



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

03/04/2017

Agenda'r Cyfarfod
Meeting Agenda

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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. Lle mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

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. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Yr Arglwydd / Lord Dafydd Elis-Thomas Bywgraffiad Biography	Annibynnol Independent
Huw Irranca-Davies Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Dai Lloyd Bywgraffiad Biography	Plaid Cymru The Party of Wales
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

John Rees	Rheolwr y Bil, Llywodraeth Cymru Bill Manager, Welsh Government
Carl Sargeant Bywgraffiad Biography	Aelod Cynulliad, Llafur (Ysgrifennydd y Cabinet dros Gymunedau a Phlant) Assembly Member, Labour (The Cabinet Secretary for Communities and Children)
Katie Wilson	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
Sam Mason	Cynghorydd Cyfreithiol Legal Adviser

Gerallt Roberts	Dirprwy Glerc Deputy Clerk
Tanwen Summers	Ail Glerc Second Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 14:00.
The meeting began at 14:00.*

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

[1] **Huw Irranca–Davies:** Prynawn da, good afternoon. Good afternoon, Cabinet Secretary, committee members. We begin this session on 3 April of the Constitutional and Legislative Affairs Committee, and before we go to the main items of business, normal housekeeping remarks: we're not expecting a fire alarm, but if there is a fire alarm, follow the guidance from our team here towards the fire exits. If you can make sure that all mobile devices are switched to silent mode. We have automatic simultaneous translation here in English of the Welsh on channel 1, you don't need to touch anything on the microphones, and we have one set of apologies from committee member Nathan Gill, who's unable to be with us here this afternoon. With all that said, we can move straight to business.

Bil Diddymu'r Hawl i Brynu a Hawliau Cysylltiedig (Cymru): Sesiwn Dystiolaeth gydag Ysgrifennydd y Cabinet dros Gymunedau a Phlant Abolition of the Right to Buy and Associated Rights (Wales) Bill: Evidence Session with the Cabinet Secretary for Communities and Children

[2] **Huw Irranca–Davies:** We are looking this afternoon at the Abolition of the Right to Buy and Associated Rights (Wales) Bill, and we have evidence this afternoon from the Cabinet Secretary for Communities and Children. You're

very welcome this afternoon, Cabinet Secretary. Would you, or would your colleagues like to make a few words of introduction on who you've got with you?

[3] **The Cabinet Secretary for Communities and Children (Carl Sargeant):** Thank you, Chair. Good afternoon, committee. I'm really pleased to be with you in our evidence session today. I'll ask my team to introduce themselves—Katie.

[4] **Ms Wilson:** My name's Katie Wilson, I'm a lawyer in legal services.

[5] **Mr Rees:** My name's John Rees, I work in the housing policy division in Welsh Government. I'm the Bill manager.

[6] **Huw Irranca-Davies:** Thank you very much. We'll go straight into the meat of this then, and if I can ask first of all, Cabinet Secretary, are you satisfied that this Bill is within the Assembly's competence?

[7] **Carl Sargeant:** Yes, we are.

[8] **Huw Irranca-Davies:** Okay. And you've had discussions to that effect with UK counterparts.

[9] **Carl Sargeant:** Well, the issue of housing is fully devolved to us. We haven't had any direct conversations with Westminster, but we believe that it's all within scope.

[10] **Huw Irranca-Davies:** Absolutely. Okay, that's great, thank you. Could I ask whether you had considered bringing forward a free-standing Bill, rather than actually amending UK legislation?

[11] **Carl Sargeant:** The complexities of this is ensuring that we have the right vehicle to deliver ending the right to buy and the right to acquire. We believe this process is substantial, and the issues around the Housing Acts of 1985 and 1996 have implications and, therefore, we believe that the approach we have taken in the laying of this Bill is proportionate.

[12] **Huw Irranca-Davies:** Indeed, it might well be proportionate, I'm just wondering whether you had put any consideration into the alternative of bringing forward a free-standing Bill, and whether that gave any advantages or disadvantages to you.

[13] **Ms Wilson:** The legislation that sets out the right to buy at the moment is in the Housing Acts of 1985 and 1996, so to abolish it we would need to amend the England and Wales legislation.

[14] **Huw Irranca-Davies:** That's great. Okay, well thank you very much for that. Are you aware, looking forward, of anything within the Bill that would be outside of competence now if the new Wales Act—the Wales Act 2017—was in force?

[15] **Carl Sargeant:** We don't believe that is the case. The fact of the matter is that the timing of this Bill, in advance of the Wales Act, puts this, constitutionally, on a slightly different basis in that we will run by the old rules as opposed to what happens in the Wales Act. So, we don't believe that there's anything coming forward in the Wales Act that, even if that preceded this, would be a problem in competence issues.

[16] **Huw Irranca-Davies:** I can't see either of your colleagues shaking their heads or anything, so—

[17] **Carl Sargeant:** Thank goodness for that. [*Laughter.*]

[18] **Huw Irranca-Davies:** Just one final question from me, Cabinet Secretary, and it's to do with how you've struck the balance between what's on the face of this Bill, and what you've left to subordinate legislation. How did you come to that balance?

[19] **Carl Sargeant:** It's always a fine balance. I've taken a significant amount of legislation through, and it's always the main question about what we put on the face and what's in regulation there. This Bill only has a very small amount of regulation powers in it, to facilitate the changes that we might need to make in the future. Again, it's based upon other legislation that's complementary to this in terms of the Housing Act or other elements of that, purely on a timing basis, and we might have to make a few slight modifications there. But we believe we've struck the right balance, but obviously your committee will advise us on whether you believe that too.

[20] **Huw Irranca-Davies:** Okay. Well, we'll move straight on to questions from colleagues here. David Melding.

[21] **David Melding:** Thank you, Chair. Cabinet Secretary, I wonder what

consideration was given to human rights issues when you were developing this policy.

[22] **Carl Sargeant:** Well, we take this very seriously in all our legislative competence and the human rights issue in relation to the Bill as a whole, including the position of tenants in the areas that are currently suspended as well. We've taken that into consideration. We're taking what we believe are reasonable steps to ensure that we've covered the human rights aspect of all who will be affected by this Act.

[23] **David Melding:** And when the policy team and the legislation team were looking at this, did they give particular attention to article 1 of protocol 1 of the European convention on human rights? That, obviously, discusses the right to property, which is fairly widely defined in terms of what that entitlement consists of.

[24] **Carl Sargeant:** Article 1 of protocol 1 is and was considered by my team and, again, what we believe is that we've taken reasonable and proportionate steps in the pursuit of the legitimate aim of this in the public interest. We do realise that this is affecting the rights of individuals and, therefore, we believe that we've taken reasonable steps to tackle that issue.

[25] **David Melding:** And, when you made that judgment, or your team made that judgment, what sort of issues were held in the balance then?

[26] **Carl Sargeant:** The fact that we've looked at other pieces of legislation of a similar ilk and at how these have been implemented. Again, just reflecting on the fact that these are current rights of individuals and we are removing them, therefore, we have to make sure that we are taking into consideration a full and proper consultation process, informing tenants of the condition [correction: effect] of the Act and doing that in a timely manner. We believe that we've covered that in the structure of the Bill.

[27] **David Melding:** And you made some sort of judgment on what would be gained in your view—and that's your policy—compared to what they would lose in terms of their individual rights, and that the public gain would be large enough to warrant that action.

[28] **Carl Sargeant:** Indeed. Again, I think we've had the discussion in a previous committee about if I was able to, I would end the right to buy today, but it's not proportionate and we believe that by the way that we are

implementing this Act, through all the processes that we put in place, we are being reasonable.

[29] **David Melding:** The final question I've got—. I don't want to get into the policy side of all this, and as you've hinted at, the two of us have had an opportunity in another committee to do that. The way tenants treat it will depend on if they're in a local authority that already has or intends to suspend the right to buy, as opposed to all the other authorities that have not taken that action and then will just get captured by this Bill. So, we have one group of tenants who will have a period of grace of one year, and those are the tenants who are currently in local authorities that have not suspended the right to buy. But the tenants who are in authorities that have suspended the right to buy would not get that period of grace under this legislation, so there are two categories. What I'd like to know is not your justification for this policy, but whether that specific issue was looked at in terms of human rights.

[30] **Carl Sargeant:** Yes, it was and we've considered, as I said earlier on, the whole principle of implementation, the effects, and at what stage they will affect an individual. We looked at the suspended areas of this. We recognise that the provisions and the processes set out under the Housing (Wales) Measure 2011 are also compatible with human rights law. It was also considered to be so by the Government and the Assembly, at the time the Measure was passed for the suspended scenario, we are just continuing on with this with this piece of legislation to encompass everybody. So, we have considered all aspects of this, including the areas of suspension in terms of human rights.

[31] **David Melding:** So, the specific issue that there are two classes, as it were, of tenants was examined from a human rights point of view, and whilst that is not elegant, perhaps one could argue, it doesn't get captured under any human rights obligations as far as you're concerned and it's something that you have the right to legislate.

[32] **Carl Sargeant:** We're content with the procedures that we've put in place.

[33] **David Melding:** Okay, thank you.

[34] **Huw Irranca-Davies:** Happy, David?

[35] **David Melding:** Yes.

[36] **Huw Irranca-Davies:** Okay, Dai Lloyd.

[37] **David Melding:** Well—

[38] **Huw Irranca-Davies:** Sorry.

[39] **David Melding:** The questions have been answered, so—

[40] **Huw Irranca-Davies:** Yes, indeed. Dai Lloyd.

[41] **Dai Lloyd:** Diolch yn fawr, Cadeirydd. Jest i droi i adran 8 o'r Bil, lle rydym ni'n sôn am ddarparu gwybodaeth am y Ddeddf i bob tenant, a allaf ofyn pam nad yw adran 8 o'r Bil, felly, sy'n gofyn i denantiaid cael gwybod am fwriad y Bil, dim ond yn ei gwneud hi'n ofynnol i Weinidogion Cymru gymryd pob cam rhesymol, yn hytrach na rhoi dyletswydd absoliwt i ddarparu gwybodaeth i bob landlord cymwys?

Dai Lloyd: Thank you very much, Chair. Just turning to section 8 of the Bill where we are talking about providing information about the Act to all tenants, may I ask why section 8 of the Bill, which requires tenants to be informed of the intention of the Bill, only requires Welsh Ministers to take all reasonable steps, rather than placing an absolute duty to supply information to all qualifying landlords?

[42] **Carl Sargeant:** Two elements of this—first of all, the reasonable steps in terms of Government intervention. There may be some landlords who are England-based and therefore operating with one or two tenancies in Wales that we're not aware of. Therefore, what we are seeking to do is have a little bit of wriggle room in order to capture as much as we possibly can. All the Welsh landlords operating in Wales—we've got them covered, but there may be some activity outside and, therefore, we think it's a reasonable ask to do that.

[43] In terms of the absolute duty on landlords, we believe that's the direct relationship, so we haven't got a direct relationship with tenants—landlords do. Therefore, that's why the duty is an absolute duty on them and it is appropriate that they are held to inform their tenants of the actions we're implementing.

[44] **Dai Lloyd:** Symud ymlaen i **Dai Lloyd:** Moving on to section 9,

adran 9—sut ydych chi fel how do you, as Cabinet Secretary, Ysgrifennydd y Cabinet yn rhagweld y envisage that section 9 will be used, bydd adran 9 yn cael ei defnyddio, ac and further to that, could you give yn bellach i hynny, a allech chi roi examples of where the affirmative enghreifftiau o ble y byddai'r and negative procedures would be weithdrefn gadarnhaol a'r weithdrefn used? negyddol yn cael eu defnyddio?

[45] **Carl Sargeant:** Section 9 is the power to make incidental, consequential provisions conferred by section 9 and is subject to the affirmative procedure, where consequential amendments are made to primary legislation, and negative in any other case. The scope of regulations under this is limited to the effect to, as I said, incidental, consequential and supplementary changes required as a result of the Bill becoming law. I suppose, importantly for you as the constitutional affairs committee, the power cannot be used to make regulations containing new or substantive provisions, but rather only making the necessary changes to ensure the provisions of the Bill work properly. The majority of the consequential amendments to the primary legislation are contained on the face of the Bill as well, so we've done a lot of work to make sure that we front-load this, as opposed to having to make consequential amendments later on.

[46] **Dai Lloyd:** Yn olaf oddi wrthyf i, rydych chi wedi sôn am Ddeddf Tai 1985 eisoes, ond nid ydy'r Bil yn cynnwys unrhyw ddiwygiadau canlyniadol i'r Ddeddf yna. Rydych chi wedi yn rhannol esbonio pam. Mae Llywodraeth Cymru, yn ei nodyn ar fwriad y polisi ar gyfer is-ddeddfwriaeth, yn dweud bod hyn oherwydd y rhyngweithio rhwng gweithredu'r Bil hwn a Deddf Rhentu Cartrefi (Cymru). A allwch chi egluro beth yn union ydy ystyr hynny a pha un a yw oedi wrth wneud diwygiadau canlyniadol mewn deddfwriaeth flaenorol wedi cael sgil-effaith uniongyrchol ar y gallu i wneud diwygiadau canlyniadol ar wyneb y Bil yma?

Dai Lloyd: Finally from me, you've spoken about the Housing Act 1985 today, but the Bill does not include any consequential amendments to that Act. You've partly explained why. The Welsh Government in its note on the policy intent for subordinate legislation says that this is because of the interaction between the implementation of this Bill and the Renting Homes (Wales) Act. So, can you explain what is meant by that and whether the delay in making consequential amendments in previous legislation has had a direct knock-on on the ability to make consequential amendments on the face of this Bill?

[47] **Carl Sargeant:** I think, certainly, the Housing Act and the Renting Homes (Wales) Act 2016 are very complex in the introduction of the duties within them. There are lots of discussions between the Ministry of Justice, the Home Office, et cetera, in terms of the implementation of them, and the timeline is not fixed. We're very conscious of that and the way that this Bill is running in tandem with the implementation of the Renting Homes (Wales) Bill [correction: Act]. That's why the consequential power gives us the ability to make amendments, depending on where this Bill lands in terms of timing with the Renting Homes (Wales) Act as well. So, it's an administrative issue, rather than a functional change. It's just about timing issues.

[48] **Huw Irranca-Davies:** Dafydd Elis-Thomas, would you like to take us onwards?

[49] **Lord Elis-Thomas:** Thank you very much for what you said at the beginning—that you always consider what should be in regulation and what should be in primary legislation on the face of the Bill whenever you lay a Bill. I've been thinking a bit about this recently, and one of the issues that this committee has concentrated on historically is the question of regulation powers used by Ministers and primary legislation. I'm not, at the moment, in my thinking on this matter, clear whether this is really an issue, as we legislate in Wales, because we are legislating in new circumstances and we are, as you described at the beginning—grateful to you for saying that. But the only way that we can make new legislation is by repealing—I can say this because I was part of it—the rubbish that we've had from Westminster. So, would you say that maybe this is the last of its kind that you'll have to do in that way, or is there more?

14:15

[50] **Carl Sargeant:** I honestly don't know the answer to that question. I fear we probably will have other examples where we will seek to change the extent of old legislation, where we're a new law-making institution, but I couldn't possibly comment in terms of detail. I'm not sighted on that.

[51] **Lord Elis-Thomas:** But the point of the question is that, to do that effectively, regulation powers for Ministers, including regulation powers—and I'm looking at our lawyers now—which make primary legislation, may be required, and we should bit the bullet, perhaps.

[52] **Carl Sargeant:** It's something on which I will defer to the First Minister, if I may, Chair. It might be something he may have a view on.

[53] **Lord Elis-Thomas:** Well, he's not here at the moment, so I'm asking you. [*Laughter.*]

[54] **Carl Sargeant:** Well, I don't disagree with the Member. I just think the provision set out in this Bill is one to ensure that we can get our policy through properly, fit for purpose for here in Wales. Of course, the Housing Act, and the issue of an England-Wales scenario of that—this gives us a very specific piece of legislation here in Wales.

[55] **Lord Elis-Thomas:** And this is related to a manifesto commitment.

[56] **Carl Sargeant:** It is.

[57] **Lord Elis-Thomas:** And therefore that has a democratic mandate.

[58] **Carl Sargeant:** I would use that argument too, yes.

[59] **Lord Elis-Thomas:** And therefore that, in a sense, is what an elected Assembly is about, isn't it—that a Government is able to carry out its policies, provided it can get them through the Assembly, and they're within competence?

[60] **Carl Sargeant:** That's our intention, of course. I would just add to that that what we want to make is good law. The influences of committees are important in terms of the ability to raise the issues of concern and amend as appropriate. Governments, as you'll be aware, can make legislation—they do—but it can always be improved by influences from committees as well.

[61] **Lord Elis-Thomas:** I understand there is some concern about the commencement period in the Bill. Would you like to say something about that?

[62] **Carl Sargeant:** We believe the commencement period, in terms of the 12-month period of implementation following two months after [correction: delete 'two months after'] Royal Assent—we believe that is reasonable. I explained to committee—the other committee that we've been in front of—that the period of implementation doesn't prohibit tenants who have the right to buy until the final day of implementation. So, you can still raise an

interest, in that you don't have to complete within the 12-month period. You can still apply within that 12-month period, even to the last day, to start the process. So, we think that's a very reasonable amount of time.

[63] **Lord Elis-Thomas:** And one final question: this is not a policy question, it's a constitutional question, because I want to ask it in the context of how many Welsh citizens you think you'll be depriving of their current rights if you get this Bill through.

[64] **Carl Sargeant:** The average figure is around 300. We lose about 300 homes every year under the right to buy. It varies a little bit, but it's around that. Over the suspension [correction: Assembly] period—that's for all local authorities—that's about 1,500 homes in five years.

[65] **Lord Elis-Thomas:** And therefore you regard this as a necessary part of your social housing agenda.

[66] **Carl Sargeant:** It's a suite of tools that we have. I've talked about the implementation of delivering 20,000 more units across Wales, and the additional funding that we're looking at—supporting individuals to get into the marketplace; the rent-to-own scheme, which we'll be launching shortly. This is about—I think it's 47 per cent, did we say, we've lost since 1985 [correction: 1981]?

[67] **Ms Wilson:** Forty-five.

[68] **Carl Sargeant:** Forty-five per cent of social housing stock has been lost since 1985 [correction: 1981], to date. I think I've said this in the past as well: I don't believe that the policy objective of the right to buy was wrong, but it was flawed. We weren't building as many properties as were exiting, irrelevant of which Government was in power. The fact is that there's more going out of the system than we're building, and we can't allow that to happen.

[69] **Lord Elis-Thomas:** So, you think that you have got the balance between denying citizens who still have property in the category that they might to be able to buy—it is obviated by the overall social agenda?

[70] **Carl Sargeant:** Indeed, and it is key. That's part of the human rights issue. We are still ensuring that people are aware of this Bill coming into place, so people who have the right to buy will still have time to do that.

There are some consequences that we're expecting, such as a peak spike in the system, but there's not a lot we can do about that; we accept that principle. But long term, we've got to plan for the future here, and the significant investment that we're making from the public purse into social housing stock has to be protected for the long term, and that's why we're introducing this.

[71] **Lord Elis-Thomas:** Thank you.

[72] **Huw Irranca-Davies:** Thank you, Dafydd. David, do you want to come back in?

[73] **David Melding:** Yes, I just wanted to put on record that the regulation-making power that you have got in the Bill is a very wide one. It's not unprecedented, but you do face a choice of a very wide one or narrow one and you have chosen, and I quote:

[74] 'Regulations under this Act may amend, repeal, revoke or modify any enactment (including a provision of this Act.)'

[75] End quote. That's the very maximum level of discretion you could possibly get and, in general, this committee has argued that Ministers ought to be much more targeted than having such a massive power available to them. As I said, it's not unprecedented, but perhaps you could explain to us why you've gone so broad instead of the alternative of being more targeted and narrow.

[76] **Carl Sargeant:** A fair question. The regulation power is only attributed to section 9 of the Bill. It's nowhere else, so it's a very small amount of legislation that it applies to. So, while wide-ranging in text, actually contextually it's only a small part that we're able to amend. So, it's all relative to section 9 of the Bill.

[77] **David Melding:** That doesn't justify the fact that you've chosen a broad approach. The reverse could be argued, even if in your view it is only a fairly limited area in terms of the legislative vehicle. Then why not also be targeted there, and be wholly virtuous?

[78] **Carl Sargeant:** Obviously, we've laid this, and we do think it's appropriate in terms of scale. I'm sure that you as a committee will have a view on that in terms of the scope.

[79] **Huw Irranca-Davies:** Just to clarify, it's section 10 that it relates to, not section 9. Is that correct?

[80] **Carl Sargeant:** Section 10 is—

[81] **Ms Wilson:** Yes, it's set out in section 10(2), but the only regulation-making power in the Bill that it applies to is the consequential amendment power in section 9. So, it says 'any regulations made under this Act', but the only regulations that can be made under this Act are the consequential amendments in section 9.

[82] **Huw Irranca-Davies:** Okay.

[83] **David Melding:** Consequential amendments can be massive.

[84] **Lord Elis-Thomas:** I don't want to get into arguments with colleagues in the middle of questioning, but the massiveness is focused.

[85] **Carl Sargeant:** Yes.

[86] **Huw Irranca-Davies:** Do you want to add—? Is there anything you want to add to your justification of the breadth of the power that you're taking, even though it's relating, as you say, to section 10 only?

[87] **Carl Sargeant:** It's listed in section 10, but it only relates to the regulation powers in section 9. We think that it is narrowly focused, albeit the wording of that line of legislation is quite broad in scope. But we believe—. The fact is that it's only under the regulation-making powers of section 9 that tightens that principle up anyway. I see your legal team may have—. Is there anything you'd like us to qualify on that?

[88] **Huw Irranca-Davies:** If there is, I think we'll come back to you on this. We'll have a look at it. Okay, thank you for that. Just turning to my colleagues here, anything else that we'd like to raise on this? I think we've covered everything.

[89] **David Melding:** It was a good explanatory memorandum. We often say they're awful, so I think—

[90] **Huw Irranca-Davies:** So, when it's good, we should say that it is good.

[91] **David Melding:** We always praise good practice. [*Laughter.*]

[92] **Huw Irranca–Davies:** Yes, thank you. We thank the Cabinet Secretary and your colleagues. Thank you very much indeed. We'll send you the transcript as normal, and if there is anything we need to follow up with, we'll do that.

[93] **Carl Sargeant:** Thank you.

[94] **Huw Irranca–Davies:** I think when we come back to private session, we'll have a discussion around that then. Okay. We will proceed with business. Thank you, colleagues.

14:25

**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**

[95] **Huw Irranca–Davies:** If we can move on to item 3—instruments that raise no reporting issues under Standing Order 21.2 or 21.3. Under paper 2, we have two statutory instruments with clear reports: the Bathing Water (Amendment) (Wales) Regulations 2017 and the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017. Are we happy to note both of those? No comments. Thank you very much. They're both noted.

**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**

[96] **Huw Irranca–Davies:** Under item 4, we do have an instrument that raises issues to be reported to the Assembly under Standing Order 21.2 or 21.3. It is the negative resolution instrument SL(5)084: the Smoke Control Areas (Exempted Classes of Fireplaces) (Wales) Order 2017. Now, I'm going to hand over to our legal team here to explain to us what's amiss with this.

[97] **Mr Mason:** Well, there's an error in article 3, in reference to revoking

last year's Order. The Government have acknowledged this area in this response, and say that they're considering their options. We will, of course, monitor it and report back to the committee should there be any inappropriate solutions as such.

[98] **Huw Irranca-Davies:** So, the Government are on top of it. We're on top of it as well. So, we will keep a very close watching eye on that, but it seems as though it's going to be rectified.

[99] **Mr Mason:** Indeed, yes.

[100] **Huw Irranca-Davies:** Are we happy to note that and keep an eye on it?

[101] **Dai Lloyd:** Bodlon. **Dai Lloyd:** Content.

[102] **Huw Irranca-Davies:** Diolch. Okay. Thank you very much for that.

14:26

**Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad Arnynt i'r
Cynulliad o dan Reol Sefydlog 21.7
Instruments that Raise Issues to be Reported to the Assembly under
Standing Order 21.7**

[103] **Huw Irranca-Davies:** We move on then to item number 4. We have one instrument that raises issues to be reported to the Assembly under Standing Order 21.7, which is subordinate legislation laid before the Assembly, or any legislative matter of a general nature within, or relating, to the competence of the Assembly or Welsh Ministers. This is SL(5)087: the Higher Education Funding Council for Wales (HEFCW) financial management code. And we have in our papers the report, the draft code and the explanatory memorandum. Again, if I can hand over to our legal team please to explain what's amiss. Gareth, you're going to—

[104] **Mr Williams:** There is a report from the Government on this particular subordinate legislation that was given to us this morning. So, Members have that in hard copy.

[105] **Huw Irranca-Davies:** So, we have that in hard copy now. You have it in front of you here, titled 'Government response to draft CLAC report on the

HEFCW financial management code'. I'll just give everybody a moment to have a look at that.

[106] **Yr Arglwydd Elis-Thomas:** Mae gen i un cwestiwn bach ynglŷn â'r arfer da yn y cyfeiriad yma. Os ydym ni yn ddeddfwrfa ddwyieithog, ac os ydym ni yn deddfu yn ddwyieithog, a bod rheoliadau yn eu ffurf terfynol yn ddwyieithog, pam bod corff cyhoeddus sydd wedi creu lot o drafferth i mi dros y blynyddoedd, Cyngor Cyllido Addysg Uwch Cymru, yn meddwl ei bod yn briodol iddo beidio â chyflwyno ei ddogfennau yn ddwyieithog yn y pen cyntaf?

Lord Elis-Thomas: I do have a minor question on best practice in this regard. If we are a bilingual legislature, and if we make legislation in two languages, and that regulations in their final form are bilingual, why does a public body that's caused me a great deal of trouble over the years, the Higher Education Funding Council for Wales, think it's appropriate for them not to introduce their documents bilingually in the first place?

[107] **Mr Howells:** Nid oes un rheoliad neu gyfraith, neu hyd yn oed cynllun iaith, wedi cael ei dorri yma, felly mater o arfer da sydd i'w ystyried.

Mr Howells: There are no regulations or language scheme that have been broken here, so it's a matter of good practice that is to be considered.

[108] **Yr Arglwydd Elis-Thomas:** Yn amlwg, nid oedd y cynlluniau iaith yn ddigon cryf yn y dechrau. Os felly, rhaid i mi ymddiheuro i fi fy hun.

Lord Elis-Thomas: Well, clearly, the language schemes weren't robust enough at the outset. If so, I have to apologise to myself.

[109] **Huw Irranca-Davies:** Okay. So, we note the response that we have now received, and we can draw the attention of that to the Assembly. And, of course, Dafydd rightly raises that issue of the robustness of the particular Welsh language provisions there within HEFCW. But, for our purposes today, it's to note it so that the Assembly can actually see that as well, yes?

[110] **Mr Howells:** Yes.

[111] **Huw Irranca-Davies:** Thank you very much. Thank you for that.

14:30

Papurau i'w Nodi
Papers to Note

[112] **Huw Irranca–Davies:** If we move to item number 6, we have some papers to note—some quite substantial papers to note, actually. The first one is the correspondence from the Cabinet Secretary for Finance and Local Government on the Trade Union (Wales) Bill. That correspondence, of course, is pertinent to our discussions later on the trade union Bill report. And I think we'll find that that's been factored in to it as we go forward. So, thank you for that. Are we happy to note that correspondence?

[113] We also have the UK Government's White Paper on the 'great repeal Bill'.

[114] **Dai Lloyd:** Thrilling stuff.

[115] **Huw Irranca–Davies:** But we have it there, and it includes those chapters on delegated powers, and its interaction with the devolution settlements as well. Obviously, that will be of great interest to us, and also the external affairs committee going forward, and others, as to the reference in there to a UK framework, where the powers return to within that framework, and where they come down. But there is some interesting phraseology within that section, particularly. But are we happy to note that?

[116] **Dai Lloyd:** Can we comment now, or are we waiting for any presentations?

[117] **Huw Irranca–Davies:** Well, for the purposes of this part of the proceedings, we can note it, but we can come back and discuss it in the private session, if you want to. So, we'll do that, if you're happy.

[118] **Dai Lloyd:** In your hands, Chair.

[119] **Huw Irranca–Davies:** Yes, indeed. There we are. And then—that is all the papers to note.

14:31

**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**

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o weddill y exclude the public from the
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in
17.42(vi).*

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[120] **Huw Irranca-Davies:** So, under item number 7—and we're speeding through today, actually—we can move, under Standing Order 17.42, to resolve to meet in private, if Members are happy to do so. We are. So, clear the gallery, and we will meet in private, please.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 14:32.

The public part of the meeting ended at 14:32.