



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

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

Dydd Llun, 5 Rhagfyr 2011
Monday, 5 December 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

Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Julie James	Llafur Labour
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
Simon Thomas	Plaid Cymru The Party of Wales

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
Lisa Salkeld	Cynghorydd Cyfreithiol Legal Adviser
Dr Alys Thomas	Ymchwilydd Researcher

Dechreuodd y cyfarfod am 2.29 p.m.
The meeting began at 2.29 p.m.

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

[1] **David Melding:** Good afternoon. I welcome everyone to this meeting of the Constitutional and Legislative Affairs Committee. We start with the usual housekeeping announcements. We have received an apology from Eluned Parrott, who is unable to attend this afternoon. In the event of an emergency, please follow the instructions of the ushers. We do not expect a routine fire drill. These proceedings will be conducted in Welsh and English. When Welsh is spoken, translation will be available through the headsets on channel 1. If you are hard of hearing, you can hear the proceedings amplified on channel 0. Please switch off all mobile phones and other electronic equipment as they can interfere with our broadcasting equipment.

2.30 p.m.

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

[2] **David Melding:** CLA63, which relates to agricultural holdings, has been made retrospectively, so I will just ask Gwyn to reassure us about this retrospective instrument.

[3] **Mr Griffiths:** Diolch, Gadeirydd. Mae'r Gorchymyn hwn yn un blynyddol ac mae bob amser yn hwyr. Mewn gwirionedd, dyma'r cynharaf mae Gorchymyn o'r fath wedi'i wneud ers i mi fod yn gyfarwydd â nhw. Y rheswm dros hynny, fel y gwelwch o nodyn y Llywodraeth, yw ei bod yn gorfod aros i wybodaeth ystadegol gael ei pharatoi, ac nid yw'n gallu gwneud y Gorchymyn nes bod hynny'n digwydd. Nid oes problem gyda'r Gorchymyn oherwydd ei fod yn cael ei wneud yn ystod y flwyddyn y mae'n berthnasol iddi. Yr unig beth sy'n digwydd yw bod unrhyw achos sy'n dibynnu ar yr ystadegau hyn yn gorfod cael ei ohirio nes bod y Gorchymyn wedi'i wneud. Fel y dywedais, nid yw'r rhain yn arbennig o hwyr.

Mr Griffiths: Thank you, Chair. This Order is made on an annual basis and it is always late. In truth, this is the earliest point at which an Order of this type has been made since I have been aware of them. The reason for that, as you will see from the Government's note, is that it has to wait for statistical information to be prepared, and it cannot make the Order until that has happened. There is no problem with the Order as it is made during the year to which it is relevant. The only thing that happens is that any case that is dependent on these statistics would have to be deferred until the Order is made. However, as I say, these are not particularly late.

[4] **David Melding:** Are Members content with that explanation? I see that they are. Do Members have any comments on CLA62? I see that they do not. We can move now to item 3.

2:31 p.m.

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

[5] **David Melding:** The first is CLA61, the London Olympic Games and Paralympic Games (Advertising and Trading) (Wales) Regulations 2012. There are issues here that we identify as being of special interest, so the Plenary may want to debate them at greater length than normal, but I will just ask Gwyn to remind us of those. Sorry, it is Lisa.

[6] **Ms Salkeld:** These are the first set of regulations to be made under the London Olympic Games and Paralympic Games Act 2006. Parallel regulations are being made in both England and Scotland. Primarily, they are to control trading and advertising during the Olympic Games around the only Olympic event centre in Wales, which is the Millennium Stadium. It is over three separate periods and it comprises the 13 days in total for which the regulations are in force. There are no technical points identified and the Welsh Government did not identify any mass of special interest for the committee, but a number of issues have been raised or drawn to the committee's attention, in the press and in written correspondence, which I have attempted to highlight. Do Members want me to go through the points within the note briefly? I see that you do.

[7] The first issue is the wide definition of 'ambush marketing campaign'. 'Advertisement' and 'ambush marketing campaign' are both defined fairly widely in

regulation 5(1), but the explanatory memorandum explains that the reason that that was done was to give effect to the host city contract, which required the UK Government, when it entered into it, to confirm that a stance would be taken on ambush marketing and that regulations would be put in place to try to combat ambush marketing. That is the reason for the wide definition that the Government has put in the explanatory memorandum.

[8] Another issue that has been raised is penalties. Under section 22 of the Act, failure to comply with the regulations is punishable by a fine of up to £20,000, but it is the Act, rather than these regulations, which provides for the criminal offence.

[9] The third issue that has been raised is the lack of guidance, but the Olympic Delivery Authority has recently issued quite comprehensive guidance on the regulations, which can be found on the Olympic Delivery Authority's website.

[10] The fourth issue is the reverse burden of proof. Essentially, what these regulations provide for is that anybody who is responsible for businesses, goods or services, or who owns the land, where advertising or trading takes place without the necessary licensing, will be guilty of an offence. It is then for them to show that they took reasonable steps to prevent contravention from occurring or continuing or recurring and that reverses the normal burden of proof, whereby it would usually be for the prosecution to prove that someone is guilty. The Government accepts—the UK Government, rather than the Welsh Government—in the human rights assessment, which is attached to the back of the explanatory memorandum, that this reverses the normal burden of proof and could interfere, or be said to interfere, with the right to be presumed innocent affirmed by article 6.2 of the European Convention on Human Rights. However, the argument being put forward is that it is justified, and the case of *Sheldrake versus DPP* and the justification in there is used. Essentially, what is being said is that the prosecution has, first, to make out the offence beyond all reasonable doubt; the onus then shifts to the defendant to make out that they had no knowledge that the offence was occurring on their land. These are matters that are within the defendant's own personal knowledge, so, it should not be too difficult for them to discharge if they were not aware that the contravention was occurring on their land. That is all set out within the human rights assessment that is appended to the back of the explanatory memorandum.

[11] The next concern raised is with regard to the exemption that is given to charities and not-for-profit bodies from the advertising restrictions in particular. A not-for-profit body is defined in regulation 5 as a body that required to use its funds for charitable or public purposes and is prohibited from distributing its assets to members other than for charitable or public purposes. So, it will relate to quite a specific group of people.

[12] The penultimate point is regarding goods deliveries. The initial draft regulations, which were consulted on in March this year, only provided limited exceptions for goods deliveries from the regulations. I think it was just for milk floats originally. However, these regulations were amended in light of the consultation responses and they provide a more general exemption. Regulation 14 provides an exemption if a person is selling or delivering an article to a person in premises adjoining a highway, so, for example, pizza delivery people or people delivering items from catalogues are not going to be caught by these regulations.

[13] The final issue that has been raised relates to whether these regulations are disproportionate. The Welsh Government states, in its explanatory memorandum, that it has sought to reach a trade-off between seeking to achieve the aims of the regulations and to maintain business as usual for the organisations listed in the event zones. The restrictions are in place for a total of 13 days and, if you look at the plan that is attached to the explanatory memorandum, which shows the event zone, they extend no further than 500 metres from the avenue entrance. Finally, the explanatory memorandum goes on to state that if the regulations are not made, it will mean that the whole city contract cannot be fulfilled in Wales and there

is a risk that the football matches would have to be moved to an alternative stadium in England.

[14] **David Melding:** May I just say that, if we approve this report, the heading ‘disproportionate’ would be replaced by ‘proportionality’, which is slightly more neutral. I do not really want us to have a discussion about the merits. There are some controversial aspects to this and they have been raised in correspondence and, I think, in the press also. I know that Eluned Parrott has aired some of these concerns. That is for Plenary. This has been identified as an instrument that needs affirmative resolution anyway and we would agree with that, given its content. Are there any technical matters Members wish to raise before we agree the report or otherwise?

[15] **Simon Thomas:** Mae gennyf un cwestiwn ynglŷn ag elusennau a chyrff dielw. Mewn digwyddiadau chwaraeon blaenorol yng Nghaerdydd yr wyf yn gwybod bod pleidiau gwleidyddol wedi manteisio ar y cyfle i ddsbarthu deunydd yn ymwneud ag ymgyrchoedd, er enghraifft. Nid pleidiau gwleidyddol yn unig sydd yn gwneud hyn ond mudiadau gwleidyddol hefyd. Mae deunydd wedi cael ei ddsbarthu ynglŷn â Deddf iaith neu rywbeth tebyg, er enghraifft, adeg gêm rygbi rhyngwladol. Gallwch ddechmygu, gan y bydd digwyddiadau pêldroed yn digwydd yng Nghaerdydd, y gallai'r rheini sydd yn erbyn *Team GB* yn y Gemau Olympaidd fanteisio ar y cyfle i ddsbarthu deunydd yn ymwneud â'r ymgyrch yn erbyn *Team GB*. A fydd hynny'n cael ei effeithio gan y rheoliadau hyn?

Simon Thomas: I have one question regarding charities and not-for-profit bodies. In previous sporting events in Cardiff I know that political parties have taken advantage of the opportunity to distribute material in relation to campaigns, for example. Not only political parties do that, but political organisations do so also. Material has been distributed in relation to a language Act or something similar, for example, during international rugby matches. You can imagine, because footballing events will be taking place in Cardiff, that those who are against Team GB in the Olympics will take advantage of the opportunity to distribute materials relating to the campaign against Team GB. Will that be affected by these regulations?

[16] **Ms Salkeld:** Well, the definition is that the body is required to use its funds for charitable or public purposes.

[17] **David Melding:** I think that the question is whether a political activity would be captured. I am not sure whether an individual exercising their right to free association and speech would be regarded as a commercial organisation, or an organisation involved in commercial activities if it is a charity, but it is an interesting question.

[18] **Simon Thomas:** The exemption is defined as certain discrete bodies, which suggests that the rest could be viewed, even under this regulation, as commercial, because the exemption is so narrow.

[19] **Mr Griffiths:** There is a definition in relation to ‘ambush marketing campaign’, which says

[20] ‘a campaign...intended specifically to promote, advertise, announce or direct one or more of the following within the event zone during an event period—

- (a) goods or services,
- (b) a person who provides goods or services’.

[21] So, that would not include people who were presenting a case, rather than selling

something.

[22] **David Melding:** It could be raised in Plenary, but I suspect that—

[23] **Simon Thomas:** I wanted a technical reply to that to start with.

[24] **David Melding:** Those who will be there to take advantage of the public space and those in it should be okay.

[25] **Suzy Davies:** I have a technical question as well. I refer you to page 16 of the explanatory memorandum—or page 46 of the bundle, whichever is easier for you. It is the page that starts ‘security matters at Games’. Do you have the right one? There is a sentence about halfway down, where it says that

[26] ‘ODA will take a light touch approach to minor infringements that can easily be rectified’.

[27] I could not find anything in the draft regulations that confirmed that that would be the way that that was dealt with. Without rehearsing what we will say in Plenary, bearing in mind the change of onus for proof, I would be interested to see whether there is anything in the draft that confirms that that is how it would be dealt with—I could not find anything.

[28] **Ms Salkeld:** No, there is nothing within the regulations. The idea was that it would be dealt with in guidance. I have been through the guidance; I am not sure, without looking at it again, whether there is anything particular there. I do not remember, off the top of my head, anything particular with regard to—

[29] **Suzy Davies:** I do not think that there was anything in the regulations.

[30] **Ms Salkeld:** No, there was nothing in the regulations.

[31] **David Melding:** Are we content to approve the report? I see that no-one is against that, so we will accept the report as it is.

2.43 p.m.

**Y Mesur Seneddol ynghylch Diogelu Rhyddidau (Cynnig Cydsyniad
Deddfwriaethol)
Protection of Freedoms Bill (Legislative Consent Motion)**

[32] **David Melding:** We have had a paper on this. It has been referred to us by the Business Committee for committee scrutiny, which is an important aspect of scrutiny, and this committee very much wants to see the routine referral of legislative consent motions to an appropriate committee. In this case, it is us. Do Members have any issues that they want to raise on the appropriateness of this LCM that is being sought by the Government in relation to the Protection of Freedoms Bill? Gwyn, do you want to highlight anything, as Members collect their thoughts?

[33] **Suzy Davies:** I have one question. On page 4, or page 59 of the bundle, under item 9, there is an assertion that:

[34] ‘There is no likelihood of an Assembly Bill in the near future that would provide a suitable vehicle for these provisions.’

[35] Do we agree with that?

[36] **Mr Griffiths:** From my analysis of the Government's statement of its legislative intention, that is the case.

[37] **Suzy Davies:** That is great, thank you.

[38] **David Melding:** I sense that we do not have huge issues, so we will report that we see no impediment to this going forward. At this stage, we do not want to raise any issues of specific concern for Plenary to consider.

2.45 p.m.

Gohebiaeth y Pwyllgor Committee Correspondence

[39] **David Melding:** This is just to note the long-running saga with the Minister for Education and Skills. We have made our view perfectly clear, but the Minister is not minded to accept our request to provide us with the information of when that power is going to be used. The exchange is on record, and that is as far as we can go with it. It is open to Members to add or subtract from that.

[40] **Suzy Davies:** I think that it is fair to say that we still do not agree with the Minister, and to leave it at that.

[41] **David Melding:** Okay.

2.46 p.m.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[42] **David Melding:** We will be in recess from next week, so the next meeting will be on 9 January. There is a paper to note, which is the report of the previous meeting on 28 November.

Cynnig Gweithdrefnol Procedural Motion

[43] **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).

[44] I do not see any objections from Members, so we will move to a private session.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 2.46 p.m.
The public part of the meeting ended at 2.46 p.m.*