



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

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol **The Constitutional and Legislative Affairs Committee**

Dydd Llun, 4 Tachwedd 2013
Monday, 4 November 2013

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi 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 Antoniw	Llafur (yn dirprwyo ar ran Julie James) Labour (substitute for Julie James)
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

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

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

Dechreuodd y cyfarfod am 14:29.
The meeting began at 14:29.

Ethol Cadeirydd Dros Dro
Election of a Temporary Chair

[1] **Mr Williams:** Good afternoon. Welcome to this meeting of the Constitutional and Legislative Affairs Committee. The committee Chair, David Melding, has submitted his apologies for today's meeting, and 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 the nomination.

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

[5] **Simon Thomas:** Diolch yn fawr. **Simon Thomas:** Thank you very much.

14:30

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

[6] **Simon Thomas:** Cychwynnwn y cyfarfod drwy nodi eto fod ymddiheuriadau wedi dod oddi wrth David Melding, ac oddi wrth Suzy Davies y bore yma. Mae Mick Antoniw yn dirprwyo ar ran Julie James; diolch, Mick, a chroeso eto. Unwaith eto, nid ydym yn disgwyl larwm tân. A wnewch chi ddistewi eich ffonau symudol? Mae popeth ar gael yn y Gymraeg neu yn Saesneg, wrth gwrs, ac mae cyfieithu ar y pryd ar sianel 1 y clustffonau, a'r trafodion fel y maent ar sianel 0. A oes unrhyw un am ddatgan buddiant? Gwelaf nad oes a bod pawb yn hapus.

Simon Thomas: We will start the meeting by noting once again that we have received apologies from David Melding, and from Suzy Davies this morning. Mick Antoniw is substituting on behalf of Julie James, so thank you and welcome, Mick. Once again, we are not expecting a fire drill. Could you please switch off your mobile phones? Everything is available either in Welsh or in English, of course, and interpretation is available on channel 1 of the headsets, and the floor language on channel 0. Does anyone have any declarations of interest? I see that no-one does and that everyone is content.

14:30

**Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3
Instruments that Raise No Reporting Issues under Standing Order 21.2 or 21.3**

[7] **Simon Thomas:** Yn gyntaf oll, mae gennym Reoliadau Adeiladu (Diwygio Rhif 2) (Cymru) 2013, a Rheoliadau Absenoldeb Teuluol ar gyfer Aelodau Awdurdodau Lleol (Cymru) 2013. A oes gan unrhyw un gwestiwn neu sylw ar y rhain? Gwelaf nad oes.

Simon Thomas: First of all, we have the Building (Amendment No.2) (Wales) Regulations 2013 and the Family Absence for Members of Local Authorities (Wales) Regulations 2013. Does anyone have any questions or comments on these? I see that no-one does.

14:31

**Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under Standing Order 21.2 or 21.3**

[8] **Simon Thomas:** Mae gennym ddau offeryn o dan yr eitem hon, sef y Rheoliadau Sgorio Hylendid Bwyd (Cymru) 2013, a Gorchymyn Deddf Awdurdod Datblygu Cymru 1975 (Diwygio) (Cymru) 2013. Mae'n beth rhyfedd i weld Awdurdod Datblygu Cymru yn cael ei grybwyll mewn deddfwriaeth o hyd a dyn yn meddwl bod y corff wedi dod i ben. Fodd bynnag, nid yw'r grymoedd o dan y corff wedi dod i ben. Mae adroddiad ar gyfer y ddau offeryn. A oes gan Aelodau gwestiynau neu sylwadau am yr adroddiad neu'r offerynnau fel y maen nhw?

Simon Thomas: We have two instruments this afternoon: the Food Hygiene Rating (Wales) Regulations 2013, and the Welsh Development Agency Act 1975 (Amendment) (Wales) Order 2013. It is strange to see the WDA mentioned in legislation these days, as one thought that it had come to an end. However, the powers under the body are still in existence. There is a report available on these two instruments. Does any Member have any questions or comments on the report or the instruments as they stand?

[9] **Mick Antoniw:** Chair, I went through the regulations fairly carefully. I did my best to pick fault, but they seem to be fairly sound. I quite like the new labelling categorisation as well. On the WDA amendment, that is, essentially, closing an anomaly that arose out of a court case. So, I did not see any greater issue than that.

[10] **Eluned Parrott:** I have just one question to ask, if I may. While I understand the reason why we might wish to close such a loophole, I am interested in the timing of this particular piece of work coming forward and I am wondering whether we have had any explanation from the Welsh Government as to why it has chosen to do this now.

[11] **Mr Griffiths:** Na, ni chafwyd ymateb hyd yn hyn. Wrth gwrs, mae'r rhain yn ddarostyngedig i'r weithdrefn gadarnhaol ac felly bydd cyfle i'r Gweinidog roi esboniad yn y Cyfarfod Llawn pan fyddant yn cael eu trafod.

Mr Griffiths: No, we have not had any response so far. Of course, these are subject to the affirmative procedure and therefore the Minister will have an opportunity to give an explanation in Plenary when they are scheduled for discussion.

[12] **Eluned Parrott:** Thank you.

[13] **Simon Thomas:** Diolch am hynny, ac fe fydd trafodaeth fer, beth bynnag, arnyn nhw.

Simon Thomas: Thank you for that; there will be a brief debate, at any rate, on these.

14:32

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

[14] **Simon Thomas:** Rydym wedi cael gohebiaeth oddi wrth y Prif Weinidog ynghylch Gorchmynion cychwyn, ac mae gennych gopi o'r llythyr a llythyr gwreiddiol y Cadeirydd. Byddwch yn cofio y bu diddordeb mawr gan y pwyllgor yn y gorffennol yn hynny o beth.

Simon Thomas: We have received correspondence from the First Minister regarding commencement Orders, and there is a copy of that letter as well as the Chair's original letter. You will recall that the committee has been very interested in that issue in the past.

[15] Rydym hefyd wedi cael llythyr ynglŷn â rheoliadau dyfroedd ymdrochi. Rwy'n meddwl mai llythyr ynglŷn â'r ffaith nad ydynt ar gael yn Gymraeg yw hwnnw, gyda'r Gweinidog yn esbonio'r meddylfryd y tu ôl i baratoi'r rheoliadau hyn yn Saesneg yn unig. A oes gan Aelodau sylwadau neu gwestiynau am y rheini?

We have also received a letter on the bathing water regulations. I think that that is on the fact that they were not available in Welsh, with the Minister explaining the thinking behind the making of these regulations in English only. Do Members have any questions or comments on those?

[16] **Mick Antoniw:** On the letter, are we including now the letter from the First Minister?

[17] **Simon Thomas:** Yes, on the commencement Orders as well.

[18] **Mick Antoniw:** The only point that I was not completely clear about was where, in relation to David Melding's letter, in the very last paragraph of his letter, the First Minister said

[19] 'I expect careful consideration as to whether powers to make these types of provision in commencement orders are needed, and for Ministers to set out in the Explanatory

Memorandums why such powers are included’.

[20] That seemed to imply, ‘Yes, I understand everything, but, ultimately, there might need to be some sort of failsafe position. What happens if the powers are used to such an extent that they cause constitutional or administrative concern or whatever?’ That was the one bit that I thought was not answered in the letter. It may be that it is just my understanding as to how it might work out that we would have the opportunity to challenge, but would there be a mechanism if we felt that there was inappropriate use of the power, because it seems to me that the Ministers, or the Government, can go ahead and use that power, and that is it, basically? There does not seem to be any sort of failsafe other than to question the Minister on it. That was the only bit—and I am not looking for a mechanism whereby we start creating a bureaucracy or whatever, but I just felt a little uneasy that there was no failsafe position, other than, I suppose, from this committee. We would say, ‘We are really not happy about this and we would like the Minister to come and explain’, and it is done in the open that way. That might be the mechanism, but it does not take the power away.

[21] **Simon Thomas:** May I just add to that? The First Minister’s letter talks about the explanatory memorandum, and this follows up on Mick’s point, really—if the explanatory memorandum says, ‘We expect these powers to be used in this way’, but then it transpired they were used in a different way, would the explanatory memorandum have any kind of consideration there in terms of challenging the use of those powers, or in the future, down the line, as it were?

[22] **Mr Griffiths:** Yes it would, but there is no route to challenge the use of the powers beyond questions, or votes of no confidence, and so on. A negative procedure would allow them to be challenged in a much more specific, legislative way. The problem is not that they have been misused, but that things can go through under this no-procedure Order that ought really to be part of a procedure that is subject to scrutiny.

[23] **Mick Antoniw:** Yes, I do not know what the answer to it is, really, other than, I suppose, that this would be the body that would draw attention to that, and would scrutinise that, albeit without the power to prevent it. However, it would at least bring accountability to the Ministers on that, and I suppose that that, to some extent, is what happens in Westminster as well, and probably in the Scottish Parliament as well—you end up with a certain category where you cannot be so precise unless everything goes through an affirmative procedure.

[24] **Eluned Parrott:** I can understand why it would be undesirable, to an extent, to have an affirmative procedure for a commencement Order, because essentially what you are doing then is passing the law twice, or requiring the legislature to pass it twice. The problem that we have is that there is a difference between a commencement Order that simply commences and a commencement Order that makes other provisions as well, and I wonder whether there is an opportunity to differentiate between those by saying that, for commencement Orders that simply commence, no procedure or a negative procedure is appropriate, but for commencement Orders that commence and have supplementary consequential powers within them, and so on and so forth, we do need some kind of formal procedure, or affirmative, so that those additional powers that were not part of the original Bill can be approved.

[25] **Mick Antoniw:** I suppose the only point, Chair, that I would make is that we are where we are, and I suppose it just means that we have to be alert as a committee. That is one of our scrutiny roles, and I suppose it cannot be taken further than that.

[26] **Simon Thomas:** I think it needs to become one of our running themes, in the same way as competence did, after we had a little discussion about it over a particular issue. It is one of our themes that needs to be constantly there in our questioning, so we always bring out from Ministers what they intend to do with the Orders, and then, if necessary, reflect in the

report that we write on the legislation whether we think it is appropriate.

[27] **Eluned Parrott:** It is not something, I think, that has caused any specific issues up to this point, is it?

[28] **Simon Thomas:** It is more a question of the future, really.

[29] **Eluned Parrott:** I am wondering if it has happened in any of the other legislatures—that it has been raised, or there have been difficulties with a commencement Order that went too far. Apart from, obviously, the original Henry VIII.

[30] **Simon Thomas:** Yes, it is a constant theme in Westminster as well, is it not—that the Government might be taking a little too much in its commencement Orders? The problem is that it might be several years down the line, and the people scrutinising the original legislation are not around to then scrutinise whether all the Orders have been done correctly.

[31] **Eluned Parrott:** Maybe that is another point, which is that if the commencement is not commenced within the same parliamentary term as it was scrutinised in the first place, then a procedure is necessary.

[32] **Simon Thomas:** We could put a little caveat like that in, yes. It is something to bear in mind.

[33] **Mr Griffiths:** I am loath to suggest more work, but—

[34] **Simon Thomas:** It depends who it is for. Is it for you? [*Laughter.*]

[35] **Mr Griffiths:** Yes, it is for us. One thing we could do is look at commencement Orders as they come through and then draw them to the attention of the committee if they make provision beyond that. The committee has a power to report on them, and it has done on a couple of occasions. So, the committee could consider them, even if there is no formal Assembly procedure. If you see a pattern developing, you can take it further.

[36] **Simon Thomas:** We will note that, then. In addition to that, we will just note the correspondence.

[37] A ydych yn hapus? Gwelaf eich bod. Is everyone content? I see that you are.
Diolch. Thank you.

14:40

**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**

[38] **Simon Thomas:** Rwyf am ofyn i chi gymeradwyo cynnig o dan Reol Sefydlog 17.42 i wahardd y cyhoedd o weddill y cyfarfod. Cynigiaf fod

Simon Thomas: I will now ask you to approve a motion under Standing Order 17.42 to exclude the public from the remainder of the meeting. I moved 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).

[39] Gwelaf fod y pwyllgor yn gytûn. I see that the committee is in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:40.
The public part of the meeting ended at 14:40.*