jones:** My political leadership, so far, has just said, 'Derek, this is what we're going to do—get on with it.'

[185] **Nick Ramsay:** The point you make is completely logical—if you've got a small amount of legislation, you've got more time to look at it.

[186] **Jocelyn Davies:** Yes, that's true. Okay, thank you very much for those insights. I think that's been very helpful. As usual, we'll send you a transcript. If you would check it for accuracy, we'd be very grateful for that. It did slip my mind that Alun Ffred did send his apologies, but he sent them via me and I forgot. So, when I said earlier on that there were no apologies, I should have included Alun Ffred. So, he hasn't just not turned up today; he did send his apologies.

09:56

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd  
o'r Cyfarfod**  
**Motion under Standing Order 17.42 to Resolve to Exclude the Public  
from the Meeting**

*Cynnig:*

*Motion:*

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

*accordance with Standing Order  
17.42(vi).*

*Cynigiwyd y cynnig.*

*Motion moved.*

[187] **Jocelyn Davies:** Shall we go into private session under Standing Order 17.42? Thank you. All agreed.

*Derbyniwyd y cynnig.*

*Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 09:57.*

*The public part of the meeting ended at 09:57.*