



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

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

**Dydd Llun, 23 Ebrill 2012
Monday, 23 April 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

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
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 2.32 p.m.
The meeting began at 2.32 p.m.

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

[1] **David Melding:** Good afternoon, everyone. I welcome you to this meeting of the Constitutional and Legislative Affairs Committee. We do not expect a routine fire drill to be held this afternoon, so, should we hear the fire bell ring, please follow the instructions of the ushers who will help us to leave the building safely. These proceedings will be conducted in Welsh and English and, when Welsh is spoken, the interpretation is available on channel 1. Should you require the amplification of our proceedings, it can be heard on channel 0. Please switch off all mobile phones and other electronic equipment completely, as they interfere with our broadcasting equipment.

2.32 p.m.

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 relevant statutory instruments are listed on the agenda. Unless any Member wants to make a comment first, I will ask Gwyn to comment on those relating to the firefighters' pension scheme. They seem repetitive, but I understand that there is a reason for that.

[3] **Mr Griffiths:** Fel y gwelwch, mae dau Orchymyn o'n blaenau, sy'n diwygio symiau cyfraniadau diffoddwyr tân at eu cynlluniau pensiwn. Mae hynny'n gywir: mae dau gynllun gwahanol. Mae enwau **Mr Griffiths:** As you can see, there are two Orders before us to amend the sums that firefighters must pay as contributions to their pension schemes. That is correct: there are two separate schemes. The two schemes have

ychedig yn wahanol ar y ddau gynllun ac, o ganlyniad, ar y ddau Orchymyn.

slightly different names, and, therefore, so do the two Orders.

[4] Mae'r Gorchmynion hyn yn cynyddu taliadau diffoddwyr tân yng Nghymru at eu pensiynau. Mae'r memorandwm esboniadol, sy'n femorandwm ar gyfer y ddau Orchymyn, yn esbonio nad yw Llywodraeth Cymru yn hollol fodlon â'r ddeddfwriaeth hon, ond mae angen ei gwneud neu bydd diffoddwyr tân yng Nghymru yn talu llai o gyfraniad na'r rhai yn Lloegr, a byddai'r arian hynny'n cael ei dynnu'n ôl o gyllideb Llywodraeth Cymru yn y flwyddyn ariannol nesaf. Mae'r esboniad yn od ond yn ddiddorol, efallai.

These Orders increase the payments made by firefighters in Wales towards their pensions. The explanatory memorandum, which is a memorandum for both Orders, explains that the Welsh Government is not entirely content with this legislation, but it needs to be made or firefighters in Wales will be making lesser contributions than those in England, and those funds would then be clawed back from the Welsh Government budget in the next financial year. It is a strange explanation but an interesting one all the same.

[5] **David Melding:** We like strange and interesting explanations.

[6] **Simon Thomas:** That is why we are on this committee.

[7] **David Melding:** Exactly. [*Laughter.*] Are Members otherwise content with those matters under item 2? I do not see anyone wanting to rush in; therefore, I conclude that Members are content.

2.34 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

[8] **David Melding:** There is one issue to be reported under item 3, which is the Controlled Waste (England and Wales) Regulations 2012. It is proposed that we make a merits and a technical point in our report. Before I ask Gwyn to outline that, do Members have any comments?

[9] **Suzy Davies:** As Gwyn will be addressing us anyway, I wonder whether he could also clarify for us why these regulations are to be made under the negative procedure. It strikes me that they are imposing new burdens, and not just increasing existing burdens, and so I would have thought that they would be appropriate for the affirmative procedure.

[10] **Mr Griffiths:** Mae dau bwynt adrodd wedi'u nodi yn y drafft. Y cyntaf yw bod hwn yn Orchymyn sy'n cael ei wneud yn Saesneg yn unig, a hynny oherwydd ei fod yn berthnasol i Gymru ac i Loegr. Penderfyniad Llywodraeth Cymru oedd hwnnw, oherwydd ei bod eisiau ymdrin â'r mater mewn ffordd gyson ar draws Cymru a Lloegr.

Mr. Griffiths: Two reporting points are noted in the draft. The first is that this Order is to be made in English only, and that is because it applies to both England and Wales. That was the Welsh Government's decision, because it wanted to deal with the issue in a consistent way throughout England and Wales.

[11] Tynnwn eich sylw atynt hefyd am eu bod yn rhoi'r hawl i awdurdodau lleol godi tâl am waredu gwastraff yn ogystal â'i

We draw your attention to them also because they give local authorities the right to charge for the disposal of waste as well as its

gasglu. Mae hynny'n arwyddocaol, fel yr awgrymwyd. Er hynny, mae'r rheoliadau yn cael eu gwneud o dan Ddeddf Cymunedau Ewrop 1972, sy'n rhoi'r pŵer i Weinidogion benderfynu ar ba broses sy'n gymwys, ac yn yr achos hwn penderfynwyd ar y weithdrefn negyddol. Nid oes esboniad ymysg y papurau o'r rheswm am y penderfyniad hwnnw.

collection. That is significant, as has been suggested. However, the regulations are made under the European Communities Act 1972. That gives Ministers the power to decide on the appropriate process, and in this case they decided to follow the negative procedure. There is no explanation in the papers as to why that decision was made.

[12] **Suzy Davies:** Is it just the case that it has been made by a superior legislature, if you like, and so it has to be brought in anyway?

[13] **Mr Griffiths:** Na. Nid oes esboniad o gwbl. Fel arfer, mae'r ddeddfwriaeth gynradd yn pennu ai'r broses gadarnhaol neu negyddol sydd i'w dilyn. Fodd bynnag, os yw'n cael ei gwneud o dan Ddeddf Cymunedau Ewrop, mae dewis, ac yn yr achos hwn penderfynwyd ar y broses negyddol. Gallwn ysgrifennu at y Gweinidog i holi am fwy o fanylder o ran hynny, ond rwy'n tybio ei fod yn benderfyniad a wnaed ar y cyd â Gweinidogion yn San Steffan.

Mr Griffiths: No. There is no explanation at all. Usually, the primary legislation determines whether the process that is to be used is the affirmative or the negative. However, if made under the European Communities Act, there is a choice, and in this case the negative procedure was chosen. We could write to the Minister to ask for more detail on that, but I suspect that it was a decision made in agreement with Ministers at Westminster.

[14] **David Melding:** We could include it as an additional merits report, could we not? How do Members feel about that, given that it creates new distinctions, obligations and charges? Do you feel that an explanation should have been given for the use of the negative procedure? We may even go further and note that, given the additional burdens that the regulations create, under normal circumstances, we would suggest that the affirmative procedure would be appropriate. I do not know. Can Members give me a steer?

[15] **Suzy Davies:** That was certainly my view, because they extend the class of people who will be subject to these burdens. Rather than just increasing the burden itself, they apply it to new individuals, and quite sensitive ones at that.

[16] **David Melding:** Members can, of course, call this in. It is not as though the Assembly would be stymied if Members were motivated enough to debate it.

[17] **Julie James:** I would certainly be grateful for an explanation of why they thought the negative procedure appropriate, but I am not sure that I want to go as far as to say that we do not think it appropriate.

[18] **David Melding:** Shall we do that in correspondence, then? Is that the feeling?

[19] **Suzy Davies:** Rather than taking it to the Assembly, that would be my preferred route, if it is not a controversial point in itself.

[20] **David Melding:** Let us do that by correspondence, then, and ask why the negative procedure was used when there seem to be grounds for using the affirmative procedure. Are we happy, then, with the draft report?

[21] **Simon Thomas:** Could I ask our legal adviser whether we have any royal palaces in Wales? *[Laughter.]*

[22] **David Melding:** If we have any, they could be captured by this legislation.

[23] **Simon Thomas:** Commercially captured?

[24] **David Melding:** That may be a future development. I see that we are content with the draft report, thank you.

2.39 p.m.

Gohebiaeth y Pwyllgor Committee Correspondence

[25] **David Melding:** You will see that we have received a letter from the Counsel General relating to the legal jurisdiction, and inviting us to take part in the consultation. I suspect that our own report will be the major bit that we do, but whether we do anything beyond that is for Members to comment on.

[26] **Simon Thomas:** Rwyf yn cymryd y **Simon Thomas:** I take it that we will have byddwn wedi cwblhau'r adroddiad erbyn completed the report by then—and in good hynny—ac mewn da bryd. time.

[27] **David Melding:** Assuming a fair wind, yes, we will have done our report. Should that change, however, we might want to return to this to see whether we want to give some interim advice or an interim response to the consultation.

2.40 p.m.

Dyddiad y Cyfarfod Nesaf Date of Next Meeting

[28] **David Melding:** The date of the next meeting will be 30 April, a week today.

[29] That concludes our formal proceedings, although we have an informal session afterwards.

*Daeth y cyfarfod i ben am 2.40 p.m.
The meeting ended at 2.40 p.m.*