



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

28/11/2016

Agenda'r Cyfarfod

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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

Nathan Gill 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

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

Siân Giddins	Dirprwy Glerc Deputy Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Gareth Howells	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 14:30.
The meeting began at 14:30.

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

[1] **Huw Irranca-Davies:** Prynawn da. Good afternoon and welcome to this afternoon's session of the Constitutional and Legislative Affairs Committee. We have the normal housekeeping remarks on the use of the Welsh and English languages through the headphones provided, the fire alarms, mobile devices and so on, which all committee members are very

familiar with. Item 1 is apologies and we have apologies from Dafydd Elis-Thomas, who can't be with us here today. There are no other apologies.

Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reol Sefydlog 21.2 neu 21.3

Instruments that Raise no Reporting Issues under Standing Order 21.2 or 21.3

[2] **Huw Irranca-Davies:** In which case, we can move on to item 2 under instruments that raise no reporting issues under Standing Order 21.2 or 21.3. We have one statutory instrument, paper 1. It's an affirmative resolution instrument: the Non-Domestic Rating (Chargeable Amounts) (Wales) Regulations 2016. Do Members have any comments or observations? If not, we're happy to note that. So, we note that.

14:31

Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3

Instruments that Raise Issues to be Reported to the Assembly under Standing Order 21.2 or 21.3

[3] **Huw Irranca-Davies:** We move on to item 3, instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3. We have a series of instruments here, negative resolution instruments. The Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016, and in your papers we have the report, the Order and the explanatory memorandum. Do we have, on that particular one, any comments or observations from Members?

[4] **David Melding:** These are the instruments that bring in arrangements and are part of an Act that's not yet commenced. Is that correct?

[5] **Huw Irranca-Davies:** Indeed, yes. Sorry—Gareth.

[6] **Mr Howells:** That's the next Order.

[7] **David Melding:** Oh, it's the next one.

[8] **Huw Irranca-Davies:** It's the next series of six together. This one, I

think, is more straightforward. Happy to note this one? Okay, we note that.

[9] We move on to the next batch, which are six regulations: the Social Care Wales (Proceedings before Panels) Regulations 2016; the Social Care Wales (Constitution of Panels Prescribed Persons) Regulations 2016; the Social Care Wales (List of Persons Removed from the Register) Regulations 2016; the Social Care Wales (Content of Register) Regulations 2016; and we also have, following on from that, an affirmative resolution instrument on the Social Care Wales (Extension of Meaning of ‘Social Care Worker’) Regulations 2016; and following on from that, again an affirmative resolution, the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016. If Members are content, what I’ll ask is for Gareth to make some comments on this because there are some interesting aspects to this. Gareth, over to you.

[10] **Mr Howells:** We raise this merits point as we think it may be of interest to the committee. So, these six sets of social care regulations are made under sections of the Regulation and Inspection of Social Care (Wales) Act 2016 that are not yet in force. Although the relevant sections of that Act are not yet in force, the Welsh Ministers can still make the regulations using powers under section 13 of the Interpretation Act 1978. These regulations won’t come into force until the relevant sections of the 2016 Act are in force, but they can be made at the moment despite the enabling powers not strictly being in force.

[11] **Huw Irranca-Davies:** Thank you. David.

[12] **David Melding:** I think that, by the sound of it, this is a power that’s convenient for them to use rather than archaic. So, if it’s not archaic, I don’t have any great objections. The only thing I did want to check is whether all those who are affected realise the procedure, otherwise you may not be expecting these regulations or you may not pay due regard to them because of the fact that the Act isn’t operational. But, it does sound as if they do find this a convenient device and it’s probably known by all stakeholders, I guess.

[13] **Mr Howells:** And they’re not due to come into force until April 2017, so there should be time there to let everyone know who is affected.

[14] **Huw Irranca-Davies:** Are you content with that clarification?

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

[16] **Huw Irranca-Davies:** Okay. Thank you, everybody.

14:34

Papurau i'w Nodi Papers to Note

[17] **Huw Irranca-Davies:** If we move on to item 4 then, papers to note, we have several papers to note, the first of which is the correspondence from the First Minister to the Secretary of State for Wales in respect of the Wales Bill. This may be something that we want to discuss later in private session—it's pertinent to our discussions there. Are we happy to note that? There we are.

[18] And then we move on to paper 24, which is the written statement by the Counsel General for Wales, of 21 November 2016, which has been circulated to all Members. Are we happy to note that? Okay.

[19] And then we have the Welsh language standards regulations, and we have correspondence from the Culture, Welsh Language and Communications Committee Chair, which are in your packs as paper 25 and paper 26. Now, just for the committee to note, this correspondence refers to the Welsh Language Standards (No. 3) Regulations 2016, which were laid on 23 February this year, subsequently rejected by the National Assembly on 15 March 2016. They seek to specify—or they sought to specify—standards in relation to the conduct of 27 bodies in the education sector. And, out of interest, as you will probably know, the fourth Assembly CLA committee—our predecessor committee—received written representations on these regulations, signed by representatives of students unions from Cardiff, Aberystwyth, Bangor, Swansea, Trinity St David's universities, as well as the National Union of Students Wales. And our predecessor committee issued a merits report on these regulations on the grounds that they gave rise to issues of public policy likely to be of interest to the Assembly. So, that was where we were then, and now we have this item of correspondence in front of us.

[20] Now, it could well be that we want to consider these regulations when they're laid, and, as part of that, consider if and how they've been changed. Given the history I've just alluded to, it's very likely, I suspect, that they will be the subject of a merits report because they will be of interest to the

Assembly. But I wonder whether committee members have any comments or any other observations. David.

[21] **David Melding:** Well, clearly, we will issue a merits report because these are highly contested matters. I'm not quite sure whether Bethan's committee realises—we all know, but I think the wider world doesn't—that merits just means, basically, badging something as being of political interest and something that the whole Assembly should be aware of. I suspect they think that merits means we've looked at the regulations and regard them as a good instrument for the policy intent, or whatever, and that that's appropriate. So, whether these regulations ought to get proper policy scrutiny—because that would be Bethan's committee, probably—is something we could possibly put in our merits report, I guess, for the Assembly's attention, saying that one way would be to defer giving assent to these regulations before, or until, they go through a committee stage scrutiny process, which is what, I think, they're asking for.

[22] **Huw Irranca-Davies:** Yes, indeed.

[23] **Nathan Gill:** In other words, pass it back to them.

[24] **Huw Irranca-Davies:** Yes, indeed.

[25] **Dai Lloyd:** Buaswn i'n cytuno efo hynny achos, ar ddiwedd y dydd, mae'r pwyllgor yma ddim ond yn trin a thrafod ochr ddeddfwriaethol pethau; mae materion polisi i'r pwyllgor arferol sy'n ymdrin â pholisi. Fy narlleniad i o'r llythyrau yma ydy eu bod nhw'n pryderu am faterion yn ymwneud â pholisi, ac er fy mod i'n aelod o'r pwyllgor diwylliant a chyfathrebu yma, nawr rwy'n gweld hwn, yn sylfaenol fe fydd e yn fater i'r pwyllgor yna, achos mater o bolisi y mae'r bobl yma'n pryderu amdano fe, nid mater o a ydy'r ddeddfwriaeth yn iawn ai peidio.

Dai Lloyd: I'd agree with that because, at the end of the day, this committee only discusses the legislative aspects; policy areas are a matter for the subject committee dealing with that policy area. And my reading of these letters is that they are expressing concerns about policy issues, so, although I am a member of the Culture, Welsh Language and Communications committee, I'm only seeing this now, and I do believe that it will be an issue for that committee, because these are policy concerns rather than concerns about the accuracy of the legislation.

[26] **Huw Irranca-Davies:** So, I think it's been clearly expressed that, within our scope, we may, indeed, want to indicate to the Chair of the committee that we will look at the technical and merits issues, as far as it extends to our remit. But I notice in the correspondence that the Chair hasn't fully ruled out looking at this. She's raised some difficulties with their timetable, but, as we know, you can always work things if it is a priority. So, on that basis, I think it's the will of the committee that we signal that, should they want to explore this more deeply on substantive merit issues that go beyond the remit of this committee, then it is for them to do so.

[27] **David Melding:** We could say in our merits report that it's important that flexibility is built into the system, or time is built into the system, in areas where you can anticipate policy interest from one of the subject committees.

[28] **Huw Irranca-Davies:** Indeed. There we are.

[29] **David Melding:** And it wouldn't have taken a genius to work this out, because the original standards were rejected by the Minister. The standards that then were brought back—I'm right in saying that, aren't I?—were then rejected by the Assembly. It is a fraught record so far on this.

[30] **Huw Irranca-Davies:** Yes. Gwyn.

[31] **Mr Griffiths:** Diolch, **Mr Griffiths:** Thank you, Chair. I Gadeirydd. Fi wnaeth graffu ar ran y scrutinised on behalf of this pwyllgor yma ar y rheoliadau committee these original regulations, gwreiddiol, ac, wrth gwrs, bydd and of course, Members will be aware Aelodau'n ymwybodol bod yr that the timetable is quite tight when amserlen yn eithaf tynn pan mae'n it comes to scrutinising regulations dod i graffu ar reoliadau o'r math of this kind. I have seen an early draft yma. Rydw i wedi gweld drafft cynnar of the amended regulations, and I o reoliadau diwygiedig, ac rydw i'n understand that the Government's deall mai bwriad y Llywodraeth ydy intention is to lay the amended gosod y rheoliadau diwygiedig cyn regulations before the end of this diwedd y tymor yma, ond eu bod term but that they're still working on nhw'n dal i weithio arnyn nhw ar hyn them at present. So, as I'm familiar o bryd. Felly, gan fy mod i'n with the background, I will be able to gyfarwydd â'r cefndir, fe fydd modd i not just provide advice to this mi nid yn unig ddarparu cyngor i'r committee in the usual way, but also pwyllgor yma yn y ffordd arferol, ond provide advice, with that background,

hefyd i ddarparu gyda'r cefndir to the culture committee to support hwnnw i'r pwyllgor diwylliant i fod yn that committee as it discusses the gymorth i hwnnw baratoi neu regulations, if it wishes to do so. ystyried y rheoliadau, os yw'n dymuno gwneud hynny.

[32] **Huw Irranca–Davies:** Thank you, Gwyn, that's helpful. Well, I think we've pretty much concluded on that item. Gareth, sitting next to me, has helpfully drawn to my attention, under Standing Order 21.3(v), that we can look at an issue on its merits if it imperfectly achieves its policy objectives, but that's not as wide and as detailed an analysis as a subject policy committee can do. So, Gwyn, with your expert attention to it, you can advise on what falls within our remit here and, as I said at the outset, in particular, when those regulations are laid—and it's helpful if you are seeing the draft versions—what we should be looking at and whether they have changed within the scope of what we're seeing, but also that we write back to the Chair and say that's what we will be doing, but she may want to consider them in more detail in discussion with her own committee. Thank you very much on that.

14:42

**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.

[33] **Huw Irranca–Davies:** And now, if I could ask the committee whether they are in agreement to move to a private session and exclude the public

from the remainder of the meeting, in accordance with Standing Order 17.42(vi). Are you content? Thank you. And we move into private session. Clear the gallery, please.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 14:42.

The public part of the meeting ended at 14:42.