



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

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

**Dydd Llun, 14 Tachwedd 2011  
Monday, 14 November 2011**

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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**

Vaughan Gething	Llafur (yn dirprwyo ar ran Julie James) Labour (substitute for Julie James)
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Lindsay Whittle	Plaid Cymru (yn dirprwyo ar ran Simon Thomas) The Party of Wales (substitute for Simon Thomas)

#### **Eraill yn bresennol**

##### **Others in attendance**

Daisy Cole	Pennaeth Dylanwadu, Cysylltiadau Cyhoeddus a Pholisi Plant, Cyngor Ffoaduriaid Cymru Head of Influencing, Public Relations and Child Policy, Welsh Refugee Council
Mike Lewis	Prif Weithredwr, Cyngor Ffoaduriaid Cymru Chief Executive, Welsh Refugee Council

#### **Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol**

##### **National Assembly for Wales officials in attendance**

Steve George	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk
Alys Thomas	Y Gwasanaeth Ymchwil The Research Service

*Dechreuodd y cyfarfod am 2.29 p.m.*

*The meeting began at 2.29 p.m.*

### **Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions**

[1] **David Melding:** I welcome everyone to this meeting of the Constitutional and Legislative Affairs Committee. I will make the usual housekeeping announcements. In the event of an emergency, please follow the instructions of the ushers, who will help us to leave the building safely. There is no fire alarm test scheduled, so, if you hear the alarm, please follow the instructions of the ushers immediately. These proceedings will be conducted in Welsh and English, and when Welsh is spoken a translation is available on channel 1. Should you need to amplify our proceedings, amplification is on channel 0. Please switch off all mobile phones and other electronic equipment completely, as they can interfere with our broadcasting systems. We have received an apology from Suzy Davies, Simon Thomas and Julie James. I am pleased to welcome to the meeting Lindsay Whittle and Vaughan Gething, who are substituting for their colleagues. Thank you very much.

**Offerynnau nad ydynt yn Cynnwys unrhyw Faterion i'w Codi o dan Reol  
Sefydlog Rhifau 21.2 neu 21.3  
Instruments that Raise no Reporting Issues under Standing Order Nos. 21.2 or  
21.3**

[2] **David Melding:** The instruments are noted as items 2.1, 2.2 and 2.3. Are Members content with that? I see that you are.

**Offerynnau sy'n Cynnwys Materion i'w Codi gyda'r Cynulliad o dan Reol  
Sefydlog Rhifau 21.2 neu 21.3  
Instruments that Raise Issues to be Reported to the Assembly under Standing  
Order Nos. 21.2 or 21.3**

[3] **David Melding:** The first instrument to be considered is CLA48—the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011. Before I ask if Members have any points to raise, our legal adviser wants to say something on the technical issue here.

[4] **Mr Griffiths:** Fel y gwelwch o'r adroddiad drafft byr iawn, mae'r pwynt hwn yn ymwneud â chyfeirio at y pwerau sydd yn caniatáu i'r rheoliadau gael eu gwneud. Maent yn bwerau o dan Ddeddf Gwastraff a Masnachu Allyriadau 2003. Mae cyfeiriad yn yr adroddiad drafft at fethiant i gyfeirio at adrannau 12(2) a 15 o'r Ddeddf honno. Mae'r rheini'n baragraffau y cyfeiriwyd atynt yn y prif reoliadau pan gafodd y rheini eu gwneud yn 2004. Mae'r Llywodraeth bellach wedi dod yn ôl atom gydag ymateb, ac mae'n derbyn y dylid bod wedi cyfeirio at adran 12(2), ond mae'n dadlau nad oes angen cyfeirio at adran 15 oherwydd nad yw'n berthnasol i'r rheoliadau hyn. Hoffwn ddyfynnu brawddeg, sydd i'w gweld tua diwedd ymateb y Llywodraeth. Mae'n dweud,

**Mr Griffiths:** As you can see from the very brief draft report, this point relates to the reference to the powers that allow the regulations to be made. They are powers under the Waste and Emissions Trading Act 2003. There is reference in the draft report to a failure to refer to sections 12(2) and 15 of that Act. Those are paragraphs that were referred to in the main regulations when those were made in 2004. The Government has now come back to us with a response, and it accepts that section 12(2) should have been referred to, but argues that there is no need to refer to section 15, as it is not relevant to these regulations. I wish to quote a sentence, which can be seen towards the end of the Government's response. It says,

[5] 'Fe geir peth o'r wybodaeth y mae ei hangen i wneud y cyfrifiad hwn yng nghofnodion awdurdod gwaredu gwastraff a gwybodaeth benodol a anfonir yn rheolaidd (dychweliadau) i'r awdurdod monitro a bydd yr awdurdod monitro yn "cael" y cofnodion hynny a'r wybodaeth honno wrth iddo gyflawni ei swyddogaethau o dan y Ddeddf.'

'Part of the information needed to make this calculation will be contained in a waste disposal authority's records and returns to the monitoring authority and those records and returns will be "acquired" by the monitoring authority in carrying out its functions under the Act.'

[6] Fodd bynnag, mae'n mynd ymlaen i ddweud nad yw'r Llywodraeth o'r farn y bydd yr awdurdod monitro yn 'cael' y cyfrifiad sy'n deillio o'r broses honno.

However, it goes on to say that the Government is not of the view that the monitoring authority will 'acquire' the calculation that arises from that process.

[7] Felly, mater technegol iawn yw a oes angen cyfeirio at adran 15 o'r Ddeddf i

Therefore, it is a very technical matter as to whether section 15 of the Act should be

wneud y rheoliadau hyn. Y ffordd ddiogel o wneud hynny yw defnyddio yr un pwerau wrth wneud rheoliadau diwygio ag a ddefnyddiwyd wrth wneud y rheoliadau gwreiddiol. Nid yw hynny wedi ei wneud yn yr achos hwn. Mae dadl dechnegol, ond, wedi dweud hynny, mae'n amlwg bod gan y Llywodraeth y pwerau, er nad yw wedi cyfeirio atynt i gyd. Felly, awgrymaf fod y pwyllgor yn nodi ymateb y Llywodraeth, a dim mwy na hynny.

referred to in order to make these regulations. The safe way of doing this is to use the same powers in making amending regulations as were used in making the original regulations. This has not been done in this case. There is a technical argument, but, having said that, the Government obviously has the powers although it has not referred to all of them. I therefore suggest that the committee notes the Government's response, and no more.

[8] **David Melding:** Are Members content with that?

[9] **Eluned Parrott:** You say that it is a technical issue. Are there reasons why it is considered best practice to refer back in that way?

[10] **Mr Griffiths:** It avoids this sort of situation where powers may have been omitted that should have been included. Sometimes, that leads to the opposite problem, which is that powers have been included that are not necessary for the regulations being amended. It is safer to outline all the relevant powers rather than to choose and then find that you have missed something that is relevant. However, as I say, Welsh Ministers do have the powers, so there is no doubt about the validity of the regulations—it is just the narrative.

[11] **Eluned Parrott:** Okay, thank you.

[12] **David Melding:** I think that we are content on that. The next instrument to be considered is CLA49—the Audit and Assessment Reports (Wales) (Amendment) Order 2011. There is a more substantive issue on this, namely the Assembly's bilingualism policy. Gwyn, will you highlight that for us?

[13] **Mr Griffiths:** Mae'r Gorchymyn hwn yn ddi-ddorol oherwydd bu'r Gorchymyn sy'n cael ei ddiwygio yn destun adroddiad gan y pwyllgor blaenorol ar y sail ei fod wedi cael ei wneud yn Saesneg yn unig, er ei fod yn dudalen o hyd yn unig. Ymatebodd y Llywodraeth gan ddweud nad oedd yn ymarferol gwneud y Gorchymyn hwn yn ddwyieithog, er bod ei swyddogion wedi cyfieithu'r llythyr at y Llywydd a oedd ddwywaith yr hyd ac yn cynnwys yr un eirfa'n union bron. Felly, y disgwyl oedd y byddai diwygiad i Orchymyn 2010 wedi bod yn gyfle i wneud iawn am y broblem flaenorol a gwneud y peth yn ddwyieithog. Yn anffodus, yr hyn maent wedi'i wneud yw gwneud y Gorchymyn hwn yn ddwyieithog, ond yn hytrach na diddymu'r Gorchymyn blaenorol, maent wedi ei ddiwygio. Felly, er bod y Gorchymyn presennol yn ddwyieithog, mae'r darn pwysig, sef y diwygiad ym mharagraff 2.2, eto yn ymddangos yn Saesneg yn unig. Nid wyf yn teimlo bod hyn yn ddigonol o ran ymateb i adroddiad y

**Mr Griffiths:** This Order is interesting because the Order that is being amended was the subject of a report by the predecessor committee on the grounds that it had been made in English only, although it was only a page long. The Government responded by saying that it was not practical to make this order bilingually, although its officials had translated the letter to the Presiding Officer, which was twice as long and included almost exactly the same vocabulary. Therefore, one would have expected that an amendment to the 2010 Order would have been an opportunity to put right this discrepancy and make it bilingual. Unfortunately, what they have done is to make this Order bilingual, but rather than revoke the previous Order, they have amended it. Therefore, although the current Order is bilingual, the important section, namely the amendment in paragraph 2.2, still appears in English only. I do not feel that this is sufficient in terms of responding to the predecessor committee's report that this should have been bilingual—translating

pwyllgor blaenorol y dylai hwn fod wedi bod yn ddwyieithog—drwy gyfieithu'r fframwaith ond gadael y ddeddfwriaeth o sylwedd yn Saesneg yn unig. the framework but keeping the original legislation in English only.

[14] **David Melding:** Are Members agreed that we should write to the Government in those terms, explaining that we are disappointed and feel that it was a lost opportunity? I see that you are. Thank you.

2.37 p.m.

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i Roi Pwerau i Weinidogion Cymru yn Neddau'r DU**  
**Committee Inquiries: Inquiry into the Granting of Powers to Welsh Ministers in UK Laws**

[15] **David Melding:** I am delighted to welcome members of the Welsh Refugee Council to the meeting: Mr Mike Lewis, the chief executive; and Daisy Cole, head of influencing, public relations, and child policy. I suspect that you have been before committees in the past. We operate in a standard way, in that we have a range of questions that we want to put to you, and I will ask Members to put a set of questions, and there may then be supplementary questions. However, if you wish to add at the end anything that we have not covered, then you will have an opportunity to do so. We are not here to interrogate you. It is meant to be as conversational as possible, which, in the constraints of committee, I realise is not always that easy. We have heard evidence so far from legal experts, academics in the field of politics, and those with an interest in the constitution. It might help us to hear how a key non-governmental organisation operates, and how you try to influence the legislative process. Presumably, you try to keep account of what is going on in Westminster and what you might then be able to influence in the Assembly. It is up to you how you split up the questions, but if you both have something to say on each question, that is fine also.

[16] **Mr Lewis:** We are interested in the intersection between devolved and non-devolved issues. Much of our funding comes from the UK Border Agency, and also from the Welsh Government. So, we are relatively unique in having a clear concern about the interface between health and education on the one side, for example, and the immigration system on the other. That is why we were excited about the opportunity to give written evidence. We are less excited about the opportunities in providing oral evidence, but that is by the by. [*Laughter.*] We are not lawyers, but we try to make sense of this both for people on the ground who are receiving services and for service agencies, who often do not understand it. That is our interest.

[17] **Ms Cole:** We seek to influence Westminster, Welsh Government and the National Assembly for Wales via consultations, committees such as this, written and oral dialogue and political representations to MPs, AMs and Ministers. At Westminster, our dialogue is primarily with the Home Office or the UK Border Agency. Today, we have been fortunate enough to meet Jane Hutt, the Minister with responsibility for non-devolved issues.

[18] We also work closely with our counterparts in the Refugee Council and the Scottish Refugee Council to take a joint approach to the UK Government's stance. We do that through joint briefings and consultation responses, and we also input into the parliamentary cross-party group on immigration. We also work in consortium with other refugee agencies as part of the UK asylum support partnership, and with refugee and children's charities as part of the refugee children's consortium, the all-Wales children's asylum policy group and the third sector partnership council.

[19] We have also started to look at working at a European level, with members of the European Council on Refugees and Exiles. The UK Government's stance is, at times, ambivalent to many elements of the European common asylum process, where the issues impact on refugees and asylum seekers in Wales. We are currently exploring how we can bring these issues to the British-Irish Council.

[20] **David Melding:** I should reiterate that the fact that you are not lawyers is why you are so interesting as far as we are concerned, because we have talked to many lawyers and they have given valuable evidence, but we do not intend to try to capture that with you. We want to see how these issues impact practically in terms of public policy and its effect on stakeholders and others who are directly affected. Is it sometimes difficult for you to ascertain who is responsible, whether it is a Westminster or an Assembly issue, and how do you work through that?

[21] **Mr Lewis:** I do not think that it is difficult for us. Welsh Government civil servants, once they see immigration—whether it applies to health, education, or whatever—are sometimes reticent to get involved. There is a blanket caveat of ignorance, if you like. That is exacerbated by the UK Border Agency. I attend meetings in London where it still does not get devolution, 12 years on. We constantly remind it that things are different in Wales, and that we have an inclusion policy. In a practical sense, the UK Border Agency's view in England is that integration begins when you get status, while the cross-party approach in Wales is that inclusion is a two-way process that begins on the day you arrive in Wales. Naturally, that leads to continuous policy battles. The best example that we have of that is the UK Border Agency's consultation in the summer on family migration. It said that the Department of Health's review of arrangements for access by foreign nationals to NHS services in England would involve discussion with the Welsh Government, but that arrangements for the UK as a whole might be appropriate and mutually beneficial. Our awareness is that there was no discussion with the Welsh Government or the Assembly on that statement. It is a scrutiny issue, a policy issue and a practice issue. For example, we had an asylum seeker with chronic toothache, and the local health board clerk said that that person could not have health treatment. That happened three or four months ago, even though the regulations have been in place since 2009. On the ground, it may not work all of the time because people do not understand, which, in turn, reinforces the issue.

[22] **David Melding:** Presumably, your colleagues who have responsibility for England—I do not know whether that is at a UK level or whether there is an English refugee council or how you are structured—know their lines of communication. They would go to the Department of Health or the Home Office, and the case would be taken up. In Wales, you ought to be taking the case up with a Welsh Minister, ought you not? Is it part of the problem that they do not realise that they have that responsibility? What are the practical issues that mean that you cannot go back to the clerk who said that there are no treatment rights and that is that?

[23] **Mr Lewis:** The policy is clear, and it has been clear since 2009. There was cross-party support for it. The outcome is occasional organisational indifference—which is a training issue—but what concerns us is the fact that it was still happening in August 2011, because there was no consultation. I believe that you have not been asked to scrutinise that document. Do you have to scrutinise UK Border Agency documents and policy? I do not think that you do. That is a real issue for us, because you are directly responsible for those welfare issues as we see it.

2.45 p.m.

[24] **Eluned Parrott:** I want to take the issues of clarity and understanding a little further,

if I may. In your written submission, you said that you are hoping for a

[25] ‘a simple, clear and straight forward process free of nuance and subtext, which has clear outcomes within the process and is easily understood.’

[26] From what you have said so far, I am getting the impression that you feel that the process is clear. Why do you think there may be a perception that the process in Wales is not simple, clear and straightforward?

[27] **Ms Cole:** I think it is partly because the whole language of asylum is rife with euphemism, because the people making decisions do not actually want to talk about people. They talk about units. They do not want to think about the reality of people seeking sanctuary. So, we have a very euphemistic language around asylum. That has crept into the political language and the understanding of the whole devolved thing. What happens is that this turns into ambiguity, which then turns into dismissal on the part of civil servants in the UK executive agencies, within the UKBA, who treat the devolved competencies as things that have absolutely no impact on their responsibilities. I can give you an example of that. The regional director of the UK Border Agency was recently in correspondence on something that we were copied into. She told a constituent that the Welsh Government was ‘in between policies’ relating to education for asylum seekers. Our view would be that it is inappropriate for an official at such a high level of the UK Border Agency to be commenting on Welsh Government policy in that way.

[28] This is the issue: it is simple on paper—you have the Government of Wales Act 2006 and the devolved responsibilities—but, in reality, you have people who are speaking way beyond the agreed boundaries. This makes our job really difficult. To advocate at community level to make meaningful change is difficult. I suppose that we are looking for something that really shows that, if you step out of line, there will be people looking to see what you are doing. At the moment, all kinds of things can happen around child safeguarding, but there is no scrutiny. There is no-one saying, ‘Actually, child safeguarding is a devolved issue, so if you are operating like this, we need to have scrutiny of it’. That is the problem. A gap has been allowed to develop over time, and there are people really suffering because of it.

[29] **Eluned Parrott:** Right, I see. My questions are moving around a little. I think this follows on from what you have just said about a lack of operational clarity between London and Cardiff in the interface between two competing jurisdictions. We recognise from what you have told us that you are experiencing issues there, but what practical steps could be taken to improve that situation?

[30] **Mr Lewis:** Our understanding is that John Vine, Her Majesty’s inspector of immigration, came to meet Carl Sargeant in the previous administration and met the then Presiding Officer. We think that that offers opportunities, because there are constitutional issues with regard to who scrutinises when devolved meets non-devolved. The situation is unclear, and we would like a scrutiny committee or John Vine to look at it. There is a real gap here, as demonstrated by the example Daisy gave of UK Border Agency officials going into a college in Newport and telling people that asylum seekers are not allowed education. That is an English policy. It is not a policy made in Wales. For the UK Border Agency to say in its response that the Welsh Government was ‘between policies’, which is a very interesting phrase, leaves me with real concern.

[31] **Vaughan Gething:** I am interested in this particular instance and the phrase ‘between policies’. That is nonsense, because either there is a policy or there is not; you cannot be between policies in that sense. I would be interested in having clarity on the example you gave, the time it took and whether it has now been resolved. If it has not, even as just an instant issue, it is something that we should try to take up to be clear about where that

responsibility lies. I would also be interested in knowing how regularly you see these instances. I know that you are giving us anecdotes, but is this still an issue that you see consistently, with the UK Border Agency coming over and saying, ‘This is the policy perspective’ and still not getting that there is a different approach on a range of issues in this part of the UK?

[32] **Ms Cole:** On this occasion, Jane Farleigh, who is the UKBA regional director, gave her apologies in the same letter that she said that it was in between policies, and she left it up to a colleague in Gwent to get in touch with students. However, it is difficult, and it leaves open scars in the communities.

[33] There are other examples around child safeguarding, such as the age assessment of age-disputed children, where any assessment done by a local authority would be undertaken from a made-in-Wales perspective. Yet UKBA is having closed meetings with local authorities and the Welsh Local Government Association to discuss how to age-assess children. We find that frightening, because there is no independent body, no representative from the Welsh Government and no representative from an advocacy agent present, so there is no critical friend to ask, ‘Do you think this actually works?’ That is really worrying. We are almost seeing policy through the back door with regard to asylum and immigration. The later questions about powers for Welsh Ministers are interesting to us with regard to back-door policy and how that can be dealt with.

[34] **Vaughan Gething:** The distinction that I try to draw is this: there is a difference between someone being legally responsible for doing something and there being simply an overlay of someone applying the wrong policy and saying, ‘We are responsible for this’, when they are not—say, the UK Border Agency applying a UK Government policy when it is not actually responsible for that. There is then another point about agencies such as the WLGA, which should understand who is responsible, understanding that they are in breach of Welsh Government policy by allowing it to take place. Legislative competence is one thing, but the application is also important because there is not much point in passing a law that does not get applied and have an impact. So, I am interested in how you take up those issues, because it may well be that Welsh Ministers do not know what is going on until they are told; they are not going to appear at every meeting and have an observer offhand. So, when these problems arise, it is about how we can act, how other agencies should act and what scrutiny we can apply.

[35] **David Melding:** That latter point is quite crucial about how Ministers would have found out that their Executive competence was being set aside.

[36] **Mr Lewis:** The issue is that the Welsh Government and the Children’s Commissioner for Wales were excluded from the process. The consequence of age assessments is that you can be treated as a child or an adult and, as a child, you are considered to be vulnerable and your protection needs are met. However, if you are assessed as an adult, your protection needs as a young person may not be met. There is potential for children who have been trafficked to be assessed as adults and later be found to be children, and we know of situations where that has happened. This is a very challenging and complex issue, without any independent scrutiny. It is contrary not only to Welsh Government policy, but to National Assembly policy, because it clearly states that we have a responsibility once asylum seekers arrive in Wales, whether they are children or adults. This is murky for us because there is no clarity, and agencies like mine have to get into this constant battle—I would say debate, but it is probably a battle, with respect—to get this resolved. We raised this with the Minister this morning, but there is no resolution to this complex situation, really.

[37] **Lindsay Whittle:** It is nice to see you again, Mike and Daisy. Thank you for coming. The age assessment of asylum-seeking children is important, and I am disturbed to hear the

evidence that you have given today. I know, from my previous work with the Wales strategic migration partnership committee, of the battles that you have had. That is not right; that is not acceptable in Wales.

[38] You have practically answered all of the questions that I was going to ask, but I am particularly concerned about the Assembly's current scrutiny process and ensuring wider engagement with civil society in Wales. It is vital that our children's commissioner, for example, is involved, as well as the National Assembly. We have a duty; we are the corporate parents of all children in Wales, regardless of where they come from. How do you view that, perhaps in relation to the scrutiny of UK legislation that affects us in Wales? I am disturbed to hear that the UK Border Agency and the WLGA are having meetings without involving the Welsh Government or you. That cannot be right. What can we do to help alleviate these problems and bring them to an end quickly?

[39] **Mr Lewis:** Those powers do not lie with me, I am afraid. I can just present evidence to committees such as this one, raise the issue with the Minister and write letters to the UK Border Agency, which we have done on more than one occasion to express our concerns, but they are ignored. This is nasty stuff and, if we get it wrong, children's lives could be in danger. I cannot put it any more strongly: if we get this process wrong, nasty things can happen to people who we believe are children. This is a protection issue and I know that the children's commissioner shares our concerns. Some local authorities do an amazing job and are professional and proficient. However, that is not always so, but that is due to a number of reasons. So, unless you have critical friends asking you, 'Have you thought about this?' or 'Have you looked at this in a different way?', you are not going to get this right. It is a real protection issue for us.

[40] **David Melding:** To add to what Lindsay has just said, most of our evidence has started from a position of ascertaining what powers the Assembly currently has and what it might get, how those powers are properly protected and, if some of those powers are returned to Westminster for a particular Bill to proceed, how that process will operate and how it may be scrutinised effectively. It is interesting that what you have talked about is really how Ministers—usually Ministers in the UK Government—work in the system and how an agency that operates under UK Ministers deals with devolution in practice. A lot of our mechanisms, in Standing Orders or in the way that we scrutinise legislative consent motions, would not impinge on the operation of those Executive powers, but what might impinge on them are the memoranda of understanding and the other ad hoc instruments that Governments agree between each other, such as concordats and so on. Do they operate effectively at the moment, or do you feel that there is nothing in place to ensure that, when someone in the UK Border Agency is making a decision, they think, 'Oh, I must now check the devolved instruments and how they must be observed'? Is that what is lacking at the moment?

[41] **Mr Lewis:** With respect, I think that it is more basic than that. I think that there is a lack of clarity in the scrutiny arrangements. I may be wrong, because, as I said, as I am not a lawyer, but there is a lack of clarity about where the responsibility for scrutiny lies. Does it lie with John Vine, as Her Majesty's inspector of immigration, or with a scrutiny committee of the National Assembly for Wales? I do not know. However, what I do know is that I cannot see any scrutiny at the moment. So, I have a problem but no solution, which I have always been taught is a bad thing. It is something that Assembly Members are genuinely concerned about. They talk to us about the issue of trafficking and child protection—the sorts of issues that we deal with—so there is obviously concern there and the need for a solution.

3.00 p.m.

[42] **David Melding:** There is not a memorandum of understanding between the Governments with regard to how issues such as health and education impact, is there?

- [43] **Ms Cole:** I think that it would be really useful to have something.
- [44] **David Melding:** It is not for us to suggest a policy, incidentally. We are looking at the process and at whether it is adequate.
- [45] **Mr Lewis:** Let us say that we do not know, but that, if there is not one, we would like one.
- [46] **David Melding:** There may be one that is 10 years old that nobody uses. We have had analogous evidence to that character already. Lindsay, it is still with you; do you want to pursue anything else?
- [47] **Lindsay Whittle:** It is quite clear—and Mike has raised this issue—about the Assembly having a greater role in scrutinising United Kingdom Bills, but what about scrutinising the role of Welsh Ministers in this regard and perhaps scrutinising and talking about the use of legislative consent motions in the Assembly? Do you feel that there should be more scrutiny in that regard?
- [48] **Mr Lewis:** I think that there should be more scrutiny, but the difficulty that I struggle with—this is not a party political point, so please do not take it as one—is this: why is the child protection element for asylum-seeking children in the Borders, Citizenship and Immigration Act 2009 and not in the Children Act 2004? Why is this group of children outside the protection given to every other child in Wales? That Act only came in in 2009, and when you look at the history of these children, you often find that they will have been trafficked and exploited, yet we have a system in which someone's welfare is less important than their immigration status. That is the interesting thing for me.
- [49] **Ms Cole:** You have the cross-cutting nature of the refugee inclusion strategy, and the accompanying action plan, which refers to the circumstances of unaccompanied asylum-seeking children, and it mentions a working group with UKBA, which rather implies that the Welsh Government would be a part of that. When we found out that it was not, it came as a bit of a shock that there was this group meeting behind closed doors. In a way, with this idea of power going to Welsh Ministers, there is also a fear of things happening behind closed doors in that regard. It needs to come out into the open, really.
- [50] Just to be pedantic, for the record, the correct title is the Independent Chief Inspector of the UKBA, not inspector.
- [51] **Mr Lewis:** Sorry, I was being lazy.
- [52] **David Melding:** We are getting on to some policy issues, which are of great concern to you, and I am quite relaxed about them being put on the record here. However, our inquiry is restricted to process and how scrutiny is applied. What that scrutiny then finds out is for another part of the process.
- [53] **Lindsay Whittle:** It is worth pointing out that these are human beings, and while these debates and arguments are going on in the corridors of power—not with the Welsh Refugee Council, obviously—the most poignant message that I am hearing today is that children are suffering. That cannot be right; we have to act very quickly in this regard.
- [54] **David Melding:** The whole population is served by effective scrutiny.
- [55] We are, I think, finding some very interesting points that have very direct relevance to us, such as whether there is a memorandum of understanding and the infringement of

Executive powers—Ministers may not have picked up that themselves, or may not have the ability to do so at the moment, it would appear. Do you have anything further that you want to follow up on, Lindsay?

[56] **Lindsay Whittle:** No, thank you.

[57] **David Melding:** Will move on to Vaughan Gething.

[58] **Vaughan Gething:** I have some more general questions to ask about scrutiny, and particularly on the point that Lindsay raised about consent and the process by which United Kingdom Parliament Bills require the consent of the Assembly. Do you have a view on the adequacy of the current scrutiny of legislative consent motions in the Assembly, where the UK Parliament will, effectively, be legislating for the Assembly?

[59] **Ms Cole:** To be honest, I feel a bit out of my depth when it comes to these technical questions. Our view is that some sort of advance warning of UK Bills would definitely be helpful, and we believe that the Assembly's consent would improve the scrutiny of legislation that applies to Wales. I do not think that I can put much more meat on the bones of that.

[60] **David Melding:** It might help us to know when you realised that the 2009 Act would, effectively, take responsibility for a group of children in Wales from here and place it elsewhere, because the child protection rights would be—would they be 'undeveloped' Gwyn? What language could we use for that? The scope of the Assembly's competence would have been restricted to UK citizens—I suppose that that is the way that it would have been drafted. So, these children would not come under the Assembly's child protection procedures because they are the children of asylum seekers. It probably did not require a legislative consent motion at the time.

[61] **Mr Griffiths:** No, because it would not have been within the Assembly's legislative competence in 2009.

[62] **David Melding:** Yes, but before 2009 we were, presumably, covering that group of children, because there was a different policy at a UK level.

[63] **Mr Griffiths:** That would have been under Westminster legislation—an Act of Parliament—rather than Assembly legislation.

[64] **David Melding:** I suppose that the question is: did you realise at the time that you were going to have this group of children that were suddenly going to lose the services that, currently, would be supervised by the Assembly?

[65] **Mr Lewis:** We need to go back to the United Nations Convention on the Rights of the Child, because the UK Government, up until about 2008, opted out of the article on asylum-seeking children. That meant, legally, that this group of children technically did not get any protection and their immigration status was the only thing that mattered. To answer your question, we work with our colleagues in London on influencing, and we were pleased to get something for children, even under the Borders, Citizenship and Immigration Act 2009, because, if you remember, there were all of those issues about dawn raids, which were reframed as 'early morning removals', and all of those other joyous terms. So, it was a difficult time for us as an agency, because we were just trying to get some level of protection. Only in preparing for this inquiry have we come to the question, 'Why is it outside the scope of the Children Act?' That is the bottom line for us.

[66] **Ms Cole:** It is a duty that sits in the immigration legislation, so it is section 55 of the *Borders, Citizenship and Immigration Act 2009*. So, effectively, it sits in immigration law.

However, that does not mean that the Wales child protection procedures do not apply to these children; they obviously still apply to these children. It just means that the UKBA's duty is under that section 55 duty, rather than under our section 28 duty in Wales.

[67] **Vaughan Gething:** Some evidence has been presented to this inquiry about the process in Scotland. The Scottish Executive provides the Parliament with a letter that sets out its view on whether any of the proposed UK legislation set out in the Queen's Speech affects the powers of the Scottish Parliament. The Scottish Government says, 'We think, of the 18 Bills announced in the Queen's Speech, seven have implications, and here they are'. Have you considered whether that sort of advance warning, to use your words, of UK Bills that could affect the Assembly would be helpful in improving the scrutiny of legislation here? There is also your second point about the influencing agenda, which, to put it another way, is about engagement with the legislative process.

[68] **Mr Lewis:** We have had £944,000 grant reduction in the past year, so we must pick our priorities, which, currently, are legal aid and welfare to work. Those are what we can cope with. Not having policy specialists, we look to the research that you publish, and to the WCVA and the WLGA. There is a real issue with the capacity of civil society to engage with the complexity of this. All that we can do is to look at the Bills that come out from our English colleagues and think that we will do three or four things, and try to get three or four issues where we want them to be. That is an excuse, but it is an honest excuse in relation to capacity. We cannot do all that we need or want to do to engage with the process.

[69] **Vaughan Gething:** Have you considered the Scottish example that I have given? Have you spoken to colleagues in Scotland about whether they find it useful or not?

[70] **Mr Lewis:** They find that very useful, and it is something that would really help us.

[71] **David Melding:** Does it seem to operate better in Scotland? I do not want chapter and verse or a PhD viva on the subject, but is it your impression that it works better in Scotland?

[72] **Mr Lewis:** Our colleagues from the Scottish Refugee Council have told us that it does work more effectively. That heads-up is really helpful.

[73] **Vaughan Gething:** So, when you talk of advance warning, you are looking for something similar here, essentially.

[74] **Mr Lewis:** Yes. It would be really helpful.

[75] **Vaughan Gething:** I have been a lawyer, so I have to be careful about leading people. [*Laughter.*]

[76] Moving on, you made some comments in your paper and before the committee about the difference between the statute book that affects Wales, and where statutes have given Executive powers directly to Welsh Ministers. The Counsel General made some comments some time ago, which we were all able to understand, that he thought that it would be a good idea to have a statute book for Wales that would draw together all the legislation in one place. Would you be in favour of having a central record of all the Executive powers that Welsh Ministers have? Is it something that you have considered or would wish to comment on?

[77] **Ms Cole:** We think that it would be a good idea to have something recorded centrally, but we have not had a great deal of internal debate about how it would be done.

[78] **Vaughan Gething:** Eluned Parrott asked a question earlier about having something

clear and straightforward to understand, and you drew out a point about your understanding of the law-making process and whether responsibility lies with the Assembly or with Welsh Ministers. It also comes back to the point about wider engagement, not only with civil society, but with the ordinary citizen. You represent a particularly vulnerable group, which often has real difficulty in engaging. Even if we went down this route of having a central record of laws and Executive powers in Wales, how much do you think that would help in engaging people such as yourselves, who are already engaged with civil society, compared to the ordinary citizen?

[79] **Mr Lewis:** We use Wales Legislation Online, so I am unclear as to what the proposal would add to that, although it is technically quite complex. To answer your question, as organisations, many of us do things that we believe are appropriate to make things simple. People tell me that I work with hard-to-reach groups, but I do not accept that, because it just gives agencies an excuse not to engage. We tend to call the people whom we work for ‘the seldom heard’. So, there is a real issue around how public-funded agencies make things simple. Some of this stuff is very straightforward. I think that it is often used as an excuse not to engage. What we do is to have as much information as possible in small briefing papers and, sometimes, we just meet people. As you know, you have to bring it down to people’s communities. We use Wales Legislation Online as one source, and we also work with the WCVA and the WLGA. Many of us are engaged in this, but I still do not think that it is going to be enough. It is complex, and making that complexity simple is a real challenge.

[80] **Vaughan Gething:** Just so that I am clear in my own mind, are you saying that having this long list in one place might make it easier for some people to engage, but that it is not really moving much further on from where we are now, and to get the citizen engaged requires something different? Having been a lawyer, at that time I would have jealously guarded my area and said, ‘Don’t worry, you need to get me in to get advice on what this all means.’ Does it really matter if you have a central record in terms of engaging the ordinary citizen—whether one of your clients, a teaching assistant, or someone in any part of Wales? If there were one central record, would they be any more likely to engage?

[81] **Mr Lewis:** Having one central record is crucial as a starting point. It is then up to all of us in civil society to think about ways of engaging. There are really good examples of citizen engagement in some parts of the public sector—citizen panels and those sorts of things, for example. My question would be: which voices are represented? Sometimes, it is the loudest voice that is represented. This is a really complex issue.

3.15 p.m.

[82] In summary, for me, there are many levels that need to be explored. My experience in working with Funky Dragon is that working with young people at an early age engages them in the political process. This is a good example of how to answer one part of a very complex issue; I believe that those young people became democratised and understood democracy because of what youth services did for them. For me, this is a crucial example of how to do that. However, it is a complex process and I have no simple answers.

[83] **Vaughan Gething:** So, you want us to have a simple system that is easier to understand.

[84] **Mr Lewis:** Yes. [*Laughter.*]

[85] **David Melding:** A clear and transparent system is not necessarily a simple one.

[86] **Vaughan Gething:** No, it is the aspiration of all of us, ultimately.

[87] **David Melding:** Absolutely. Complicated things can still be rendered transparent, can they not? That is the task that we urge of Government. Are there times when you genuinely do not know where Executive authority rests? Presumably, some central source would help you in those cases. Also, are there times when the Government does not realise that it has the Executive powers to act in a certain area?

[88] **Mr Lewis:** I think that there is an issue relating to civil servants. Some civil servants, though not all of them, do not understand the interface between devolved and non-devolved responsibilities. We see examples from outside the inclusion agenda, in health, education and so on, where civil servants just do not get the fact that they could have responsibility for a certain case, and that there is a debate to be had about that. We are not saying that our viewpoint should be accepted, but we are saying that a debate should be had about these nuanced cases.

[89] **Ms Cole:** When asylum is mentioned, we too often get the answer that asylum is a non-devolved matter, and we might then point out that it is a health or child safeguarding issue. It is simpler for people to divorce these issues when they are not divorced.

[90] **David Melding:** Before I ask whether there is anything that you would like to add, we will move on to one final area that might be of interest to our committee: how international treaty obligations operate, and whether you feel that this area is poorly understood between central and devolved Government.

[91] **Mr Lewis:** It is poorly understood, and the Governments engage with different treaties in different ways under different systems. We have just been involved in discussions on CEDAW, the Convention on the Elimination of all forms of Discrimination Against Women, and there has been a lot of engagement with the Runnymede Trust and civil society. There was engagement with the Welsh Government in the inclusion part. A lot of work was done, but my understanding is that the analysis was not conducted on a cross-governmental basis. I came from the children's sector, as you know, and this is viewed as a children's issue rather than as a cross-governmental one. I believe that international treaties need to be understood better across the Welsh Government. I know that that is a very strong statement. However, I think that the relationship between the UK Government and the devolved nations in the context of treaties also needs to be revisited. In my experience, different departments do things in very different ways.

[92] As an aside, we have been working with our Irish colleagues in terms of looking at the British-Irish Council. We think that we could have some leverage in terms of beginning to look at immigration across the eight member administrations that make up the British-Irish Council. However, that is something that we are just beginning to do.

[93] **David Melding:** Do Members have anything to add before we draw this to a close? I see that they do not.

[94] I believe that we have covered a lot of territory, and I am very grateful to you for taking the time to join us today. I believe that you have given us a very valuable perspective that has drawn us away from too narrow a focus on the process. In terms of your evidence, I am afraid that it is your illumination of the process that might be reflected in our report. However, your evidence has been very valuable in a wider context and in respect of some of the specifics.

[95] **Mr Lewis:** Thank you for your time.

3.19 p.m.

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

[96] **David Melding:** The date of our meeting next week is 21 November. There is a paper to note, which is the report of our meeting on 7 November.

**Cynnig Gweithdrefnol**  
**Procedural Motion**

[97] **David Melding:** I move that

*the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(vi).*

*Derbyniwyd y cynnig.*  
*Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 3.20 p.m.*  
*The public part of the meeting ended at 3.20 p.m.*