



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

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

Dydd Llun, 5 Tachwedd 2012
Monday, 5 November 2012

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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.

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

Mick Antoni	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
Owain Roberts	Y Gwasanaeth Ymchwil The Research Service

Dechreuodd y cyfarfod am 2.28 p.m.
The meeting began at 2.28 p.m.

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

[1] **David Melding:** Good afternoon. Welcome to this meeting of the Constitutional and Legislative Affairs Committee. I welcome all Members to this afternoon's meeting. We are not expecting a fire drill, so, if we hear the fire alarm sound, please follow the instructions of the ushers, who will help us to leave the building safely. This meeting will be conducted in Welsh and English. When Welsh is spoken, a translation is available on channel 1 of the headsets, through which you can also amplify our proceedings. Please switch off all electronic equipment completely.

[2] I have received apologies from Suzy Davies and also from Julie James. I welcome Mick Antoni and thank him for substituting. I know that the committee will want to extend our best wishes to Julie James for a full and speedy recovery from her illness. We are grateful for the work that she has done as a member of this committee and look forward to her return.

2.29 p.m.

Offerynau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reolau Sefydlog Rhif 21.2 neu 21.3
Instruments that Raise No Reporting Issues under Standing Orders Nos. 21.2 or 21.3

[3] **David Melding:** The single statutory instrument in this category is listed. Are Members content with that? I see that you are.

Offerynau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r Cynulliad o dan Reolau Sefydlog Rhif 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under Standing Orders Nos. 21.2 or 21.3

[4] **David Melding:** There is also just one instrument in this category, and it is a superaffirmative resolution instrument, the Public Bodies (Water Supply and Water Quality) (Inspection Fees) Order 2012. We have issued a report with merits points and, if Members have any further queries, Gwyn is here to respond to them. I believe that it is fairly straightforward, given the subject matter. Are we content to publish that report? I see that we are. Thank you.

2.30 p.m.

Y Bil Menter a Diwygio Rheoleiddio: Cynnig Cydsyniad Deddfwriaethol Atodol a Bil Pensiynau'r Gwasanaeth Cyhoeddus: Memorandwm Cydsyniad Deddfwriaethol
Enterprise and Regulatory Reform Bill: Supplementary Legislative Consent Motion and Public Service Pensions Bill: Legislative Consent Memorandum

[5] **David Melding:** Do Members have any further queries regarding this item? The main issue is whether the Minister's written response is sufficient in terms of our queries, and, if it is not, whether we feel it will be necessary to invite the Minister to committee. I have been told that that can be fitted into the timescale, so we could ask her to appear before us. However, if you are happy with the detail in her letter, it will be redundant to do that. Shall we just check with Gwyn whether he has any profound issues with this, or wishes to bring certain issues to our attention with regard to the Minister's response?

[6] **Mr Griffiths:** O ran y memorandwm cydsyniad deddfwriaethol sy'n ymwneud â Bil Pensiynau'r Gwasanaeth Cyhoeddus, mae'r Gweinidog, yn ei hymateb, wedi nodi un pwnc anghyffredin, sef yr hyn y mae'n ei ddweud ynghylch pensiynau. Dyfynnaf un paragraff o'i hymateb: **Mr Griffiths:** In terms of the legislative consent memorandum in relation to the Public Service Pensions Bill, in her response, the Minister has noted one unusual issue, namely what she says about pensions. I will quote one paragraph of her response:

[7] 'You suggest that the pension provision made in the Welsh Language Measure was possible under Schedule 5 because the pension provision was inserted as being incidental to the purposes of the Measure but that is not permissible under Schedule 7. The Welsh Government's view is that if the Assembly was to consider making a Welsh Language Act now, the "incidental" power would still be available even though pensions are in general excepted. We believe this is clear from section 108(3) to (5) of the Government of Wales Act 2006.'

[8] Mae'r Llywodraeth yn credu, felly, The Government therefore believes that the fod yr hawl cyffredinol i nodi materion general right to note 'incidental' matters is

'incidental' yn bwysicach na'r eithriad penodol sydd yna i gymhwysedd deddfwriaethol y Cynulliad ynghylch pensiynau cyhoeddus. Mae hynny'n fy nharo i fel rhywbeth annisgwyl. Fodd bynnag, wedi dweud hynny, mae'r Llywodraeth, fel ninnau, yn aros am ymateb gan y Goruchaf Lys ynglŷn â sut y mae dehongli'r materion hyn. Felly, byddwn yn argymhell ein bod ond yn nodi, ar hyn o bryd, ein bod wedi codi'r pwnc, ac mai dyma ymateb y Gweinidog, ac wedyn efallai y gallwn ystyried y peth ymhellach ar ôl cael ymateb y Goruchaf Lys.

more important than the specific exception here to the Assembly's legislative competence in relation to public pensions. That strikes me as unexpected. However, that said, the Government, like us, is awaiting a response from the Supreme Court in terms of how these issues should be interpreted. Therefore, I would recommend that we should simply note at present that we raise the issue, and that this is the Minister's response, and then perhaps we can consider it further once we hear the ruling of the Supreme Court.

[9] **David Melding:** I am sorry; I have slid into item 5 on the Public Service Pensions Bill: Legislative Consent Memorandum. I suggest that we go back to item 4 later, if you have any views on the Enterprise and Regulatory Reform Bill. However, let us deal now with the legislative consent memorandum on the Public Service Pensions Bill. That is the one that relates to whether we want the Minister to appear before the committee. I also welcome Simon Thomas to committee. I apologise for confusing Members.

[10] **Mick Antoniw:** The point that has been made is a valid one. However, it may be—certainly on that particular point—that there is nothing that the Minister can say until we have that clarification from the judgment itself. Therefore, it would seem to be sensible to await the outcome of that judgment, and, as I believe was suggested, to note it now, and then for it to come back before the committee.

[11] **Eluned Parrott:** What is the timescale for this memorandum? That is pertinent, obviously, depending on when the Supreme Court ruling is expected. I believe that it is expected in December, is it not?

[12] **David Melding:** Obviously, whatever the Supreme Court judges will be relevant. However, other than noting that and that we may need to make some sort of reference to that, I do not believe that there is much that we can do.

[13] **Mr Griffiths:** Bydd y pwyllgor wedi nodi bod cyfeiriad gan y Gweinidog, ar ddiwedd y llythyr hwn, at ysgrifennu at Gomisiwn y Cynulliad ynghylch y mater hwn. Mae'r Gorchymyn hwn yn dal yn y Tŷ cyntaf yn San Steffan, felly mae amser, pe bawn yn gofyn i'r Pwyllgor Busnes am ragor o amser, yn sgîl y sylw hwn ynghylch cysylltu â'r Comisiwn, neu gallwn adrodd ar y memorandwm hwn a dod nôl at y mater yn fwy cyffredinol pan fydd gennym adroddiad a barn y Goruchaf Lys.

Mr Griffiths: The committee will have noted that at the end of the letter there is reference by the Minister to writing to the Assembly Commission about this issue. This Order is still in the early stages in Westminster, and there is time, therefore, if we were to ask the Business Committee for more time, in light of this comment about getting in touch with the Commission, or we could report on this memorandum and return to the issue in more general terms when we have the report and judgment of the Supreme Court.

[14] **David Melding:** Are Members content with that?

[15] **Mick Antoniw:** Yes. I agree.

[16] **Mr George:** To clarify, the report that we will have to make to the Assembly will simply note that this particular question rests, to some extent, on the judgment of the Supreme Court. Does the committee want to recommend that the Government revisit the matter with

the UK Government after that judgment is known?

[17] **Mick Antoniw:** My understanding is that we will note the current position, but that the matter will come back to us, in more general terms, once the judgment is available. So, we are not committing ourselves in any way across the board on this, at this stage.

[18] **Simon Thomas:** Efallai bydd yn briodol dweud, felly, fod hwn yn fater y bydd y pwyllgor yn ystyried dychwelyd ato yn y dyfodol, gan ddibynnu ar y dystiolaeth a ddaw i law, heb roi addewid ynghylch hynny.

Simon Thomas: Perhaps it would be appropriate to say, therefore, that this is a matter that the committee will consider returning to in future, depending on the evidence that comes to hand, without making a specific pledge to that end.

[19] **David Melding:** Correct.

[20] I apologise for conflating items 4 and 5. We will return to item 4, which is the supplementary legislative consent motion relating to the Enterprise and Regulatory Reform Bill. Are we content with the report and can we confirm that we do not need to invite the Minister to give evidence, or do we have issues that you wish Gwyn to respond upon? It is a fairly technical one, relating to the sunset and review provisions in the subordinate legislation. I see that you are content.

2.37 p.m.

Gohebiaeth y Pwyllgor Committee Correspondence

[21] **David Melding:** We have had a response on the Bluetongue (Wales) (Amendment) Regulations 2012. I have to say that I do not think that it is terribly clear. I find it a somewhat awkward principle that the Minister is saying that although they are not spelling out what the directive requires, it can be inferred, because that kind of introduces the principle that anything could be inferred, as long as they give a general commitment to implement the directive. I am not sure that we can take it any further. However, if Members have other views, I would be happy to hear them.

[22] **Simon Thomas:** Mae'r ffaith bod y Llywodraeth yn dweud y bydd yn gwneud yn wahanol y tro nesaf yn dangos bod y pwynt wedi ei dderbyn, ond nid wyf yn gweld y gallwn wneud llawer pellach fel pwyllgor.

Simon Thomas: The fact that the Government is saying that it will do it differently next time shows that the point has been accepted. However, I do not see that there is much more that we can do as a committee.

[23] **David Melding:** Perhaps we could just point that out. There is a big difference if the Government were minded to impose a greater buffer zone than the minimum, because, at the minute, everyone would assume that it would be the minimum, but it may be its intention that it should be larger than that, and that would not be known. So, I think that we could perhaps raise that as an issue that would have a potential consequence on people who will be affected by restrictions if they are in the buffer zone. Are we content with that? I see that we are.

2.39 p.m.

Dyddiad y Cyfarfod Nesaf Date of Next Meeting

[24] **David Melding:** We will not need to meet on 12 November. So, with your

agreement, I suggest that our next meeting will be on 19 November.

[25] There is just one paper to note. It is a report of the meeting on 22 October. I declare the meeting concluded. Thank you.

Daeth y cyfarfod i ben am 2.39 p.m.
The meeting ended at 2.39 p.m.