



Cynulliad Cenedlaethol Cymru

The National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

Dydd Llun, 21 Hydref 2013
Monday, 21 October 2013

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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

Mick Antoni	Llafur (yn dirprwyo ar ran Julie James) Labour (substitute for Julie James)
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Alun Davies	Aelod Cynulliad, Llafur (y Gweinidog Cyfoeth Naturiol a Bwyd) Assembly Member, Labour (the Minister for Natural Resources and Food)
Julia Hill	Gwasanaethau Cyfreithiol, Tim Amaeth a Materion Gwledig, Llywodraeth Cymru Legal Services, Rural Affairs and Agriculture Team, Welsh Government
Gary Haggatt	Dirprwy Gyfarwyddwr, yr Is-adran Amaeth a Materion Gwledig, Llywodraeth Cymru Deputy Director, Agriculture and Rural Affairs Division, Welsh Government

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Gareth Pembridge	Cynghorydd Cyfreithiol Legal Adviser
Siân Richards	Y Gwasanaeth Ymchwil Research Service
Owain Roberts	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 14:49.
The meeting began at 14:49.

Ethol Cadeirydd Dros Dro Election of a Temporary Chair

[1] **Mr Williams:** Good afternoon and welcome to the Constitutional and Legislative Affairs Committee. The committee Chair, David Melding, has submitted his apologies for today's meeting. The first item of business is therefore the election of a temporary Chair. I invite nominations from committee members for a temporary chair to be elected under Standing Order 17.22.

[2] **Eluned Parrott:** I nominate Simon Thomas.

[3] **Mick Antoniw:** I second that.

[4] **Mr Williams:** I see that there are no other nominations. I declare Simon Thomas elected and invite him to take the Chair.

*Penodwyd Simon Thomas yn Gadeirydd dros dro.
Simon Thomas was appointed temporary Chair.*

14:50

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant Introduction, Apologies, Substitutions and Declarations of Interest

[5] **Simon Thomas:** Diolch am hynny. Croeso i'r pwyllgor, bawb. Dyma gyfarfod o'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol. Yn gyntaf oll, mae gennym, fel y nododd y clerc, ymddiheuriadau gan y Cadeirydd, David Melding, a chan Julie James. Croeso i Mick Antoniw, sy'n eilydd i Julie. Mae'r sylwadau agoriadol yr un peth ag arfer. Nid ydym yn disgwyl larwm tân. Felly, os oes larwm tân, dilynwch y tywyswyr. Hoffwn i chi ddiffodd eich ffonau symudol, os yn bosibl. Wrth gwrs, mae'r pwyllgor yn gweithio drwy'r Gymraeg a'r Saesneg—ar sianel 1, fe gewch y cyfieithu o'r Gymraeg, ac ar sianel 0, fe gewch glywed yr iaith wreiddiol. A oes rhywun am ddatgan unrhyw fuddiant yn yr hyn yr ydym yn ei drafod heddiw? Gwelaf nad oes—mae pawb yn hapus.

Simon Thomas: Thank you for that. Welcome to the committee, everyone. This is a meeting of the Constitutional and Legislative Affairs Committee. First of all, we have, as the clerk noted, apologies from the Chair, David Melding, and from Julie James. We welcome Mick Antoniw, who is substituting for Julie. The opening remarks are the same as usual. We do not expect a fire drill. So, if the alarm should sound, please follow the ushers. I would like you to switch off your mobile phones, if possible. Of course, the committee operates through the languages of Welsh and English—on channel 1, you can hear the interpretation from Welsh, and on channel 0, you can hear the verbatim language. Does anybody wish to declare any interests? I believe that everyone is content.

14:51

Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reolau Sefydlog 21.2 na 21.3 Instruments that Raise no Reporting Issues under Standing Orders 21.2 or 21.3

[6] **Simon Thomas:** Mae offerynnau gweithdrefn negyddol—dau ohonynt. Er gwybodaeth, mae un o'r ddau yn cyfeirio at reoliadau addysg, a byddwn yn trafod y cod

Simon Thomas: The negative procedure instruments are before you—there are two of them. For your information, one of them relates to education regulations, and we shall

yn nes ymlaen ar yr agenda. A oes gan rywun gwestiwn neu bwyntiau i'w gwneud ar y rhain? Gwelaf nad oes. Diolch am hynny.

be discussing the code later on the agenda. Does anybody have any questions or comments to make? I see that nobody does. Thank you very much.

[7] Dim ond sôn wrth fynd heibio ydw i fod offeryn o dan y weithdrefn negyddol yn dod gerbron y Cynulliad Llawn ddydd Mercher i bleidleisio arno. Nid ydym yn cael hynny'n aml iawn; nid wyf ond am nodi bod hynny'n digwydd.

I mention only in passing that there is an instrument under the negative procedure coming before the Plenary on Wednesday to be voted on. We do not see that very often; I just want to note that it is happening.

14:52

Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reolau Sefydlog 21.2 neu 21.3

Instruments that Raise Reporting Issues under Standing Orders 21.2 or 21.3

[8] **Simon Thomas:** Trown at offerynnau sydd â materion i gyflwyno adroddiad arnynt, ac yn benodol at y Rheoliadau Ychwanegion, Cyflasynnau, Ensymau a Thoddyddion Echdynnu Bwyd (Cymru)—roeddwn am ddweud hynny yn bendant, gan fod enw cystal Cymraeg ar y fath reoliadau. Mae adroddiad byr ar y rheini. A oes pwyntiau neu gwestiynau gan Aelodau? A ydych yn hapus gyda'r adroddiad, felly?

Simon Thomas: We turn now to instruments that raise reporting issues, and in particular to the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations—I wanted to make sure that I said that properly, because it is such good Welsh. There is a brief report on those. Do Members have any points to make or questions to ask? Are you content with the report?

[9] **Suzy Davies:** On this question of the EU legislation, there is a point about that, is there not, about it being introduced incompletely, basically? Could you just flesh that out a little bit, so that I understand what the problem is?

[10] **Mr Griffiths:** Y broblem yw bod deddfwriaeth Ewrop yn pennu bod angen i'r perchennog neu'r person sy'n delio â'r materion hyn yn rhoi gwybodaeth i'r Comisiwn o dan dri math o amgylchiadau. Mae dau ohonynt yn cael eu gorfodi gan y rheoliadau hyn, ond nid oes cyfeiriad at y trydydd. Yr esboniad yr ydym yn ei gael yw ei bod oherwydd mai cydgrynhoi y mae'r rheoliadau hyn, felly nid yw'n briodol eu diwygio. Nid wyf yn llwyr ddeall pam hynny—os ydynt yn anaddas ar hyn o bryd, dyma gyfle i gywiro pethau. Rwy'n meddwl mai'r hyn sydd wedi digwydd yw eu bod wedi cytuno ar ddrafft gyda Lloegr a'r Alban, ac felly nid ydynt am greu rhywbeth gwahanol yng Nghymru, gan y byddai hynny'n tynnu sylw'r Comisiwn at y cwestiwn o baham y mae gwahaniaeth yn y ffordd y mae'r Deyrnas Gyfunol yn

Mr Griffiths: The problem is that European legislation determines that the owner or the individual dealing with these issues is required to provide information to the Commission under three specific circumstances. Two of them are required under these regulations, but there is no mention of the third. The explanation that we have received is that it is because these regulations consolidate, and it is therefore inappropriate to amend them. I do not quite understand why that is the case—if they are currently not appropriate, then this is an opportunity to correct the situation. I think that what has happened is that they have agreed on a draft with England and Scotland and therefore do not want to do anything different in Wales, as that might draw the Commission's attention to the question of why there is a difference in the way that the

gweithredu'r ddeddfwriaeth hon.

UK is implementing this legislation.

[11] **Suzy Davies:** Diolch yn fawr.

Suzy Davies: Thank you.

14:54

Trafodaeth ynghylch y Cod Apelau Derbyn i Ysgolion Consideration of the School Admission Appeals Code

[12] **Simon Thomas:** Ar gyfer yr eitem hon, mae gennych bapur sy'n cynnwys adroddiad byr ar y cod apelau derbyn i ysgolion. Efallai eich bod yn cofio i ni drafod hyn o'r blaen yn y pwyllgor a'n bod yn awyddus i ddilyn y mater i fyny i weld a oedd y gwaith yn cael ei wneud yn ffordd briodol. Mae'r adroddiad yn nodi bod y gweithdrefnau cywir wedi cael eu defnyddio, ond dyma gyfle i Aelodau godi cwestiynau os oes ganddynt rai. A ydych yn hapus gyda hynny? Gwelaf eich bod, felly dyna gau pen y mwdwl o ran hynny. Diolch i'r swyddogion am hynny.

Simon Thomas: For this item, you have a paper that contains a brief report on the school admission appeals code. Perhaps you will recall that we discussed this earlier in committee and that we were keen to follow the matter up to see whether the work had been done in the appropriate manner. The report notes that the correct procedures have been used, but this is an opportunity for Members to ask any questions they may have. Are you content with that? I see that you are, so, that brings that to a conclusion. Thank you very much, officials, for that.

Tystiolaeth mewn Perthynas â'r Bil Rheoli Ceffylau (Cymru) Evidence in Relation to the Control of Horses (Wales) Bill

[13] **Simon Thomas:** Gwelaf fod y Gweinidog wedi cyrraedd, ac, felly, os yw'r Aelodau'n hapus i wneud, liciwn symud yn syth ymlaen. Rhown ni funud i sicrhau bod popeth yn iawn, ac wedyn symudwn ymlaen, os yw hynny'n iawn, achos y mae'r Gweinidog yn barod i wneud hynny.

Simon Thomas: I see that the Minister has arrived, so, if Members are content to do so, I would like us to move straight on. We shall wait a few moments to ensure everything is in place and then we will move on, if that is okay, because the Minister is content to do so.

[14] Croeso, Weinidog. Dyma sesiwn derbyn tystiolaeth ar y Bil Rheoli Ceffylau (Cymru). Mae'r Gweinidog yma gyda dau o'i swyddogion. Yr hyn yr ydym yn bwriadu ei wneud yw gofyn cwestiynau i chi ac wedyn byddwn dros nos, gyda lwc, yn cysylltu â chi gydag unrhyw gwestiynau sy'n codi, neu unrhyw bwyntiau sydd gennym yn sgîl hyn, er mwyn bwydo i mewn i'r drafodaeth a fydd yn digwydd yn y Cyfarfod Llawn yfory, os yw hynny'n dderbynniol i chi. Byddwn yn mynd yn syth at ofyn cwestiynau, ond efallai yr hoffech gyflwyno eich swyddogion yn gyntaf.

Welcome, Minister. This is a session to receive evidence on the Control of Horses (Wales) Bill. The Minister has joined us with two officials. What we intend to do is to ask our questions, and then overnight, hopefully, we will contact you with any questions or points that we have as a result of this discussion to feed into the discussion that will take place in tomorrow's Plenary session, if that is acceptable to you. We will go straight into asking questions, but perhaps you would like to introduce your officials first.

[15] **Y Gweinidog Cyfoeth Naturiol a Bwyd (Alun Davies):** Diolch yn fawr. Rwy'n hapus iawn gyda hynny. Gary Haggaty yw pennaeth amaethyddiaeth,

The Minister for Natural Resources and Food (Alun Davies): Thank you very much. I would be more than happy to do so. Gary Haggaty is the head of agriculture for the

Llywodraeth Cymru, ac mae Julia Hill yn un o gyfreithwyr y Llywodraeth. Welsh Government, and Julia Hill is a Government lawyer.

[16] **Simon Thomas:** Diolch, Weinidog. Felly, awn ni yn syth at y cwestiynau. Mae Suzy yn agor y cwestiynu. **Simon Thomas:** Thank you Minister. We will turn straight to our questions. Suzy will begin.

[17] **Suzy Davies:** Obviously, this is a Bill for which the normal process has been curtailed somewhat. I think we have already had an idea from you through earlier scrutiny that you consider this to be an urgent Bill, and also that part of the consultation work had already been done before the Bill was conceived of. Are there any other reasons you can think of to justify the curtailment of the scrutiny process?

[18] **Alun Davies:** Of course, the Conservative leader asked us to deal with this in the Chamber in July—he asked us whether we could put legislation on the statute book before the onset of this current winter. I presume that the reasons he said that are very similar to the reasons that I have employed to bring this Bill forward. Many of us will be aware of both the animal welfare issues and also the wider social issues around fly-grazing, and will have seen some appalling reports in the media—and will have seen for ourselves in our constituencies and regions—the very real impact of fly-grazing on communities, on the animals themselves, on people, and also on the enforcement agencies, local government and charities that have been trying to deal with the issue.

[19] You are absolutely right, Suzy, in what you say. The First Minister asked me to coordinate a governmental approach, because this is something that touches on a wide number of different portfolios. He asked me some time ago now to look at the issue and to take the ministerial lead on these matters. In responding to that request from the First Minister, I brought people together—I brought together a taskforce, if you like, of people working with officials within the Welsh Government, and people from across different parts of Wales, to look at how we can deal with fly-grazing—both immediately, as the situation faces us in communities, and then to put in place medium-term and longer-term solutions. As part of that, we started a consultation on fly-grazing last year, and we closed that consultation in the spring of this year. I made a statement on it in the summer and published last week an action plan that derives from that consultation, and from the debate and discussion that we have had with the wider horse/equine community in Wales. A part of that action plan was about taking actions in different ways, and a part of it was to ensure that we do have a stable, clear, consistent and coherent legislative framework in Wales.

15:00

[20] The part of the world that you represent in South Wales West probably has three or four different laws according to where you are. My constituency does not have any law at all, and neither does Mick's. In the case of Eluned, there will be different laws in at least two different parts of the region. Again, with regard to Simon, I do not think that any part of the Mid and West Wales region has any specific law on this matter. So, there is a need for a consistent pattern across Wales. We brought forward this legislation in this way. I spoke to all three parties outside the Government on this matter in September, and all three agreed that it should be brought forward in an expedited fashion. I outlined to all three opposition spokespeople the timetable that I had in mind in September, and with varying degrees of enthusiasm, all three agreed with that. If you like, that is a broad narrative of where we are today.

[21] **Suzy Davies:** Thank you for that answer. You touched on it, but the problems relating to fly-grazing—not just the issue of councils treating them differently, but the actual day-to-day problems of having them on your doorstep—are not new; they were certainly not

brought to your attention in July this year. I think that we have all known about them much longer than that. It has really been a sort of obvious place to think about legislating a long time ago. I am just wondering, when you were thinking about doing the consultation work, why possibly legislation was not at the forefront of your mind at that stage.

[22] **Alun Davies:** Consultation was certainly a part of that. If you look at the consultation documents, you will find that we do raise the issues of legislation in them. When I took the ministerial lead for this area, I felt that legislation was clearly necessary. That was my individual view, that we needed this consistent and coherent legislative framework or statutory framework across Wales. However, in order to do that we need to have the evidence, and we also need to ensure that that is what the community wants. So, it is one thing for a Minister to have a hunch, if you like, and say, 'I think that this is what we need', watching reports on the media, listening to what I am being told, and reading through the advice that I receive, but it is another thing to have something that comes from the community itself. When I look at this legislation, I feel myself far more the midwife than the parent, if you like, because this is something that has come from a much wider community of people, in terms of local government, the police and other enforcement agencies, and animal charities—people who are dealing with this problem day in, day out. They have said, 'We need this legislation, and we need it urgently'. I was in your region on Friday, as you will know, with your colleague, Byron Davies, looking at a significant problem on the Gower, where 200 horses are being fly-grazed at the moment. The RSPCA made it very clear there that this is an excellent piece of legislation and that we need it as soon as possible.

[23] **Suzy Davies:** It is not now, though, that those bodies are saying that legislation is needed urgently. I am just wondering why it did not find its way into the programme of government, for example.

[24] **Alun Davies:** I do not think that it found itself into any party manifesto prior to the last election. Clearly, in the previous Assembly, I think that those of us who were Members then—I think that I am the only person who was a Member in a previous Assembly, actually, and I spent my time on this committee and other committees, and Gwyn will give you the advice on this, going through hell trying to get legislative competence and then to legislate on different matters. That was very difficult, and the referendum has made the process of legislating far more coherent than it was previously. So, we have had the powers available to us on a much wider basis since the last election, and I think that, at the same time, we saw fly-grazing become a more significant problem in Wales. It was always there as a difficulty—I do not think that you are wrong about that at all, Suzy, because fly-grazing has always been there—but it became a more significant problem. I think that there were issues around the equine market in terms of prices, dealing and the ability of that market to function effectively, which meant that, all of a sudden, there was a glut of horses available, if you like, which were being fly-grazed and were of less value than in previous years. So, you had a number of things coming together around two years ago, which created a very real crisis.

[25] We responded to that in terms of creating a taskforce and in terms of responding to it in a way that had coherence in terms of control and response. In doing so, the conversations that we were having with the wider community led us to be convinced that we actually needed a longer term response as well. A part of that longer term response is this legislative route. I encourage Members not to look at this legislation in isolation. It is a very short piece of law; I think that we have four pages here and 10 sections, and there are seven or eight sections that are of substance—and you will know this as a lawyer. So, it is a very short piece of legislation and it is there to fill in some gaps and to be a subset of the overall action plan. It is not the legislation that is leading this: this is a part of a much wider approach.

[26] **Suzy Davies:** Thank you for that answer. Two points arise from that, and one is on something that you touched on latterly. This is a short piece of legislation—I am sure that

other Members will point out some of the difficulties we have with it in terms of drafting—but how long did it take you to put it together? That is one question.

[27] **Alun Davies:** It did not take me any time at all; it took my officials some time.

[28] **Suzy Davies:** How long did it take your officials then? Knowing that this was likely to be on the horizon, I would not like to think that this was just put together in a day. I would like to think that some thought has gone into it.

[29] My other point is about what you said earlier about this place now having the ability to make coherent legislation. One of the difficulties I have with this is that, while it is quite right to consider that this is, perhaps, an urgent problem, some of us might think that the control of dangerous dogs is an urgent problem, but you have taken a completely different approach to that, which has added to the length of time that it will take to get your policy objectives onto the statute book. Did you have an overall approach, or did you think, ‘Well, I’ve just got to deal with this now because it has come to the top of my inbox’?

[30] **Alun Davies:** I will ask Gary or Julia to answer your original question of how long it took to draft.

[31] **Suzy Davies:** I am just curious as to why the different approach.

[32] **Ms Hill:** The consultation ended on 29 April, and then that gave time for policy to work up some instructions to Legal Services. I received them by 17 June, and then I had to turn those into instructions for legislative counsel. That was in early August, and we had the first draft from legislative counsel at around about the end of August, and it has been tinkered with a couple of times since then, before it was produced to the Presiding Officer.

[33] **Alun Davies:** I hope that that answers your question, Suzy.

[34] **Suzy Davies:** That is the practical answer for me, but what about the more philosophical question, Minister?

[35] **Alun Davies:** Do you want to dignify my thoughts with a philosophical basis? In terms of where we are, clearly, different pieces of legislation will demand and require different approaches. So, a piece of legislation such as this one, for example, will be dealt with in a different way to the environment Bill and the White Paper that I am publishing this week. That is an extensive piece of legislation that requires a great deal of debate and consultation and will take far longer, in terms of scrutiny, simply because it is a far larger piece of work. So, you will take different approaches to different pieces of legislation. I am assured that this legislation has the support of all four parties represented in this Assembly, although sometimes you would struggle to believe that, and I accept that. It has the full support of the community, enforcement agencies, animal welfare charities, local authorities and local governments. So, it has full support from all of those.

[36] In terms of contrasting it with the dangerous dogs legislation, I think that the committee might wish to reflect on drawing too tight a comparison with that. The situation with dangerous dogs is that there is a piece of legislation currently working its way through Westminster, which is able to deal with that. A better comparison would be the wild animals and circuses example, where we are also using the UK route. If we have a policy objective that requires changing the law, we try to change the law in the most sensible and coherent fashion that enables us to arrive at our destination and objective in a way that is timely and resource efficient. We have a relationship with the United Kingdom Government and with the UK Parliament where we do, on occasions, ask them to legislate for us, if we believe that that will best achieve our objective.

[37] **Suzy Davies:** You have given us evidence on that particular point already, but I was just trying to work out why one was more urgent than the other.

[38] **Alun Davies:** I do not think that it is a matter of one being more urgent than the other. I would say that there is no UK vehicle that will provide this piece of legislation at this time. So, the choice of going to Westminster is not there. Where there is a UK vehicle, and where I believe that that will help us and enable us to deliver our objectives, I do not have a difficulty in using that UK vehicle. We do have some differences of approach to dangerous dogs between us and the coalition Government in the UK. However, we have had good conversations with UK Ministers on this matter. I have been convinced that this is a good means of achieving our objectives, which saves our resources and time here by enabling the scrutiny to take place in Westminster, and I have full confidence in the Westminster Parliament's ability to do that and so—

[39] **Suzy Davies:** Okay, I do not need us to go through the whole dangerous dogs story again.

[40] **Alun Davies:** We are doing exactly the same thing with the wild animals and circuses legislation as well. I have asked the Department for Environment, Food and Rural Affairs for Wales to be included in that legislation to enable us to meet our objectives in a way that is most efficient for us.

[41] **Simon Thomas:** Weinidog, ar rai o'r pwyntiau rydych wedi sôn amdanynt, i fod yn glir, nid ydym yn cwestiynu'r polisi na'r cytundeb rhwng y pleidiau, rydym yn craffu ar briodoldeb yr hyn rydych wedi gosod. Nid yw hyd y Bil yn cyfrif dim; yr hyn sy'n bwysig yw bod yr hyn sydd ar wyneb y Bil yn destun gwaith craffu iawn.

Simon Thomas: Minister, on some of the points that you have made, to be clear, we are not questioning the policy or the agreement between parties, we are scrutinising the appropriateness of what you have laid before us. The length of the Bill counts for nothing, what is important is that what is on the face of the Bill is scrutinised.

[42] Hoffwn ddychwelyd at bwynt a wnaethoch wrth ateb Suzy. Pan oeddech yn gosod allan amserlen yr ymgynghoriad, ac wedyn wrth i Ms Hill amlinellu'r amser yr oedd wedi cymryd i'w roi at ei gilydd, nid oedd dim byd yn fy nharo'n anarferol ynglŷn â hynny—hynny yw, proses arferol Llywodraeth o lunio polisi ac arwain at ddeddfwriaeth oedd honno. O ystyried hynny a'r ffaith bod eich nodyn esboniadol chi yn nodi na fydd y Bil yn debyg o ddod i rym tan yn gynnar y flwyddyn nesaf, nid yw'r Bil hwn yn paratoi ar gyfer y gaeaf hwn o gwbl, nac ydyw? Ym mha ffordd felly yr oedd y cymhelliant mor gryf i osgoi, fel roedd Suzy yn gofyn, y rhan gyntaf?

I will return to a point that you made in response to Suzy. When you were laying out the timetable for the consultation, and then as Ms Hill outlined the time that it took to put the Bill together, nothing struck me as being unusual about that—that is, that was the usual Government process of creating policy and leading to legislation. Considering that and the fact that the explanatory note that you provided says that the Bill is not likely to come into force until early next year, this Bill does not prepare for this winter at all, does it? In what way therefore was the incentive so strong, as Suzy asked, to avoid that first stage of scrutiny?

[43] **Alun Davies:** A ydych chi'n sôn am ran gyntaf y broses graffu?

Alun Davies: Do you mean the first stage of scrutiny?

[44] **Simon Thomas:** Ie, y broses graffu.

Simon Thomas: Yes, Stage 1.

[45] **Alun Davies:** Mae'n rhaid inni

Alun Davies: We have to balance what is

bwyso a mesur beth sy'n rhesymol a beth nad yw'n rhesymol. Pan oeddwn yn wynebu'r penderfyniad hwn yn yr haf, pan oedd gennym y ddeddfwriaeth ar—

[46] **Simon Thomas:** Pryd oeddech chi'n siŵr bod angen deddfwriaeth arnoch? A oedd hynny ar ôl yr ymgynghoriad neu cyn yr ymgynghoriad?

[47] **Alun Davies:** Roeddwn yn meddwl bod gennym y dystiolaeth bod angen y ddeddfwriaeth ar ôl inni weld canlyniadau'r ymgynghoriad. Dyna pryd y gofynnem i *Legal Services*—

[48] **Simon Thomas:** Ac wedyn fe wnaethoch roi'r *policy instructions* mewn lle.

[49] **Alun Davies:** Ie. Mae'n rhywbeth roeddwn wedi trafod â phobl yn anffurfiol o'r blaen. Dyna pam yr oedd Andrew R.T. Davies yn gallu codi'r peth ym mis Gorffennaf, oherwydd roedd cred o gwmpas bod angen rhywbeth i ddelio â'r sefyllfa rydym yn ei hwynebu. Roedd yn rhaid i mi wneud penderfyniad os oeddem eisiau trio mynd â Bil drwyddo fel rhyw fath o ddeddfwriaeth argyfwng. Nid oeddwn eisiau gwneud hynny. Roeddwn yn hollol sicr bod angen y ddeddfwriaeth hon a bod ei hangen cyn gynted a bo modd. Roeddwn yn hollol sicr hefyd na fyddwn yn gofyn i'r Cynulliad wneud hynny pe na bai cytundeb amlbleidiol. Roeddwn wedi dweud wrth bob llyfarydd dros yr haf, 'Os byddwn yn mynd i lawr y llwybr hwn, rwyf eisiau eich cefnogaeth chi'. Nid wyf eisiau bod mewn sefyllfa, fel Llywodraeth na fel Gweinidog, lle'r ydym yn trio gwthio deddfwriaeth drwyddo os nad oes cefnogaeth iddi ar draws y Siambr. Mae pob plaid wedi cytuno ar hynny, wedi cytuno bod angen y ddeddfwriaeth ac wedi cytuno eu bod yn mynd i gefnogi'r Bil.

[50] **Simon Thomas:** Felly, mewn ffordd, rydych wedi cyflymu'r broses achos fe gawsoch chi'r golau gwyrdd, o ran polisi o leiaf.

[51] **Alun Davies:** O ran polisi ac o ran cefnogaeth wleidyddol eang ar gyfer y Bil. Nid oeddwn eisiau bod yn y sefyllfa o gyflwyno Bil ym mis Hydref i'r Cynulliad a bod rhaid dadlau yn erbyn gwrthwynebiad

reasonable and what is unreasonable. When we faced this decision in the summer months, when we had legislation on—

Simon Thomas: When did you become certain that you needed legislation? Was that after the consultation or prior to the consultation?

Alun Davies: I believed that we had evidence of the need for legislation after we had seen the consultation responses. That is when we asked *Legal Services*—

Simon Thomas: And then you gave the policy instructions, is that right?

Alun Davies: Yes. That is something that I had discussed informally with people in the past. That is why Andrew R.T. Davies was able to raise this in July, because there was a widespread belief that something needed to be done to deal with the situation that we were facing. I had to make a decision whether we wanted to try to get this Bill through as emergency legislation. I did not want to go down that route. I was entirely convinced that this legislation was necessary and that it needed to be in place as soon as possible. I was also entirely convinced that I would ask the Assembly to do that only if there were to be cross-party agreement on that. I had spoken to each spokesperson over the summer and said, 'If we are going to go down this route, I want your support'. I do not want to be in a situation, either as a Government or as a Minister, where we are trying to push legislation through unless there is support for it across the Chamber. Every party agreed to that, they agreed on the need for the legislation and they agreed to support the Bill.

Simon Thomas: So, in a way, you accelerated the process after receiving the green light, at least in terms of policy.

Alun Davies: In terms of policy and in terms of there being political backing for the Bill. I did not want to be in the situation where we would introduce a Bill to the Assembly in October and then have to argue against

difrifol yn y Siambr. Roeddwn eisiau cytundeb ar yr egwyddorion.

serious opposition in the Chamber. I wanted an agreement on the general principles.

15:15

[52] Roedd pob plaid wedi gweld y Bil drafft ym mis Medi ac wedi cael cyfle i ddarllen trwyddo a dod yn ôl ataf i ofyn cwestiynau ynglŷn â'r broses a'r hyn yr oeddem yn trio ei wneud. Felly, roeddwn i'n meddwl bod cytundeb gwleidyddol eang, a phan oeddwn yn sicr o hynny, penderfynais fynd trwy'r broses ffurfiol o gyflwyno Bil i'r Cynulliad. Roeddwn i'n meddwl bod hynny'n deg i'r pleidiau i sicrhau bod cefnogaeth, a bod pobl yn deall beth oedd y Bil hwn yn trio ei wneud.

Every party had seen the draft Bill in September and had an opportunity to read through it and come back to me with any questions in terms of the process and our objectives. Therefore, I felt that there was broad political agreement, and when I was assured of that, I decided to go through the formal process of introducing a Bill to the Assembly. I believed that that was fair to all parties in ensuring that there was support, and that people understood what the objectives of this Bill are.

[53] **Simon Thomas:** Diolch, Weinidog. Mae'n rhaid i ni symud ymlaen at rai pethau eraill, ond mae un pwynt gan Suzy.

Simon Thomas: Thank you, Minister. We have to move on to other matters, but Suzy has one point.

[54] **Suzy Davies:** Ar ôl mis Medi, pan gafodd y Bil ei gyhoeddi, a gawsoch chi wrthwynebiad o gwbl o safbwynt yr egwyddor, gan unrhyw blaid—nid i'r manylion, ond i'r egwyddor?

Suzy Davies: After September, when the Bill was published, did you have any opposition whatsoever in terms of the principle, from any party—not to the details, but to the principle?

[55] **Alun Davies:** Nid o ran yr egwyddor. Byddwch wedi darllen y cwestiynau a'r trafodaethau a gawsom yn y Cynulliad yr wythnos diwethaf a chawn weld beth fydd yn digwydd yfory.

Alun Davies: Not in terms of the principle. You will have read the questions and the discussions that we had in the Assembly last week and we will see what happens tomorrow.

[56] Mae pobl wedi cwestiynu'r broses rhywfaint—yn fwy nag oeddwn i'n disgwyl ar ôl cael y cytundeb hwn, mae'n rhaid dweud—ond nid wyf yn credu bod unrhyw un wedi dweud, 'Rwy'n gwrthwynebu hwn; nid wyf yn cytuno â'r hyn rydych yn ei wneud'.

People have questioned the process to some extent—more than I had expected after getting this agreement, I must say—but I do not believe that anybody has said, 'I oppose this; I do not agree with what you are doing'.

[57] **Suzy Davies:** Dyna roeddwn yn ei ofyn—ynglŷn â'r egwyddorion.

Suzy Davies: That is what I was asking—about the principles.

[58] **Alun Davies:** Mae pedair plaid yn y fan hon. Efallai bod rhywun yn mynd i anghytuno.

Alun Davies: There are four parties here. Perhaps someone is going to disagree with me.

[59] **Simon Thomas:** Rydym yn craffu ar briodolrwydd y deddfu yn unig ar hyn o bryd. Mick Antoniw sydd nesaf.

Simon Thomas: We are scrutinising only the appropriateness of the legislation at present. Mick Antoniw is next.

[60] **Mick Antoniw:** Minister, I very much agree with the tone of the legislation, but I think that our prime concern is that it actually produces what it is aimed at doing. So, I have a

number of issues as we go through, and it might be, Chair, that I might need to come back at the end, because some of them jump from one to the other.

[61] Is it your intention to publish guidance with the legislation and, if so, when will that guidance be available?

[62] **Alun Davies:** It is our intention to publish non-statutory guidance to local authorities. We want to make that available as soon as possible when the legislation becomes law.

[63] **Mick Antoniw:** Is there any reason why it will be non-statutory as opposed to statutory guidance?

[64] **Alun Davies:** I said in response to Suzy's question that I am more the midwife than the parent. This legislation comes from a very long, deep and wide conversation with the communities that have been dealing with this problem across the whole of Wales. Part of that is local government. We spent a lot of time talking to local government about what powers it believes that it needs and what it requires and what it wants. This provides permissive powers for local government—it does not provide a duty on local government—because that is what local government said that it needed and wanted. Part of that was an agreement that the advice could be non-statutory rather than statutory, to provide local government with the flexibility to be able to respond to different situations, but within an overall framework.

[65] **Mick Antoniw:** In order to achieve consistency, there are a number of areas that will need very clear guidance. How advanced is that work? For example, section 1 covers whether the local authority has reasonable grounds and there is the issue of lawful authority. There are two areas there that need a degree of clarification. Also, as you go down, it says that the local authority has to have 'reasonable grounds for believing'; there needs to be clarification on that. Also, in section 3(2), it says that a local authority must, as soon as is reasonably practical et cetera, 'take reasonable steps to ascertain'. So, there needs to be clarification there. Are you confident that all of those issues will be clearly defined? Without them, there will not actually be any consistency in implementation.

[66] **Alun Davies:** Yes, I am. That work is being undertaken at present. We are looking at all the guidance that we will be providing to local government. I was in front of three committees last week—talk about an expedited process; it does not feel like it sometimes—and we are listening to this debate and discussion, actively, and we are responding to the scrutiny process. So, as this process goes forward, we are proactively seeking to provide this guidance, but also responding to questions that Members raise. So, yes, that guidance is being provided and I am very confident that, at the moment, the process is progressing well. Did you want to say something, Gary?

[67] **Mr Haggaty:** Yes, I want to add to that; I think that it is an important point. We are working closely with the local authorities, especially those that have been directly involved with some of these issues, to put this guidance together, so that it is a document that everybody can buy into.

[68] **Mick Antoniw:** Perhaps I can also take you to section 3(3) of the draft Bill. I apologise; I have a whole series of bits and pieces. I do not want to step on other people's toes, because I know that there are other questions. What interests me, as much as anything, is how the draft of the legislation hangs together and whether it is sufficiently clear. It states that,

[69] 'A local authority must, within 24 hours of seizing a horse under section 2, give a written notice to—(a) any person who appears to the local authority to be the owner of the horse or to be acting on behalf of the owner in relation to the horse, and (b) a constable.'

[70] So, there is no choice in it. The local authority ‘must’ give that particular notice within 24 hours. Then, within a period of seven days of a horse being seized, any person who has not been given a written notice must, within 24 hours, be given identification. Do you think that that section is slightly unclear as to its intention? Could it be drafted a bit more clearly?

[71] **Alun Davies:** I think that the section is clear, but if the committee wishes to make suggestions or amendments, we would be happy to consider them. I will say to the committee that the time periods here were a focus of quite some debate and discussion. In trying to establish a national framework of law here, we wanted something that was sufficiently robust to withstand challenge, but also sufficiently fast to be able to deal with the problem. At the moment, we do not have consistency across Wales. We did spend some time looking at these time periods, if you like, of within 24 hours and seven days. I will say to the committee that a number of respondents to the consultation wanted time periods that were considerably less than seven days. I think that some people responded by saying that 24 hours was sufficient. We have been quite cautious or conservative, if you like, in terms of our approach to that. So, we hope that we have found an approach and a place that provides the speed necessary to deal with the situation, while preventing responsible owners from becoming a victim, if you like, of that process. The difficulty that we have here is that responsible owners do not allow their horses to fly-graze. This is about driving responsible horse ownership as well as creating a means of dealing with irresponsible horse ownership. The advice that we have received very clearly is that any responsible horse owner will check their horses every day or will ensure that they are checked on a regular basis. Only an irresponsible owner would leave a horse seven days without any form of checking at all.

[72] **Simon Thomas:** To what extent does what you have in this Bill reflect the existing, more local legislation in terms of timescales?

[73] **Ms Hill:** We have taken as much as we can from the existing legislation and updated or modernised it, if you like. The previous legislation did have the equivalent of section 3(3), whereby notice is served on a constable. We retain that because we thought of human rights; we are interfering with property, and it is article 1 of the first protocol. The working of section 3(3) is intended for where, perhaps, the horse is known in the locality and where the local authority does know who the owner is; then, it would be able to serve a notice, plus the notice served on the constable. Section 3(4) envisages the situation where it is not obvious whose horse it is. I am advised by policy that it can take up to seven days for checks to be returned via the Department for Environment, Food and Rural Affairs and the passport issuing offices. That is why those seven days are in there, to allow the local authority the time to get the data back from the relevant PIOs, as they are called. So, that provision would then trigger the disposal, which may be by selling or giving away.

[74] **Mick Antoniw:** May I please identify a number of anomalies? It may be that these are ones that we will have to put in writing to you. The legislation is very clear that the requirements in terms of giving notice are mandatory. They are an absolute must. Secondly, in terms of the actual destruction of a horse, after a period of seven days you have to have identified the owner. The legislation does not seem to make proper provision for those situations where it has not been possible to identify an owner. Even if that is corrected within the drafting, you still have, in section 5, a position where the owner has been identified. If you have a situation where you have not been able to identify an owner, or an owner might not want to come forward for whatever reason, you cannot actually proceed to the destruction of the horse, because there is a requirement for notification.

[75] **Ms Hill:** As we have put the provision in there that a constable is always notified, that becomes the triggering event. So, a notice will always be served on a constable and it will

be served simultaneously on a person if it is known who the owner is. However, if it requires a search, only the constable will have had the notice, so that becomes the date on which the disposal provisions are triggered.

[76] **Mick Antoniw:** That would be one area that needs to be looked at and clarified. I do not think that it is clear from the drafting. I did want to go on, but I fear that I might be treading on someone else's toes on some questions. Chair, if it is okay, I will pick up on one or two points at the end.

[77] **Simon Thomas:** If you have other points, you may pick up on them later, Mick; that is fine, but we will move on.

[78] **Alun Davies:** Before you move on, if Members have other points, as has just been raised, we would be more than happy to receive a note from you outlining those points, or if you have any suggestions as to how the Bill can be improved.

[79] **Eluned Parrott:** You said when you introduced the Bill in Plenary that you are not expecting there to be a need to use an appeals procedure regularly, but you are anticipating that you will need an appeals procedure. Could you tell us how often you expect that kind of procedure to be used?

[80] **Alun Davies:** The grounds for appeal are quite limited is what I meant in what I said. The grounds for appeal would generally be about issues of ownership, and those can be dealt with very clearly and quickly. So, we do not anticipate that there will be very many grounds for appeal. We do not anticipate that we would need to establish a very great structure in order to deal with those. Members will be aware that the appeals process in section 7 is very much a power that we are asking Welsh Ministers to exercise. We are not saying that Welsh Ministers must exercise it, but it may be set up. From my years on this committee, I am sure that that is something that the committee's eyes will be drawn towards; the negative procedure rather than the positive procedure is still seared on my mind. It is something that we have discussed within Government. At the moment, we believe that a negative procedure for this power is reasonable, because we do not expect this to be a contentious matter, but one that is more administrative in nature, shall we say?

[81] **Eluned Parrott:** You are quite right in anticipating that we would ask about that. This question of 'may' versus 'must'—

[82] **Alun Davies:** I spent four years doing this. [*Laughter.*]

[83] **Eluned Parrott:** You are giving yourself a power to establish an appeals procedure, but not a duty to do so. Could you explain why you think that this is appropriate, given the fact that you have said that it is something that is likely to be necessary?

[84] **Alun Davies:** My view is that an appeals process must be included. That is my view on it. It would be unreasonable to establish legislation without such a process, knowing, also, that the grounds for appeal and the purposes and breadth of opportunity for such an appeal would be somewhat limited. We are looking at a very different sort of scenario here than we are in other pieces of legislation and other areas of law. Nevertheless, I felt that it was important that we did have an appeals process in here. If the committee has recommendations to make to change the way that it is currently structured, I would be very happy to listen and take note of those. However, I think that the power that we have here is reasonable and I believe that the structures that we will put in place are reasonable and proportionate to the requirement and the need.

[85] **Simon Thomas:** Mick, did you want to come in on this?

[86] **Mick Antoniw:** Yes. I do not want to make too much of a play on words, but we do need to get this right. There must be an appeals procedure, or it could, potentially, put the legislation in breach of human rights legislation with regard to the protection of property and the right to a hearing and so on. So, that would have to be in there.

15:30

[87] Secondly, there will need to be within the appeal—you list the various criteria for an appeal—a criterion that makes it clear that, upon lodging an appeal, that will suspend any further action in terms of disposal and so on; otherwise, it would make the legislation pointless. There is just one slight anomaly that follows on from that, which takes us back to section 3(4) where, once an owner is identified, you have to give seven days' notice, but if you are on the seventh day of that original period, the horse could be destroyed before the person has had a chance to receive that notice or act on it. So, it is just something that needs to be tidied up within that overall appeals procedure. I am just wondering whether you agree with that generally.

[88] **Simon Thomas:** I am not sure that there were any questions there, Minister, but there was a lot of helpful information for you. [*Laughter.*]

[89] **Alun Davies:** Shall I answer the ones that I can? In terms of your reading across the Bill in terms of sections 3(4) and 3(3), I would disagree on your view on the period of notice required there. Section 7(2)(6) ensures that there is

[90] 'provision preventing the taking of any specified action pending the determination of appeals.'

[91] So, there is a safeguard there that no action can be taken to dispose of the horse in any way prior to the determination of an appeal. That is already there, and I hope that that is sufficiently clear. I understand the points that you make, Mick, about the period of seven days, but we need to be able to move forward through this process in a timely fashion.

[92] **Mick Antoniw:** These are points that we can make again in a letter, rather than playing around with words now. However, the Bill is almost there; it is about honing it to ensure that it delivers.

[93] **Simon Thomas:** I think that you get a taste of what we are interested in, so we will go back to Eluned.

[94] **Eluned Parrott:** I want to ask about the drafting of section 7(2), because it is not usually the Welsh Government's practice to give a list of what may or may not be included within regulations. In fact, it is the Welsh Government's practice very definitely not to do that. Can you explain to us why you have chosen to do so on this occasion?

[95] **Alun Davies:** I think that what we try to say is that regulations flesh out what is on the face of primary legislation and that we do not tend to put into primary legislation lists of consultees, for example. I know that that is something that came up a number of times in the previous Assembly, when I sat in your seats. Those sorts of lists were very much kept for statutory instruments and regulations, rather than being included on the face of primary legislation. The reason that there is a list here is because this provides grounds for appeal. It does not try to perform any other role, but it provides the grounds on which an appeal may be made. So, in that way, this list is different to other pieces of legislation that may try to create lists for other purposes. On this basis, I am content that we have sufficient grounds for appeal here to enable such an appeal process to work effectively, but without going into so much

detail as to make the law either cumbersome or unwieldy.

[96] **Eluned Parrott:** It seems to me almost like you are trying to find a halfway house between putting the appeals procedure on the face of the Bill and not putting the appeals procedure on the face of the Bill. Is that a compromise that you are trying to make, so that you can make the system obvious at this point in time, so that we can anticipate what will be in regulation, should it come forward, as opposed to when it comes forward? What is the purpose of this at this time?

[97] **Alun Davies:** It is certainly putting the framework on the face of legislation. I felt that it would be wrong to simply say, ‘There shall be an appeals process “full stop”’ and then—

[98] **Simon Thomas:** You do not even say that, Minister; you say ‘may be’.

[99] **Alun Davies:** Yes. The ‘full stop’ was the key part of that sentence. I felt that it would be wrong to do that without any explanation of any part of that. I feel that it is important that we put on the face of the legislation the framework within which the statutory instruments and secondary legislation will function. So, I am very comfortable with this. I hesitate to answer your question directly in the sense of, ‘Did you do this for this particular reason?’, because I do not think that I did it for that particular reason. I think that I agreed to this because I felt that it was a good way of putting on the face of the legislation enough detail as to provide a structure and framework that can then be filled in through regulations at a subsequent point. I will say to the committee that, in terms of bringing forward these regulations, I am very happy to provide the committee with a copy of those regulations before they are published, if the committee wishes to come back to review and scrutinise those regulations.

[100] **Eluned Parrott:** That would be very interesting. You said earlier that the grounds of appeal would be quite limited and that that is one of the reasons why you have provided the list, although it does state in section 7(2) ‘but is not limited to’. So, clearly you can expand upon that. The appeals procedure and the grounds for appeal are obviously something on which you have placed great importance, by the very fact that you have placed them on the face of the Bill. So, I query whether or not you really do believe that the negative procedure is appropriate for the statutory instrument when it comes forward, given that you have already diverted from the normal process.

[101] **Alun Davies:** I think that, on this occasion, a negative procedure probably is a fair and reasonable procedure. These sorts of regulations are administrative in nature rather than novel. I do not believe that the other procedures that we have available to us would be necessary to fulfil the requirement to ensure that these regulations are seen by Members, and are available for scrutiny by Members. Members then have an opportunity, of course, to raise issues on the negative process if they believe that that is necessary. It is something that, as a Minister, I consider on each occasion that this matter comes before me. I do prefer—and this is my personal approach—to use procedures that maximise the opportunity for scrutiny and do not minimise the opportunity for scrutiny. So, on this occasion, I think that this section on appeals is something that is not novel or does not require greater scrutiny.

[102] **Simon Thomas:** I will bring Suzy in.

[103] **Suzy Davies:** I do not think that I have heard the negative procedure being used as an example of maximum scrutiny before, but I think that you really have a problem with it on the clause as it is drafted at the moment. Even if you adjust sub-section 1 to state that the Welsh Ministers ‘must’ create an appeals procedure rather than ‘may’, subsection 2 still states that the provision may be made by regulations to include various things. It is quite possible for

you, under the terms of that subsection, to include none of those things in your regulations, as well as include a whole host of other things that Eluned mentioned. For that reason alone, the Assembly needs a good opportunity to have a look at those, not least because you have flagged them up. You have given us a little taster of what will be in there, and if they do not turn up, using the negative procedure we are unlikely to ever know that you have not included them.

[104] **Simon Thomas:** Minister, before you answer that, I will just reinforce the point. Section 7(2)(a) actually specifically states,

[105] ‘provision specifying the grounds on which an appeal may be brought’.

[106] You have told this committee that you think that appeals will generally be brought on the question of ownership. However, in fact, they are taking powers to a whole range of grounds on which appeals may be brought.

[107] **Alun Davies:** You asked my view and that was, is and remains my view. However, I recognise that appeals may also be brought on other grounds. So, we have tried to provide the opportunity for that.

[108] **Simon Thomas:** So, you will be making provisions for appeals to be brought on other grounds.

[109] **Alun Davies:** Yes, and that is what we are doing in section 7. You asked me my view; this is my view. However, I recognise that, when or if this becomes law—and there will clearly be other grounds for appeals—I would simply say what I felt was the most significant, not the only—

[110] **Suzy Davies:** The point is that these may not appear.

[111] **Alun Davies:** I am just answering Simon’s question before I come back to the penultimate question. We do need to ensure that we have the opportunity for a range of appeals on a range of different grounds, and to make that as comprehensive as possible. That is what we have tried to do here.

[112] I will say to you Suzy that I hope that we do not disappoint when the regulations are published. Let me say this: I gave a very serious undertaking to the committee, as I have already said that I am happy for the regulations to come here for further scrutiny if you wish, and if you regard that as being necessary. I would also say that we have not included this section in the legislation only to ignore it when it is enacted. Any judge looking at this law would take a very dim view of regulations that did not reflect the primary legislation from which all these regulations are drawn. It would bring the legislation into very significant disrepute if we came to this committee, and to the National Assembly, to ask for powers to do these things, and then simply walked away when it came to the period of laying the secondary legislation. I hope I can give you the sort of reassurances that you require on this matter. It is our intention to ensure that there is an appeals process that is fit for purpose and proportionate to the other parts of this legislation.

[113] **Eluned Parrott:** As you have taken the unusual step of putting the grounds for appeal on the face of the Bill, and as you have already agreed that it would be your intention to share and to try to achieve a consensus with the regulations at that point in time, I hope that you would consider taking that one very small step of making this an affirmative procedure rather than a negative procedure, because when the regulations come into place, we do not know who the Government will be, or who the Minister in charge of this piece of legislation will be.

- [114] **Alun Davies:** I hope that I am still in office in January.
- [115] **Eluned Parrott:** It is the principle rather than the specifics, Minister.
- [116] **Alun Davies:** I know it is; I had the same teacher.
- [117] **Simon Thomas:** We are trying to find out how well the pupil has learned. [*Laughter.*] We also need to bear in mind that you will not be the Minister forever, and these regulations, and the Bill, must be robust enough for the future.
- [118] **Alun Davies:** I accept that. I do accept the points that committee is making, and I will reflect long on those points.
- [119] **Simon Thomas:** I think that Mick wants to add to your reflection.
- [120] **Mick Antoniw:** I wanted to jump on your toes a bit, Chair, in terms of asking a question about interpretation of the Bill. I have been waiting all afternoon to ask this question. Within the Bill, under section 9, ‘Interpretation’—
- [121] **Alun Davies:** I knew you were going to do this—we were just discussing it.
- [122] **Mick Antoniw:** The Bill defines ‘horse’ or ‘ceffyl’ as including
- [123] ‘a pony, donkey, mule or hinny’,
- [124] and what we would all desperately like to know is why the Welsh version of the Bill does not include a corresponding definition of ‘hinny’.
- [125] **Alun Davies:** As we walked to committee, this was the topic of conversation. We do have a term in Welsh that covers all equine animals, and that is included in the Welsh version of this legislation. We have had probably more discussion—certainly as much—on many other things in terms of the terminology we use for hinnies, mules, donkeys, jennets, ponies, horses and the rest of it. What we are seeking to do here is include any equine in this legislation, and it may well be the case that we should use the term ‘equine’ more often.
- [126] **Simon Thomas:** On a more serious point, because I think some of us know what the Welsh version of ‘hinny’ might be, are you content that, in both Welsh and English, you will include the animals that you need to include in this legislation?
- [127] **Alun Davies:** The Welsh and the English should have, and will have, equal status.
- [128] **Simon Thomas:** Okay. I see that Members are happy with that.
- [129] Mae gennyf ychydig yn rhagor o gwestiynau, os caf i, Weinidog. Hoffwn droi at fater hawliau dynol, sydd wedi ei grybwyll gan Ms Hill eisoes. Gan eich bod yn ymwneud ag eiddo pobl, ac, o bosibl, ynglŷn â gwerthu neu ladd, i bob pwrpas, yr eiddo hwnnw—achos dyna un o’r posibiladau yn sgîl ceffylau sy’n cael eu dal o dan y gyfraith hon—pa ystyriaeth yr ydych chi wedi ei roi i’r hyn sy’n ymhlyg yng nghonfensiwn Ewrop ar hawliau dynol yn y ffordd y mae’r I have a few additional questions, if I may, Minister. I would like to turn to the matter of human rights, which was mentioned earlier by Ms Hill. Given that you are dealing here with people’s property and, possibly, with selling or, to all intents and purposes, killing that property—that is one of the possibilities that might arise in the case of horses seized under this law—what consideration have you given to the implications of the European convention on human rights in the way that

Bil hwn wedi cael ei roi at ei gilydd?

this Bill has been put together?

[130] **Alun Davies:** Gwnaf ofyn i Julia ddod mewn ar hyn ond, yn amlwg, mae gennym gyfrifoldebau fel Llywodraeth i sicrhau bod pob un rhan o'r ddeddfwriaeth yr ydym yn ei chynnig i'r Cynulliad yn cydymffurfio â phob un o'r anghenion sydd gennym fel Llywodraeth, ac mae hawliau dynol yn enghraifft dda iawn o hynny. Rydym yn credu, ac mae Llywydd y Cynulliad yn cytuno, fod hyn yn cwmpo o fewn maes lle mae hawliau dynol yn rhan o'r ddeddfwriaeth, heb dorri unrhyw ddeddfwriaeth ar hawliau dynol.

Alun Davies: I will ask Julia to come in on this point, but, clearly, we do have responsibilities as a Government to ensure that every piece and every section that we propose to the Assembly complies with all the requirements placed upon us as a Government, and human rights is a very good example of that. We believe, and the Presiding Officer has agreed, that this falls within an area where human rights are included within the legislation, without contravening any human rights legislation.

15:45

[131] **Ms Hill:** As the Minister said, we have gone through each and every provision of the Bill to ensure that we are compliant with the Human Rights Act 1998. In particular of concern were article 6, as previously discussed, and article 1 of the first protocol. On balance, we think, as the Minister said, as regards dispute, that there are very few grounds on which there may be factual disputes arising. We think that we have built in provisions to safeguard honest and honourable horse owners, such as the reasonable grounds that, before a local authority may seize an animal, the notices that have to be posted at the site of seizure and served on the owner and the police. There is also the general animal law, the Animal Welfare Act 2006, which places duties on horse owners. The Welsh Government has issued an equine code of practice, which also sets out what is good practice in terms of horse ownership. The Equine Identification (Wales) Regulations 2009 require that horse owners have their animals microchipped and passported. In reality, it is hoped that, with that combination of notices being served, a responsible horse owner would probably have their horse back within 24 hours, if they were in compliance with existing general law.

[132] **Simon Thomas:** Unfortunately, I do not think that the convention differentiates between responsible human beings and irresponsible people. Their rights to property are the same under the convention.

[133] **Ms Hill:** That is right, yes.

[134] **Simon Thomas:** I want to explore one particular thing you said earlier. If a notice was given to a constable and, within 24 hours, they could not identify the person, and then they had seven days to do it, but they still could not identify the owner, you seemed to suggest that the notice given to the constable was sufficient to trigger the eventual disposal of that animal. Was my interpretation correct of what you said?

[135] **Ms Hill:** Yes.

[136] **Simon Thomas:** Is that really in line with the convention, and are you happy with that?

[137] **Ms Hill:** Yes. We weighed up the prejudicial effect on the individual horse owner as opposed to the effect it has on the wider community. On balance, we think that, with the legislation I have just cited, whereby horse owners are meant to act in a particular way, if they are doing so, the horse would not have been seized in the first place. Any prejudicial effect on them is outweighed by benefits to the community.

[138] **Simon Thomas:** In which case, this is probably more of a question for the Minister. How are you going to make people aware of this change in the law and of the fact that, to a certain extent, their rights are being changed by your interpretation of the balance of their responsibilities?

[139] **Alun Davies:** The issue of fly-grazing is well known to the equine community, although I can understand how the general population might be unaware of particular issues. I spoke to a number of horse owners yesterday, in a Blaenau Gwent civic service, and they were very aware of their responsibilities as owners. All horse owners are aware of their responsibilities and where the law starts and finishes. I am content that there is a wide recognition of legal responsibilities at present. We will need to—and, as a Government, we will—ensure that the community in its wider sense is made aware of the changes to the law. Within the equine press and the equine community, what we are doing here is the subject of considerable comment, debate, discussion and support. I am confident that there will be a wide recognition within that community that the law is being changed. We will ensure, through formal communications, that the change in law is well communicated.

[140] **Simon Thomas:** That is almost like Stage 1, Minister. Let us come back to a question from Suzy.

[141] **Suzy Davies:** Are you considering any principle of compensation when a horse has been stolen from a perfectly responsibly owner, is fly-grazed by whoever has stolen it, and then destroyed because the fly-grazer is not responsible? The original owner has been very responsible and has reported his horse missing, but it gets destroyed before it is found by the police.

[142] **Mr Haggaty:** I think that that is very unlikely to happen. If you have a horse that has been well looked after—it has the appropriate passport and the appropriate chip—and that it is obvious from the care that has been given to it that it has not simply been dumped, but has essentially gone through those sorts of events and into the system, local authorities will have the tools in their toolbox to be able to find out whether the owner wants that horse back, and before we get anywhere near the point at which that horse will be slaughtered, it will be back with its rightful owner.

[143] **Suzy Davies:** Even if it has been fly-grazing very far away from where it was stolen?

[144] **Mr Haggaty:** Yes. We think that that is the case.

[145] **Alun Davies:** I recognise that it is a very real concern. The condition of the horses that I saw in the Gower on Friday is very different to the condition of horses that you would see if they had been well looked after by a responsible owner. It really did make my blood boil to see the way that those horses have been treated. The owner or owners of those horses, whoever they are, should hang their head or heads in shame due to the way those horses have been treated over an extended period of time. The success of this legislation will not be in the number of actions local government takes but in the way that we change attitudes towards horse ownership. We will ensure responsible horse ownership, which is already the norm, let us face it, across vast areas of Welsh life. We are talking about a tiny minority of people who do this. We will drive responsible horse ownership throughout the whole of Welsh society. The issues that you have identified, which are very real scenarios, in the hypothetical sense, will be recognised by specialists and people who deal with equine on a day-to-day basis. They will recognise a horse that has been well cared for and a horse that is not being well cared for.

[146] **Suzy Davies:** Even for some time previously, because they can go missing for a long time.

[147] **Alun Davies:** Yes, even for some time previously.

[148] **Eluned Parrott:** Minister, I want to go back to more general questions. In the explanatory memorandum, you talk through where the legislative competence comes from in order to make this Bill. Are you confident that the Bill is entirely within competence?

[149] **Alun Davies:** Yes.

[150] **Eluned Parrott:** Great. What discussions have you had with the Westminster Government at this time about the Bill?

[151] **Alun Davies:** We have had very good and positive conversations with the UK Government on this matter. There have been a number of different legislative issues that have arisen over the last few months, and Suzy referred to one of them in terms of dangerous dogs. Earlier, I referred to wild animals in circuses in answer to that question. We have looked at and considered how best to enact our policy approach and which policy approach to take. I have had conversations with DEFRA Ministers about this during the period of consultation in the spring, over the summer and within the last month. DEFRA is aware of what we are doing; it had copies of the draft legislation before we published it, and we have had productive conversations with DEFRA about what we are doing here. One of the things that you will see is that we will establish a better, more comprehensive, legal framework for dealing with this problem in Wales, which you will see the UK Government following to deliver a similar thing in England.

[152] **Simon Thomas:** A derbyn y caiff y Bil ei gymeradwyo gan y Cynulliad, a ydych chi yn dal i fod yn hyderus y daw i rym ym mis Ionawr, fel sydd wedi ei awgrymu yn y nodyn esboniadol?

Simon Thomas: Accepting that the Bill is approved by the Assembly, are you still confident that it will come into force in January, as has been suggested in the explanatory note?

[153] **Alun Davies:** Gydag ewyllys da Cynulliad Cenedlaethol Cymru a Gweinidogion yn San Steffan, bydd y ddeddfwriaeth hon yn dod i rym yn unol â'r amserlen rydym wedi ei chynnig, ac rwy'n llawn ddisgwyl Cydsyniad Brenhinol yn gynnar yn y flwyddyn newydd.

Alun Davies: With the good will of the National Assembly for Wales and the Ministers in Westminster, this legislation will be enacted according to the timetable that we have proposed, and I fully expect Royal Assent to be given early in the new year.

[154] **Simon Thomas:** Diolch, Weinidog. Dyna'r holl gwestiynau sydd gennym ni. Diolch yn fawr i chi a'ch swyddogion am ddod i mewn i'n gweld ni. Bydd *transcript* o'r hyn sydd wedi ei drafod ar gael i chi ei wirio, ond, yn bwysicach, rydym yn awyddus, fel pwyllgor, i gysylltu dros nos gyda chi, a'r Cynulliad cyfan hefyd, gyda rhai o'r cwestiynau a'r sylwadau sydd gennym fel pwyllgor.

Simon Thomas: Thank you, Minister. That concludes our questions. Thank you to you and your officials for joining us today. There will be a transcript of what has been discussed this afternoon for you to check, and, more importantly, we as a committee are eager to contact you, and the full Assembly, overnight with some of the questions and comments that we have as a committee.

[155] **Alun Davies:** Diolch am hynny. Rwy'n gwerthfawrogi'r ffaith fod y pwyllgor wedi cyfarfod ac wedi cynnal y sesiwn hon. Gan ein bod yn mynd drwy broses sy'n gyflymach na'r arfer, rwy'n hapus iawn i

Alun Davies: Thank you for that. I appreciate that the committee has met today and conducted this session. Given that we are going through a more accelerated process than we usually would, I am happy to tell the

gynnig i'r pwyllgor fy mod yn hapus i ddod yn ôl, naill ai yn ystod Cyfnod 2, neu ar ôl hynny, cyn ein bod yn cyrraedd Cyfnod 3 neu Gyfnod 4 yn y Siambr, os dyna yw dymuniad y pwyllgor.

committee that I would be content to return, either as part of Stage 2 proceedings, or following that, before we commence Stage 3 or Stage 4 in the Chamber, if that is the wish of the committee.

[156] **Simon Thomas:** Diolch yn fawr iawn, Weinidog.

Simon Thomas: Thank you very much, Minister.

15:55

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

[157] **Simon Thomas:** O dan yr eitem hon, mae gennym lythyr oddi wrth Gwenda Thomas, y Dirprwy Weinidog, ynglŷn â'r Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru). A ydych yn hapus i nodi'r papur hwnnw? Gwelaf eich bod. Nodwch fod cyfle i chi gyflwyno gwelliannau cyn 6 Tachwedd, os oes diddordeb gennych i wneud hynny. Rwy'n synhwyro y bydd lot o welliannau i'r Bil arbennig hwn.

Simon Thomas: Under this item, we have a letter from Gwenda Thomas, the Deputy Minister, regarding the Social Services and Well-being (Wales) Bill. Are you content to note the paper? I see that you are. Please note that you have until 6 November to table amendments, if you wish to do that. I am sure that there will be a number of amendments to this particular Bill.

15:56

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

[158] **Simon Thomas:** Cynigiaf fod

Simon Thomas: I move that

y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod, yn unol â Rheol Sefydlog 17.42(vi).

the committee resolves to exclude the public from the remainder of the meeting, in accordance with Standing Order 17.42(vi).

[159] Gwelaf fod y pwyllgor yn gytûn.

I see that there is no objection.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 15:56.
The public part of the meeting ended at 15:56.*