



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales
Y Pwyllgor Materion Cyfansoddiadol a
Deddfwriaethol
The Constitutional and Legislative Affairs Committee

Dydd Llun, 8 Hydref 2012
Monday, 8 October 2012

Cynnwys
Contents

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

Offerynnau Nad Ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reolau Sefydlog Rhif
21.2 neu 21.3
Instruments that Raise No Reporting Issues under Standing Order Nos. 21.2 or 21.2

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

Craffu ar Gymhwysedd Deddfwriaethol: Goblygiadau Bil Is-ddeddfau Llywodraeth Leol
(Cymru)
Scrutiny of Legislative Competence: Implications of the Local Government Byelaws (Wales)
Bill

Bil Archwilio Cyhoeddus (Cymru)
Public Audit (Wales) Bill

Gohebiaeth y Pwyllgor
Committee Correspondence

Dyddiad y Cyfarfod Nesaf
Date of Next Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir
trawsgriafiad o'r cyfieithu ar y pryd.

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.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Vaughan Gething	Llafur (yn dirprwyo dros 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

Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Clerc Clerk
Francesca Rowley	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 2.30 p.m.
The meeting began at 2.30 p.m.

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

[1] **David Melding:** Good afternoon, everyone, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I will make the usual housekeeping announcements. We do not expect a routine fire drill this afternoon, so if you hear the alarm, please follow the instructions of the ushers carefully, who will help us to leave safely. These proceedings can be conducted in Welsh or English. When Welsh is spoken, a translation is available on channel 1 on your headsets; proceedings are amplified on channel 0. Please switch off all electronic equipment completely. We have apologies from Julie James, and I welcome Vaughan Gething as her substitute. We also have an apology from Suzy Davies.

2.31 p.m.

Offerynnau Nad Ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reolau
Sefydlog Rhif 21.2 neu 21.3
Instruments that Raise No Reporting Issues under Standing Order Nos. 21.2 or
21.2

[2] **David Melding:** There are no items listed under this item.

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

[3] **David Melding:** The first item here is on the Bluetongue (Wales) (Amendment)

Regulations 2012. Joanest wants to raise a point, which is in the proposed merits report but is a matter of some interest and concern.

[4] **Ms Jackson:** Members will have seen the response provided by the Government, which is of the opinion that the regulations give proper effect to the relevant directive, and that it is not necessary to make specific reference to the minimum distances specified in the directive for surveillance zones. We in Legal Services here are not convinced that this is a valid point. That could be said about most provisions in directives. The whole point about transposing directives, rather than putting the law into European regulations, is that they are meant to be transposed fully into domestic law unless there is a specific discretion not to transpose particular provisions. That is not the case in this instance. Are there any questions?

[5] **Vaughan Gething:** I have seen the response from the Government and I have looked at regulation 6, which is probably most appropriate if you were going to specify an area for setting out the exclusion zones or the surveillance zones. The Government response says that the ability of Welsh Ministers to deal with the outbreak lawfully, in accordance with the requirements of the directive, is not in question. I think that that is right, but my understanding of what you are saying is that, in any event, the regulations should specify that these surveillance zones should be at least 50 km.

[6] **Ms Jackson:** Yes, they should be. It is probably clearer to persons relying on the regulations for the undertaking of their business to know that their particular property could be within a surveillance zone from the outset. Chair, you asked me this morning whether there were restrictions on animal movements within surveillance zones, and insofar as a surveillance zone forms part of a restricted zone under the Environmental Protection Act 1990, yes, there are restrictions on animal movements within these zones.

[7] **David Melding:** Is there anything further?

[8] **Eluned Parrott:** I agree that it is important for transparency's sake, but also to avoid any potential confusion, should an outbreak occur, that it ought to be transposed fully.

[9] **David Melding:** Our understanding of the law requires this transcription to be done and it is not enough for Ministers to say that they will follow the EU directive. It has to be written into our Orders, and that is that. It is a poor principle to allow it to be established that they can move to a less formal system, even if they do sincerely intend to implement it.

[10] **Ms Jackson:** Yes, I think that you are quite right. There probably is a precedent issue in it as well.

[11] **David Melding:** So, we will issue that merits report.

[12] The next item is on the radioactive contaminated land statutory guidance. We do not deal with much guidance, but statutory guidance does come to us. There is a technical issue here, which, again, Joanest will outline.

[13] **Ms Jackson:** This is quite unusual, in that there is a provision in the enabling Act that relates to the making and issuing of guidance, which requires, in this case, the guidance to be laid before it can be issued. What we outlined in the report is that, had this been a statutory instrument, it would have been reported as being drafted in English only. There is also a typographical error. It is stated that the statutory guidance has been scored in accordance with the Welsh Government's Welsh language scheme and does require translation due to the length, the technical nature and the limited target of the document. However, as the Government has acknowledged in its response, that is a typographical error; I believe that it intends it to read 'does not require'. Nevertheless, we believe that it is worth raising under the

merits issue, under Standing Order No. 21.7(v), which raises general and procedural issues that are likely to be of general interest.

[14] **David Melding:** Is everyone content with that?

[15] **Vaughan Gething:** It is quite a technical point. I had a look through this, and I heard the point about some of the normal meanings of words having a different meaning in the guidance, so it has its own glossary, and is quite technical. However, I will not pretend to have read it all, from cover to cover.

[16] **David Melding:** I am sure that we would all wish to join you in that lack of pretence. *[Laughter.]*

[17] **Eluned Parrott:** I have a question. Does this follow on from a previous statutory guidance?

[18] **Ms Jackson:** Yes. As I understand it, in the past, there was one guidance document, which was issued by the Department for Environment, Food and Rural Affairs, which dealt with generally contaminated land, if you like, or non-radioactive contaminated land, as well as radioactively contaminated land. The move is to separate the guidance into two documents, and, as you say, this deals with radioactive land. That is the idea—to separate them out, so that the two do not become confused, I suspect, in their operation.

[19] **Eluned Parrott:** However, there is no note in the paperwork that we have received to say why that is felt to be timely at present.

[20] **Ms Jackson:** I think that there is something in the explanatory memorandum. The policy background is set out in paragraphs 9 and 10. It says that the guidance follows a new format of the revised statutory guidance for non-radioactive contaminated land.

[21] **David Melding:** I believe that you have some questions, Simon.

[22] **Simon Thomas:** Derbyniaf fod hwn yn dechnegol, a bod cynllun iaith Gymraeg y Llywodraeth yn nodi nad oes angen ei gyfieithu. Fodd bynnag, rydym wedi cael profiad diweddar â dogfen ymgynghorol dechnegol, ar y parthau cadwraeth morol. Roedd honno'n ddogfen weithio, a oedd yn cael ei defnyddio gan bysgotwyr, ac roedd yn lletchwith nad oedd fersiwn Gymraeg ar gael. Mae hefyd yn codi'r cwestiwn ynglŷn ag a yw'r fersiwn arall, sydd efallai yn delio â thir wedi ei halogi nad yw wedi ei halogi yn ymbelydrol, hefyd ar gael ond yn Saesneg. Efallai fod honno'n dechnegol iawn, ac efallai fod y llall yn fwy cyffredin, yn enwedig ymysg awdurdodau lleol. Felly, rwyf yn awyddus ein bod yn tanlinellu'r egwyddor, o leiaf, ein bod yn deddfu yn y ddwy iaith. Rydym newydd gael hw-ha mawr dros Fil Cynulliad Cenedlaethol Cymru (Ieithoedd Swyddogol), lle'r oedd pobl yn gytŷn, o leiaf, y dylai'r deddfu sy'n digwydd yma fod yn y ddwy iaith.

Simon Thomas: I accept that this is technical, and that the Government's Welsh language scheme notes that it need not be translated. However, we have had a recent experience with a technical consultation document, on the marine conservation zones. That was a working document, which was used by fishermen, and it was awkward that there was no Welsh-language version available. It also raises the question of whether the other version, which perhaps deals with contaminated land that is not radioactively contaminated, is also available in English only. That may be very technical, and the other one may be more common, especially among local authorities. Therefore, I am eager that we underline the principle, at least, that we legislate bilingually. We have just had a great hoo-ha over the National Assembly for Wales (Official Languages) Bill, and people were at least in agreement that the legislation created here should be done bilingually.

[23] **David Melding:** Okay. Could we emphasise in the report that we do not expect explanations such as ‘the document is technical and will only used by a limited section of the community’ to be a routine occurrence?

[24] **Simon Thomas:** That is true of all legislation.

[25] **David Melding:** Yes. These excuses have to be exceptional, and not in any way routine. So, we will issue that report.

2.39 p.m.

**Craffu ar Gymhwysedd Deddfwriaethol: Goblygiadau Bil Is-ddeddfau
Llywodraeth Leol (Cymru)
Scrutiny of Legislative Competence: Implications of the Local Government
Byelaws (Wales) Bill**

[26] **David Melding:** Members will be aware that the Local Government Byelaws (Wales) Bill has been referred to the Supreme Court by the Attorney General for England and Wales and the Secretary of State for Wales. I believe that evidence will be heard this week, and we expect a judgment some time before Christmas. Simon, I believe that you have issues about this and that you believe that this committee may be required to undertake some work as a consequence of whatever transpires in the Supreme Court.

[27] **Simon Thomas:** Rwyf am nodi, fel y bu inni ei drafod y tro diwethaf, nad wyf yn meddwl ei bod yn briodol i ni, fel pwyllgor, drafod rhywbeth sydd gerbron y Goruchaf Lys ar hyn o bryd. Ond, mae rhywbeth ynglŷn â'r drefn ar sut y cyraeddasom y pwynt hwn sydd yn werth i ni fel pwyllgor edrych arno. Nid oedd unrhyw sibrydion bod unrhyw gwestiwn ynglŷn â dilysrwydd y Bil hwn wrth i ni ei drafod, ac mae hynny'n anffodus, a dweud y lleiaf, gan mai dyma ein Bil cyntaf. Byddwn yn dymuno i'r pwyllgor gadw hynny mewn cof wrth inni edrych ar y broses. Beth bynnag yw penderfyniad y llys, mae rhywbeth yma ynglŷn â gweithdrefn y byddai'n werth inni edrych arno.

Simon Thomas: I want to note, as we discussed last time, that I do not think that it is appropriate that we as a committee discuss something that is currently before the Supreme Court. However, there is an issue related to how we reached this point that is worth our considering as a committee. There was no indication that there was any question about the validity of this Bill when it was being discussed, and that is rather unfortunate to say the least, because this was our first Bill. I would like the committee to bear that in mind as we look at the process. Whatever decision the court comes to, there is an issue here relating to procedure that we should look into.

[28] **David Melding:** One obvious procedural change would be for us to ask the Minister whether there are any issues of competence being raised by the UK Government. We could possibly remind the Chairs of the various committees that would be undertaking any line-by-line examination of Bills that they might want to put that question to Ministers appearing before them. That is something that we could do immediately. First, are Members content that we follow that practice from now on? I see that you are.

[29] **Vaughan Gething:** It is a fairly easy question that should resolve the issue early on, or at least smoke it out, as it were.

[30] **Simon Thomas:** Yes, sometimes you think that the simple questions do not need to be asked, but they do.

[31] **David Melding:** On the issue of whether we need to do a wider piece of work on the ramifications of any judgment, I think that we had better wait until the judgment has been made and then we can have a discussion on it. Is that satisfactory, Simon?

[32] **Simon Thomas:** Yes.

2.42 p.m.

Bil Archwilio Cyhoeddus (Cymru) Public Audit (Wales) Bill

[33] **David Melding:** We need to decide whether we want to ask the Minister in for a scrutiny session. The Bill does not contain any regulation-making powers, so it seems unlikely that there would be much value in an oral session. However, we have just said that, as a matter of procedure, we now want to put to Ministers the question of whether there are issues about competence. Members may feel that we could do that through correspondence. What are Members' views?

[34] **Vaughan Gething:** Yes. It seems excessive to get the Minister in just to ask that one question. You could do it in writing or you could try to ensure that the Public Accounts Committee, which I assume will do the line-by-line scrutiny, asks that question. It is just one question, but it would be useful to have it answered.

[35] **Ms Jackson:** Just for Members' information, if you ever have the inclination to look back at the transcripts of the Public Accounts Committee, you will see that the Minister attended the first evidence session for the scrutiny of this Bill. As a follow-up to the statement that she made in Plenary, she was asked about matters of competence. So, I think that the practice may be—

[36] **David Melding:** They are ahead of us—

[37] **Ms Jackson:** Yes, they are ahead of you.

[38] **Eluned Parrott:** As we have talked about it becoming a matter of course for this committee, perhaps we can write to the Minister and ask her to confirm that.

[39] **David Melding:** Yes, I think that we should do that as a matter of procedure now anyway, so that is fine.

2.44 p.m.

Gohebiaeth y Pwyllgor Committee Correspondence

[40] **David Melding:** We have one piece of correspondence, relating to the Natural Resources Body for Wales (Functions) Order 2012. This looks as though it will be quite a large piece of work. We can scrutinise the outcome in the usual way when that is due. Do we know when it is due?

[41] **Ms Jackson:** No, I am afraid not.

[42] **Ms Lewis:** No, not at the moment. We will not know until the Government submits it. At the moment it exists in draft form.

[43] **Vaughan Gething:** I am on the Environment and Sustainability Committee. Given the previous correspondence, we would expect to have at least two goes at looking at the draft Order and then the formally laid Order. I know that there will be a real amount of interest in that committee on the detail of what has been provided to us.

2.45 p.m.

[44] **Simon Thomas:** Rwy'n cymryd na fyddwn ni am edrych ar y Gorchymyn drafft o gwbl. Ni fyddwn ni ond â diddordeb, os o gwbl, mewn edrych ar yr un sydd wedi'i osod. **Simon Thomas:** I assume that we would not want to look at the draft Order at all. We would only be interested, if we have any interest at all, in looking at the laid version.

[45] **David Melding:** We will examine the actual Order in the normal way, but there does not seem to be much point in looking at the draft, because that is more for policy issues. We will pick up any merits or technical points when it is actually laid. I think that that is the intention.

[46] **Simon Thomas:** The previous one had a few issues, which we discussed in this committee. It might well be the case that this one will also have one or two issues that we need to look at.

[47] **David Melding:** Yes, okay.

2.46 p.m.

Dyddiad y Cyfarfod Nesaf Date of Next Meeting

[48] **David Melding:** I do not intend to call a meeting next week because there is not enough business, and what business there is can be deferred until 22 October. I will be in Glasgow on 22 October, leading our delegation to the British-Irish Parliamentary Assembly, so I want to ask a Member who will be available to chair that meeting. Simon has been kind enough to do that on one previous occasion.

[49] **Simon Thomas:** I will be here, certainly.

[50] **David Melding:** Perhaps I could ask you to do that.

[51] **Simon Thomas:** Yes.

[52] **David Melding:** There is a paper to note. It is the report of our meeting held on 24 September. There are no other items, so I declare the meeting concluded. Thank you very much.

*Daeth y cyfarfod i ben am 2.46 p.m.
The meeting ended at 2.46 p.m.*