



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

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

Dydd Llun, 16 Ionawr 2012
Monday, 16 January 2012

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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

Mohammad Ashgar	Ceidwadwyr Cymreig (yn dirprwyo ar ran Suzy Davies) Welsh Conservatives (substitute for Suzy Davies)
Mark Drakeford	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
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

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

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest

[1] **David Melding:** Good morning, everyone, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. It is the first meeting of the year, so happy new year to everyone. I will just go through the usual housekeeping announcements. We do not expect a routine fire drill, so if we hear the bell please follow the instructions of the ushers, who will help us leave the building safely. These proceedings will be conducted in Welsh and English. When Welsh is spoken, translation is available on channel 1; channel 0 will amplify proceedings. Please switch off all electronic equipment completely as it interferes with the broadcasting system. We have two apologies and two substitutions. I welcome Mohammad Asghar, who is subbing for Suzy Davies, and Mark Drakeford, who is subbing for Julie James.

2.29 p.m.

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

[2] **David Melding:** The first substantial item of business concerns statutory instruments that raise no reporting issues. However, do Members have any queries on any of the items listed from 2.1 to 2.7? Are we content? I see that Members seem to be happy with those.

2.30 p.m.

**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:** We only have negative resolution instruments to discuss under this item. We will take them in order. There is a merits report on CLA66, The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011. Is there anything to add, Gwyn, other than the issue of the Channel Islands?

[4] **Mr Griffiths:** Nac oes.

Mr Griffiths: No.

[5] **David Melding:** I did not think so; the report is very clear. So, we are content with those. The next one is CLA66, The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011.

[6] **Simon Thomas:** Hoffwn ofyn cwestiwn ar yr ardal oedd rheoli mwg. Yn gyntaf, a oes un o'r ardaloedd hyn yng Nghymru o hyd? Nid wyf yn ymwybodol os oes un ai peidio. Yn ail, wrth basio, fel un a gafodd ei godi yng nghysgod un o'r ffatrioedd hyn, Phurnacite yng Nghwm Cynon, yr wyf yn falch o weld nad oes gennym ffatri yn gwneud y *briquettes* hyn ac yn llygru amgylchedd Cymru. Fodd bynnag, yr wyf yn derbyn bod rhaid cael y math hyn o brosesau ac yn gobeithio bod y lleoedd eraill hyn sy'n gwneud y *briquettes* hyn yn lanach na'r hen Phurnacite ers talwm.

Simon Thomas: I would like to ask a question on the smoke control areas. First, is there such an area in Wales? I am not aware if one still exists here or not. Secondly, in passing, as one who was raised in the shadow of one of these factories, Phurnacite in the Cynon Valley, I am pleased that we do not have one of these factories producing these briquettes and polluting the Welsh environment at present. However, I accept that we must have these sorts of processes, and I hope that these other places that are producing these briquettes are cleaner than Phurnacite was in the past.

[7] **Mr Griffiths:** Yn ôl y memorandwm esboniadol, mae rhai yn cael eu gwneud yn Llantrisant,

Mr Griffiths: According to the explanatory memorandum, some are being produced in Llantrisant.

[8] **Simon Thomas:** Wir? Ond dim ond y rhai newydd yma—ychwanegiadau yw'r rhain, onid ydynt?

Simon Thomas: Really? But only these new ones—these are additions are they not?

[9] **Mr Griffiths:** Ydynt. Mae rhai yn cael eu gwneud yn Lloegr, a rhai yn dod o'r Iseldiroedd. Yn ddiddorol, mae'r memorandwm yn dweud bod rhai yn cael eu gwneud yn Llantrisant, Morgannwg Ganol, sy'n awgrymu nad yw'r person sydd wedi drafftio'r memorandwm wedi dal i fyny gydag ad-drefnu llywodraeth leol.

Mr Griffiths: Yes. Some are produced in England, and some come from the Netherlands. Interestingly, the memorandum states that some are being made in Llantrisant, Mid Glamorgan, which suggests that the person who drafted this memorandum has not quite caught up with local government reorganisation.

[10] **Simon Thomas:** Mae hyn ynghylch tanwydd i'w losgi mewn ardaloedd rheoli mwg. A oes un o'r ardaloedd hynny yng Nghymru? Mater o ddiddordeb yw hwn i mi, dyna i gyd.

Simon Thomas: This is about fuel to be burned in smoke control areas. Does such an area exist in Wales? This is just a matter of interest to me.

[11] **Mr Griffiths:** Nid wyf yn gwybod. Nid yw'r rheoliadau yn ymwneud â hynny o gwbl. Maent i gyd yn ymwneud â'r tanwydd, yn hytrach na'r ardaloedd, ac felly nid oes manylion ynglŷn â'r ardaloedd. **Mr Griffiths:** I do not know. The regulations do not discuss anything in relation to that. They are about the fuel, not the areas, and therefore, there are no details on the areas.

[12] **Simon Thomas:** Credaf nad oes gennym un o'r ardaloedd rheoli mwg yng Nghymru ar hyn o bryd. **Simon Thomas:** I do not think that we have a smoke control area in Wales at present.

[13] **David Melding:** We could inquire. It does not relate specifically to whether or not this should proceed, I do not think. It is of general interest, obviously, as you have raised it.

[14] **Simon Thomas:** It is just strange, because if we do not have a smoke control area in Wales, then we do not need to make regulations to allow these fuels to be burned in Wales. England-only regulations would be sufficient.

[15] **David Melding:** Perhaps we can check that point.

[16] **Simon Thomas:** We might just be making regulations automatically without understanding—

[17] **David Melding:** It is valid point. We move on to CLA72, The Non-Commercial Movement of Pet Animals Order 2011, CLA73, The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2011 and CLA74, The Eels (England and Wales) (Amendment) Regulations 2011, which is my personal favourite. [*Laughter.*] I see that Members have no comments. That concludes the items that have reporting points.

2:33 p.m.

Bil Is-ddeddfau Llywodraeth Leol (Cymru) Local Government Byelaws (Wales) Bill

[18] **David Melding:** This discussion is just to agree how we are going to deal with this Bill, which has been referred to us for some scrutiny. I understand, Gwyn, that a paper will be prepared for us so that we can undertake a scrutiny session with the Minister. At the moment, we are proposing to invite the Minister to attend our next meeting on 23 January. He is free then, so I hope Members will be pleased to agree that. Obviously, we need to fit into the scrutiny that is going on through the Committee on Communities, Equality and Local Government. Are there any issues that people want to raise now or are there any areas that you wish to indicate to Gwyn that you might want to be briefed on?

[19] **Mr George:** Just to give a little bit of history, this committee's predecessor considered all proposed Measures, as they then were, that were laid before the Assembly. So, you might want to consider the extent to which the committee feels that it should scrutinise Bills. When the committee scrutinised proposed Measures, its focus was primarily on the subordinate legislation provisions that they contained, although we had a tendency to bring a paper to the committee, even if they did not have subordinate legislation provisions, so that the committee could consider them. So, from that point of view, a paper could be brought to the committee to consider on the proposed Commission Bill on the Welsh language, which I do not think has any subordinate legislation provisions. However, the likelihood is that, unless you wanted to, we would not then conduct any detailed scrutiny of commissioners in that case.

[20] **David Melding:** This contains a more substantive point, however, does it not, in that

it reverses the previous system for dealing with subordinate legislation? It is chunkier, it is fair to say, than other legislation that was looked at, as Steve has indicated, when Measures were the vehicle for subordinate legislation.

[21] **Simon Thomas:** Hoffwn ymateb i'r hyn a ddywedodd y clerc. Mae'n hollol briodol ein bod yn cael adroddiad ar bob Bil, fel ein bod yn cael gorolwg o'r broses. Wedyn, gallwn benderfynu os ydynt wir o ddiddordeb i'r pwyllgor alw Gweinidog a chynnal ymchwiliad ac ati. Fodd bynnag, fel roedd y Cadeirydd yn dweud, mae hwn yn rhywbeth sy'n gig a gwaed i'r pwyllgor hwn.

Simon Thomas: I want to respond to the clerk's comments. It is entirely appropriate that we should receive a report on each Bill, so that we have an overview of the process. We can then decide if it is really of interest to the committee to call a Minister in and to have an inquiry and so on. However, as the Chair said, this the substance of the committee's work.

[22] **Mr Griffiths:** Hoffwn ymateb yn gryno iawn. Nid wyf yn meddwl bod y pwerau is-ddeddfu yn hwn yn arbennig o ddadleuol, ond mae'n codi cwestiynau sydd efallai'n fwy diddorol i'r pwyllgor o ran i ba raddau mae deddfwriaeth y Cynulliad yn cael ei chydgrynhoi a'i diweddarau. Er enghraifft, mae cyfeiriadau amrywiol ynddo i ddeddfwriaeth sydd yn mynd yn ôl i'r bedwaredd ganrif ar bymtheg. Efallai y bydd y pwyllgor am wneud sylw ynglŷn ag a ddylid dod â hynny i'r ganrif bresennol yn hytrach na'r ganrif cyn yr un ddiwethaf.

Mr Griffiths: I want to respond very briefly. I do not think that the powers for subordinate legislation here are particularly controversial, but it raises questions that are perhaps more interesting to the committee in relation to the extent to which Assembly legislation is consolidated and updated. For example, it contains various references to legislation that goes back to the nineteenth century. Perhaps the committee would want to comment as to whether they should be brought into the present century as opposed to coming from the one before last.

[23] **Simon Thomas:** The Town Police Clauses Acts 1847.

[24] **David Melding:** That has whetted our appetite for the paper, has it not? [*Laughter.*]

[25] The other general point, on which you were right, Simon, is that we would look at the merits of each piece of legislation in terms of whether it was proposing anything novel or irregular, to use the slightly alarming words that civil servants use sometimes, in the way that it dealt with secondary legislation, and then decide whether we would want a session with the Minister. Is there anything further on that? We will conduct that scrutiny session next Monday.

2.38 p.m.

Gohebiaeth y Pwyllgor Committee Correspondence

[26] **David Melding:** First is an exchange with Carl Sargeant—the same Minister, as it happens—on the issue of using every opportunity to ensure that Orders and legislation are available bilingually. It is a fairly productive response, I think that Members will agree. I do not know whether Members have any comments. I think that that concludes the matter and that we are happy that it is concluded in that manner.

[27] Next is the correspondence, which eventually came from the First Minister, on the Localism Bill and the issue of whether the Assembly has competence and that we should receive an explanation for why it does not have competence, if that is the view of the Minister. You will see that the First Minister indicates that Welsh Ministers are not under any obligation to tell us the reasons for our lack of competence, but he does, in fact, give the

reason. So, I am not quite sure how we should respond to that. Do we say ‘Thank you for giving us the reason’ or ask whether that could be part of the structure of how the Executive responds? It may be something that we can sweep up in our report on this matter in terms of how Ministers acquire their powers. I think that we should let it rest, but do Members have a different view?

[28] **Mohammad Asghar:** The second paragraph of the letter from Carl Sargeant says

[29] ‘to ensure that the legislation process is carried out as effectively as possible’.

[30] So, he is doing scrutiny for the scrutiny committee, sort of thing.

[31] **David Melding:** No, that refers to the point that we were encouraging the Minister to take the opportunity, when he has to issue new regulations, to ensure that they are done bilingually when, in the past, they have not been. It is a catch-up procedure, so that they do not perpetuate a situation in which some regulations are only available in English. It was a point about how we are an effective bilingual legislature. So, he is not scrutinising himself; that is not happening.

[32] **Eluned Parrott:** In terms of the issue of where we do and do not have competence, who decides and so forth, in this circumstance, it is clear that there is more than one potential interpretation of where the powers lie. In potentially grey areas, it is right and proper that we should request an answer as to why we felt that it was not in our competence. It is as important as deciding that something is within our competence.

[33] **Simon Thomas:** On Eluned’s point, which I agree with, you mentioned earlier that we are doing a report on Standing Orders. Perhaps we can bring that out more clearly in that report.

[34] **David Melding:** I agree with what you have said. We are in the slightly odd position that the First Minister has said that, in principle, he does not need to do that, but, in practice, he has done it. We just want to encourage him to keep up that practice. We do not want to get into a slanging match for the sake of it on a principle that they will not apply anyway. It is about how we do it tactfully.

[35] **Mark Drakeford:** He said that he would not normally expect to do so, and I thought that Eluned was making the point that—

[36] **Eluned Parrott:** There are circumstances.

[37] **Mark Drakeford:** Yes, when there are abnormal positions.

[38] **David Melding:** Okay, is there anything further on that? I see that there is not.

2.42 p.m.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[39] **David Melding:** To confirm, the date of the next meeting is 23 January. There is a paper to note, namely the report of our last meeting. I now close proceedings for today.

*Daeth y cyfarfod i ben am 2.42 p.m.
The meeting ended at 2.42 p.m.*