



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

Y Pwyllgor Busnes **The Business Committee**

Dydd Llun, 18 Mawrth 2013
Monday, 18 March 2013

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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

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| Rosemary Butler | Llafur (Y Llywydd a Chadeirydd y Pwyllgor) Labour (The Presiding Officer and Committee Chair) |
| Jocelyn Davies | Plaid Cymru The Party of Wales |
| William Graham | Ceidwadwyr Cymreig Welsh Conservatives |
| Lesley Griffiths | Llafur (yn dirprwyo ar ran Jane Hutt) Labour (substitute for Jane Hutt) |
| Aled Roberts | Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats |

**Eraill yn bresennol
Others in attendance**

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|---------------|---|
| Sarah Canning | Dadansoddwr Polisi Cyfansoddiadol, Llywodraeth Cymru Constitutional Policy Analyst, Welsh Government |
| Claire Fife | Pennaeth Tim y Rhaglen Ddeddfwriaethol, Llywodraeth Cymru Head of the Legislative Programme Team, Welsh Government |

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

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| Adrian Crompton | Cyfarwyddwr Busnes y Cynulliad Director of Assembly Business |
| Aled Elwyn Jones | Clerc Clerk |
| Tanwen Summers | Dirprwy Glerc Deputy Clerk |
| Siân Wilkins | Pennaeth Deddfwriaeth a Gwasanaethau'r Siambr Head of Legislation and Chamber Services |

*Dechreuodd y cyfarfod am 3.00 p.m.
The meeting began at 3.00 p.m.*

**Ymddiheuriadau a Chyhoeddiadau
Apologies and Announcements**

[1] **The Presiding Officer (Rosemary Butler):** Good afternoon, everyone, and welcome to this meeting of the Business Committee, which is being held in public. I would like to welcome our new Minister for business, Lesley Griffiths, who is actually here this afternoon substituting for Jane Hutt. That is because, technically, Jane is still a member of this committee, and the Minister will not be until tomorrow. Welcome.

[2] **The Minister for Local Government and Government Business (Lesley Griffiths):** Thank you.

[3] **The Presiding Officer:** Before we get on with today's proceedings, I remind Members of the following practical arrangements. In the event of a fire alarm, you should leave the room by the marked fire exits. There are no tests planned for today, so, if the alarm goes off, please leave the room as quickly as you can. I remind people here and in the public gallery to turn off their mobile phones, pagers and BlackBerrys, because they affect the broadcasting equipment. I would also remind you that the National Assembly for Wales operates in the medium of both the Welsh and English languages. Interpretation is available

on channel 1, and the verbatim proceedings are on channel 0.

3.01 p.m.

**Diwygiadau i Reolau Sefydlog Rhifau 26 a 26A: Y Cyfnod Ailystyried
Amendments to Standing Order Nos. 26 and 26A: Reconsideration Stage**

[4] **The Presiding Officer:** These amendments relate to the reconsideration stage for Acts and private Acts of the Assembly. A review of these procedures at the end of 2012 highlighted some gaps in the Standing Orders that we decided needed to be addressed. Amendments are proposed to the relevant Standing Orders to address the issues we identified, and the proposed changes will provide a clearer and, hopefully, more comprehensive set of procedures for reconsideration stage. Do any Members have any comments on that point? No? Okay. I take it, therefore, that you will agree in principle the proposed draft Orders at annex B of paper A. I see that you do.

3.02 p.m.

**Diwygiadau i Reolau Sefydlog Rhifau 21 a 27: Cyflwyno Adroddiadau ar
Offerynnau Statudol
Amendments to Standing Order Nos. 21 and 27: Reporting on Statutory
Instruments**

[5] **The Presiding Officer:** This item relates to the deadline for reporting on statutory instruments, and we are looking at Standing Order Nos. 21 and 27. Standing Order No. 21.4 stipulates that the responsible committee must report in respect of any statutory instrument or draft statutory instrument no later than 20 days after the instrument or draft has been laid. The Public Bodies Act 2011, however, sets out a procedure for the Assembly's consideration of draft Orders laid by Welsh Ministers under the Act. It includes specific time limits both for the Assembly and the responsible committee to consider such Orders. The Chair of the Constitutional and Legislative Affairs Committee has recommended that we look at amending Standing Orders to deal with anomalies that arise from procedures in UK or Welsh legislation that impact on the time of reporting on subordinate legislation. Now, the proposed amendments are designed to be applicable not only to Orders made by Welsh Ministers under the Public Bodies Act 2011, but also to those made under any other Acts that may stipulate timings in relation to the Assembly's consideration of statutory instruments. Can we agree in principle on that one? Yes? Okay. I see that we are agreed.

3.03 p.m.

**Diwygiadau i Reolau Sefydlog Rhifau 29 a 30: Cydsyniad mewn Perthynas â
Biliau Senedd y DU
Amendments to Standing Order Nos. 29 and 30: Consent in Relation to UK
Parliament Bills**

[6] **The Presiding Officer:** In March 2012, the Constitutional and Legislative Affairs Committee published the report of its inquiry into the granting of powers to Welsh Ministers in UK laws. The Business Committee considered the report at its meetings of 12 and 19 June 2012 and was able to take the Welsh Government's own response to the report into account in its discussions. In our response, we welcomed the opportunity provided by the report to review the Assembly's procedures in this area and responded positively to all the recommendations that called for the Assembly's Standing Orders to be revised. The proposals that we are considering today are designed to implement recommendations 5, 6 and 7 of the Constitutional and Legislative Affairs Committee's report. We will consider further proposals

in due course. So, we are looking at annex A, pages 30, 31 and 38—that is, Standing Orders Nos. 29.1, 29.2, and 30.

[7] The Constitutional and Legislative Affairs Committee recommended the widening of when a legislative consent motion would be required. It recommended that any provision in a UK Bill that is within the Assembly's competence or impacts upon it, or which modifies the functions of Welsh Ministers, should require the Assembly's consent. The proposed amendments to Standing Order No. 29.1, alongside the deletion of Standing Order No. 30, would implement this recommendation. The proposed amendments would bring us into line with the Scottish Parliament and the Northern Ireland Assembly.

[8] The Welsh Government noted in its response that expanding the scope of the Standing Order would require amendments to devolution guidance notice 9 in order to make it an effective process. The proposed amendment to Standing Order No. 29.2 also extends its scope to include private Bills in the UK Parliament. So, Minister, could you update us on the Government's progress on discussions with the UK Government?

[9] **Lesley Griffiths:** We believe that there would be practical problems in implementing this amendment. The process that applies to private Bills in Westminster is different from that which applies to UK Government-sponsored Bills and private Members' Bills. Those sponsoring private Bills deal directly with the House authorities. The UK Government has no direct influence over private Bills and DGN 9 does not extend to them. We would not be able to implement a consent process in the Assembly as it would not be possible to exert any influence over the progress of the private Bill in Westminster. So, we would not be able to ask the UK Government to remove provisions from private Bills if the Assembly did not consent to them.

[10] **The Presiding Officer:** Do the business managers have any comments, or, Adrian Crompton, would you like to make any comments?

[11] **Mr Crompton:** On that point, I can see why, from the Westminster end and from a Government perspective, having any commitment for it to engage with private legislation would be very difficult for it to commit to, because, as the Minister said, it has no particular locus in a private Bill when it comes forward. However, I think that the committee and the Assembly should think about whether it wants some procedure built in at this end to make sure that, if the Assembly has a view on a piece of legislation introduced in Westminster, it is able to express that.

[12] This was prompted by the introduction of a private Bill in Westminster 18 months ago that was very obviously within the competence of the Assembly, and, because we picked it up and communicated that to the House authorities, it was withdrawn. So, as I said, even if it is not a governmental process, there ought to be some provision that ensures that the Assembly has the opportunity to express its view.

[13] **Jocelyn Davies:** I think that there has been a similar problem when we have Member-proposed Bills here, and the inability to communicate that to the UK Government. There is an issue in that Governments talk to Governments. So, in this case, it would require the Assembly, as a legislature, to speak to the House authorities. I suppose that that would be down to us, or you, Presiding Officer. We just have to make sure that it is possible for that communication to take place. However, I know the difficulty that our Members have faced when they have been expected to communicate with the UK Government; it is impossible, because those processes and channels of communication simply are not there. So, as long as there is a mechanism, then it can work. Otherwise, we cannot really rely on the Government here to make views known to a Member in Westminster.

[14] **William Graham:** I support what Jocelyn has said.

[15] **Aled Roberts:** Yes, it seems to make sense.

[16] **The Presiding Officer:** Yes, I think it is very important that we have a mechanism. So, I think that what we are saying is that we cannot agree these proposals today, but we will bring something back at some point—possibly at the next meeting of the Business Committee.

[17] **Mr Crompton:** We can certainly take a look at that and maybe break the link with the onus being on the Government to introduce the memorandum, to guarantee that the onus is not on the Government, but, one way or another, the Assembly has a chance and it is drawn to its attention.

[18] **The Presiding Officer:** I do not think that this is urgent, because I do not see any private Bills in the near future, but it would be quite important. So, if you can get it done fairly quickly, that would be helpful.

[19] **Mr Crompton:** Certainly. One advantage is that, for private legislation, the procedure in Westminster is very odd. It is a bit like pandas mating; it happens only once a year.

[20] **The Presiding Officer:** That is a very interesting analogy. [*Laughter.*]

[21] **Mr Crompton:** There is a point in the year when any private legislation will be on the table. So, if we focus on that, it will not be too difficult.

[22] **Jocelyn Davies:** There will be people all over the world awaiting the news. [*Laughter.*]

[23] **The Presiding Officer:** Well, there we are. I will not say that was more information than we needed, but it was very interesting. So, we propose that we will not adopt Standing Order No. 29.2 and that we will accept Standing Order No. 29.1. Minister, do you have anything to say on Standing Order No. 29.1, or are you comfortable with it?

[24] **Lesley Griffiths:** We are content with the amendment—I am sorry, Chair.

[25] **The Presiding Officer:** It is okay, this is very complicated.

[26] **Lesley Griffiths:** We agree in principle that modifications to functions of the Welsh Minister or of the Counsel General should be covered by the legislative consent process, even where those functions fall outside of the Assembly's legislative competence. However, our response to the Constitutional and Legislative Affairs Committee's report made it clear that this was not simply a matter of changing Standing Orders, and would need to be discussed with the UK Government. We have also received a negative response from the Secretary of State for Wales.

[27] **The Presiding Officer:** I am not quite sure what that means—'a negative response from the Secretary of State for Wales'. So, we are talking about Standing Order No. 29.1 and Standing Order No. 30. We have agreed that Standing Order No. 29.2 will not stand. Are we comfortable with Standing Order No. 29.1?

[28] **Lesley Griffiths:** I will bring Sarah in on this.

[29] **Ms Canning:** Our position at the moment is that the First Minister has received a

response from the Secretary of State for Wales, on behalf of the UK Government, which says that he is not prepared to change devolution guidance note 9 to correspond to what we want here in the Assembly in this respect. So, although as a Welsh Government we totally agree with this and think it should happen, at the moment we cannot agree to it. We need to reflect on what has been said in the Secretary of State's letter and see whether we can go back to get any change on that.

[30] The other thing is that there will possibly be some developments in the next couple of weeks, because we are aware that the McKay commission is going to be reporting. It may say something about legislative consent motions, and we think that we may be able to look at this again after Easter to see whether there is anything that can be done. The bottom line at the moment is that devolution guidance note 9 is not going to be updated, which would mean that the UK Government, as far as it is concerned, would not be prepared to wait for a consent motion to go through the Assembly in respect of anything to do with Welsh Ministers' functions outside of the Assembly legislative's competence. So, basically, if we changed the Standing Orders in this respect, they would be out of sync with the devolution guidance that is given to UK Government officials. So, it would not be part of the Sewel convention as far as the UK Government is concerned.

[31] I do not know whether I have explained that clearly or not, because I can see some confused expressions. Basically, our position is that, at the moment, we cannot agree to it, because we have not been able to get the relevant agreement from the UK Government.

[32] **The Presiding Officer:** Adrian Crompton, do you have any comment on that? I see not. So, are we talking about Standing Order No. 29.1, Standing Order No. 29.2 or Standing Order No. 30?

[33] **Ms Canning:** It was the two together—it was about Standing Order No. 29.1(iii), which would extend the Standing Order to cover Welsh Ministers' functions, and also about deleting Standing Order No. 30, which at the moment deals with Welsh Ministers' functions, when a written statement is laid before the Assembly if Welsh Ministers' functions are affected by UK legislation.

[34] **Jocelyn Davies:** Presiding Officer, all I would say is that we can have whatever rules we would like to govern what we do, but we cannot guarantee that any other legislature or Government will enact the rules that we put in place for ourselves. So, there is nothing to stop us from adopting whatever rule we choose, especially if we all agree on it.

[35] **The Presiding Officer:** Are there any comments on that?

[36] **Mr Crompton:** I certainly agree with Jocelyn, and, from what Sarah said, we can carry on talking with Government officials to see whether we can tweak this, if there is a bit of a move at the other end, to get something suitable. As Jocelyn said, if this is what the Assembly wants and if the Welsh Government is comfortable with it, then, to a degree, I suspect, we can incorporate something so that Members are at least aware of any changes in ministerial functions, even if there is no commitment at the Westminster end to act on anything that we do.

3.15 p.m.

[37] The other thing to bear in mind, just to put it in context, is the number of instances that you are talking about here—they are not as rare as the other thing that we were talking about, but they are still not very many. So, these are changes to ministerial functions here that are outside the competence of the Assembly. We have had a handful of them—single figures—in this Assembly. They will be quite rare, but, in principle, important nonetheless.

[38] **The Presiding Officer:** So, are we deferring all these, or are we agreeing Standing Order No. 29.2?

[39] **William Graham:** I would prefer us to defer them all while negotiations take place.

[40] **The Presiding Officer:** Do we need to negotiate on Standing Order No. 29.2? Are you comfortable with deferring all of these and that we have a report back as soon as is possible?

[41] **Mr Crompton:** Yes. The process we envisage after this public meeting is that, when we have finalised changes to the Standing Orders, we bring those back to the Business Committee, either in public or private session. So, nothing will happen until you have seen the final version.

[42] **The Presiding Officer:** That will be in one of the standing committees, will it?

[43] **Mr Crompton:** Yes.

[44] **Aled Roberts:** We should make it clear what we are minded to do, in order perhaps to strengthen the Government's hand with regard to discussions with the UK Government.

[45] **Jocelyn Davies:** We should acknowledge that we did not just come up with this as an idea. This is based on a considerable amount of work and opinions taken from across the Assembly and outside. It is important that we return to it within a reasonable length of time.

[46] **The Presiding Officer:** Absolutely. When we discussed it on 19 February, we were aware that there were issues with the Secretary of State. We are some time on from there and we still have the problem. We would like this to be resolved as soon as possible, so, if we could move on at some pace with that, that would be helpful.

[47] We move on to the information in a legislative consent memorandum, which relates to Standing Order No. 29.3. We referred to this vaguely earlier, but the proposed new provision in Standing Order No. 29.3 implements a recommendation by the Communities, Equality and Local Government Committee in its report on the legislative consent motion on the Local Government Finance Bill on 25 June 2012. It recommended that any LCM must contain details of the Assembly's procedures that would apply to legislative powers granted to Welsh Ministers by a Westminster Bill. The proposed new Standing Order No. 29.3 makes it clear that, if a memorandum is laid relating to the same provisions in the same Bill as a previous memorandum, it must set out how it differs from the previous memorandum. Should I read that again, or do you all understand that? Does anyone have any comments? I am asking you to agree in principle that we accept Standing Order No. 29.3. I see that you do.

[48] We now move on to referral to committee, which relates to Standing Order No. 29.4 and Standing Order No. 29.5. These are in the annex on page 23. Again, these refer to legislative consent motions being referred to a committee. The Constitutional and Legislative Affairs Committee's recommendation 6 was that all LCMs should be referred to a committee, except in exceptional circumstances. The proposed changes to Standing Order No. 29.4 and Standing Order No. 29.5 implement that recommendation. I do not think that there is anything controversial there, so we will agree that one in principle.

[49] We now turn to tabling a legislative consent motion, which relates to Standing Orders Nos. 29.2A and 29.6. These are on pages 33 and 35 to 36 of the annex. The proposed change removes a requirement on the Government to table a motion for every memorandum laid. This was proposed by the Government in its response to the Constitutional and Legislative

Affairs Committee's report. At the same time, it provides for any other Member to table a legislative consent motion should they so wish. Any Member wishing to do so would need to lay a memorandum of their own, in accordance with the proposed new Standing Order No. 29.2A. This is fairly standard. Do we all agree that one in principle? I see that we do.

[50] The secretariat will draft a report based on our decisions today, which we will consider at a future meeting. The point that Members have made is that that should be sooner rather than later if we can manage that. That brings today's formal proceedings to a close.

Daeth y cyfarfod i ben am 3.19 p.m.
The meeting ended at 3.19 p.m.