



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

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

Dydd Llun, 25 Chwefror 2013
Monday, 25 February 2013

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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

Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Owain Roberts	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc 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 start with the usual housekeeping announcements. We do not expect a routine fire alarm, so, if we hear the bell, please follow the instructions of the ushers, who will help us to leave safely. Please switch off all electronic equipment completely, otherwise, even on silent, it can interfere with the broadcasting equipment. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there is a translation on channel 1 and channel 0 will amplify our proceedings. I have apologies from Julie James, and I understand that Mark Drakeford will be joining us as a substitute as soon as possible.

2.31 p.m.

**Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reolau
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:** There is one instrument, which is listed. Do we have any queries? I see that Members do not have any points that they want to raise.

**Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'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:** There is one item listed, the Official Statistics (Wales) Order 2013. There is a question here as to whether we want to report it at all, but, if we do, there is a short merits paragraph that outlines the fact that it is of some significance because it is the first time that this power has been used. Do Members have any views?

[4] **Suzy Davies:** I did have a question—[*Inaudible.*] The first is with reference to the explanatory memorandum on page 7, subpoint b), when we are talking about official statistics that are not national statistics. Subpoint b) states that 'persons producing official statistics' 'are expected to comply with the standards' and yet, at the bottom of that paragraph, it states that it:

[5] 'is not a formal requirement but is best practice to be observed'.

[6] So, it is just—[*Inaudible.*] It is page 7. It is under the heading 'the purpose and intended effect of the legislation' in the explanatory memorandum.

[7] **Mr Griffiths:** [*Inaudible.*]

*Nid oes recordiad ar gael o'r cyfarfod rhwng 2.33.15 p.m. a 2.34.03 p.m.
No recording is available of the meeting between 2.33.15 p.m. and 2.34.03 p.m.*

[8] **Suzy Davies:** I do not think it is important; it was just quite interesting.

[9] **Mr Griffiths:** There is quite a long list made under the Act, and devolved administrations can add to it. I do not know whether the other devolved administrations have done that yet.

[10] **Suzy Davies:** It is just curiosity.

[11] **Mr Griffiths:** I am afraid that I do not have an answer to that.

[12] **Suzy Davies:** That is okay. Thank you.

[13] **Eluned Parrott:** My query was regarding the fact that these are not necessary public bodies; they have status that is not a Government department or something along those lines. I do have a concern about whether they necessarily have the capacity to produce statistics that will conform with the kind of codes that we expect national statistics to conform with. I am wondering whether there is question there about the practicality of that.

[14] **David Melding:** I think that that questions the policy intention of it, but it inclines me to think that you do want us to issue the report and that it is not de minimis and therefore not

worth bringing to the Assembly's attention.

[15] **Eluned Parrott:** The idea of a precedent for applying national statistic standards to non-governmental organisations is something that I would wish to query.

[16] **Mr Griffiths:** They are Assembly-sponsored public bodies, or Welsh Government-sponsored public bodies. They are responsible for the oversight of other organisations within their areas. So, they produce statistics, for example, in relation to the Welsh language and its usage. Sport Wales produces statistics about how many people take part in different sports and so on. I presume that that is why these have been selected; it is not just for the things that they do themselves, it is because, in effect, they keep an oversight and analyse the work of other organisations.

[17] **Simon Thomas:** I ddilyn pwyntiau Eluned a Suzy, fy nealltwriaeth i o'r Gorchymyn hwn yw ei fod yn sicrhau bod eu hystadegau hwy'n cwrdd â gofynion y canllawiau. Felly, mewn ffordd, mae'r Gorchymyn yn angenrheidiol er mwyn sicrhau nad yw'r perygl y soniodd Eluned amdano'n digwydd. Os yw'r Gorchymyn yn mynd trwyddo, mae'n rhaid iddynt ddilyn y canllawiau, a rhaid i'r ystadegau fod o'r radd flaenaf, fel ein bod yn gallu ymddiried ynddynt. O gofio'r anawsterau cyfrifiadurol mae un o'r cyrff hynny'n ei gael, rwy'n meddwl efallai ei fod yn bwysig bod y Gorchymyn yn mynd trwyddo.

Simon Thomas: Following on from Eluned and Suzy's points, my understanding of this Order is that it ensures that their statistics meet the requirements of the guidelines. So, in a way, the Order is necessary to ensure that the risk that Eluned identified does not arise. If the Order is passed, they will have to follow the guidelines, and the statistics will have to be of the highest quality, so that we can have faith in them. Bearing in mind the IT difficulties that one of these bodies has had, I think it is perhaps important for the Order to go through.

[18] **Suzy Davies:** I want to check something. Again, it is a point of definition. This Order does not create new national statistics, just official statistics. What is the significant difference? It is not important for us to report on, but I was just wondering what the purpose of this thing is in the first place.

[19] **Mr Griffiths:** I am afraid that, as the Minister would say, I shall have to write to the Member with the information. I do not have the Act, which would explain the distinction.

[20] **Suzy Davies:** No, that is fine. I did not even know that we had hierarchies of statistics, that was all. Thank you.

[21] **David Melding:** Okay. Do we want to beef up the paragraph by emphasising the importance of the Order given the need for the public to have confidence in official statistics or something?

[22] **Simon Thomas:** You cannot make public policy without evidence and statistics—

[23] **David Melding:** Yes. The need for evidence bases in public policy. Can we have that as a small additional paragraph? Then it would give you enough leeway if you want to speak to it in the Chamber. Obviously, we want to lay a report.

[24] **Suzy Davies:** On the point that Gwyn made that these are specific bodies that have overarching responsibilities for other bodies, one of the questions I asked myself when I saw the list was why the Royal Commission for Ancient Monuments is not included there, for example. If these are bodies that are responsible for money that goes to other bodies, perhaps that is a useful explanation as to why these five have been chosen. If that is indeed the reason.

[25] **David Melding:** Okay. We are getting to more general scrutiny of the whole issue of how statistics are gleaned.

[26] **Suzy Davies:** Okay, that is fine.

[27] **David Melding:** Could you find that out for us if it is not too burdensome to do so, Mr Griffiths?

[28] **Mr Griffiths:** Yes.

[29] **David Melding:** With regard to the Order as it is in front of us, as drafted, are you content? I see that you are. We will strengthen the merits point a bit to emphasise the point about public confidence in official statistics and their use in evidence-based policy. That is something that the Assembly will be interested in noting. Thank you.

2.39 p.m.

**Cynnig y Comisiwn Ewropeaidd i Ddiwygio'r Gyfarwyddeb Cynhyrchion
Tybaco (Cyfarwyddeb 37/2001/EC)
The European Commission Proposal to Revise the Tobacco Products Directive
(Directive 37/2001/EC)**

[30] **David Melding:** We asked for a paper from the secretariat and I am grateful for the note that we have had, which is very helpful and comprehensive. It pretty much demonstrates that we do not have a specific role; it is through national parliaments. However, it seems to have triggered debate in a few places around the European Union. The deadline for any response by national parliaments is next week, and I think all we can do is use the unofficial channels available to us to the national parliament. Perhaps we can write to the House of Lords committee and the House of Commons committee to say that this issue has been raised with us. Members may want to go further or do something completely different.

[31] **Simon Thomas:** Mae hyn yn eithaf diddorol, a rwy'n credu ei fod gerbron y pwyllgor pwnc yn Senedd Ewrop sydd yn edrych ar hwn heddiw. Mae tipyn o anghytuno ynglŷn â'r polisi, ond mater arall yw hwnnw, efallai. Mae modd dadlau bod hyn yn dechrau tresmasu ar sybsidiaredd, achos mae'n amlwg bod yr hyn sy'n cael ei gynnig gan y Comisiwn yn ymwneud â meddyginiaeth, ond yr wrthddadl yw bod hyn yn ymwneud â gostwng effaith drwg ysmegu tybaco, a bod dulliau amgen, gan gynnwys gwm cnoi nicotin a sigarennau electronig, yn gallu chwarae rôl mewn iechyd cyhoeddus i leihau dibyniaeth pobl ar dybaco a nicotin mewn tybaco, a sgîl-ffeithiau hynny. Felly, mae dadl gref bod hwn yn fater i'r Senedd—gellid dadlau ei fod yn fater i'r Cynulliad, ond mae dadl ehangach ei fod yn fater i Senedd y Deyrnas Gyfunol ac mai mater o reoli ysmegu yn fwy na rheolaeth ar feddyginiaeth yn y farchnad sengl sydd yma.

Simon Thomas: This is quite interesting, and I think it is due to come before the European Parliament subject committee looking into this matter today. There is quite a lot of disagreement about the policy, but that is a different issue, perhaps. It could be argued that this starts to creep into subsidiarity, because it is clear that what is being proposed by the Commission involves medication, but the counterargument is that this is to do with reducing the harmful effects of smoking tobacco, and that there are other means, including nicotine chewing gum and e-cigarettes, that can play a part in public health to reduce people's dependency on tobacco and nicotine in tobacco, and their side effects. So, there is a strong argument that this is an issue for the Parliament—you could argue that it is an issue for the Assembly, but there is a broader argument that it is an issue for the UK Parliament and that it is to do with the regulation of smoking

Hoffwn i'r pwyllgor dynnu sylw seneddau eraill at y mater hwn gan fod dadl gref bod sybsidiaredd yn cael ei dramgwyddo yn y fan hon.

rather than the regulation of medication in the single market. I would like the committee to draw the attention of our fellow parliaments to this issue because there is a strong argument that subsidiarity is being undermined here.

[32] **David Melding:** There is not a lot that we can do, because the deadline is upon us.

[33] **Simon Thomas:** It is just a question of signalling it.

[34] **David Melding:** We can ask officials to investigate why this was identified for this sort of procedure. I suspect that it was because the UK Parliament, certainly for England and Wales, is responsible for what products are under some form of medical control. The controversy here is that products like chewing gum and even patches are available at retail outlets such as chemists.

[35] **Mr Griffiths:** Gallaf ychwanegu, Gadeirydd, mai diwygio'r gyfarwydddeb bresennol a wneir yn hytrach na mynd i dir cwbl newydd. Rwyf wedi edrych ar yr hyn mae tair o'r seneddau eraill wedi'i ddweud. Mae Senedd Sweden yn sôn yn benodol am dybaco i'w gnoi yn hytrach na materion mwy cyffredinol, tra bod gan yr Eidal a'r Weriniaeth Tsiec ddiddordeb mwy cyffredinol mewn sybsidiaredd. Rwy'n cyfaddef nad wyf wedi llwyddo i ddarllen yr hyn sydd gan Senedd Gwlad Groeg i ddweud ar y mater. Fodd bynnag, mae dwy senedd wedi codi pwyntiau cyffredinol ynglŷn â sybsidiaredd.

Mr Griffiths: I can add, Chair, that this is an amendment to the current directive rather than a move to entirely new ground. I have looked at what three of the other parliaments have had to say. The Swedish Parliament specifically mentions chewing tobacco rather than more general issues, while Italy and the Czech Republic have a more general interest in the issue of subsidiarity. I have to admit that I have not managed to read what the Greek Parliament has to say on this issue. However, two parliaments have raised general points on subsidiarity.

[36] **Simon Thomas:** Hoffwn pe baem o leiaf yn rhoi ein dwylo i fyny a dweud ein bod yn meddwl bod pwynt yn y fan hon.

Simon Thomas: I would like us to at least flag this up and say that we think that there is a point here.

[37] **David Melding:** I suggest that I do it in correspondence, and we can certainly ask officials to look at this case to give us some further advice on what subsidiarity points were raised, and then we can reflect on whether, in the UK, there was any possibility that it would be dealt with at a level other than the UK Parliament, as the body responsible for saying whether the subsidiarity principle had been honoured. It may be the case that Scotland has some role in the licensing of medicines; I do not know. However, it is an important issue, because it is possible that different parts of the UK would want to take a slightly different approach to the availability of smoking cessation products. You could argue that, in some areas, unless they are widely available, it will not be reasonable to ask people from deprived housing estates to traipse to Cardiff to get materials that are not available locally, and to require the presence of a pharmacist or whatever it is that will be proposed. So, I think that there are issues.

2.45 p.m.

[38] **Mr Roberts:** Perhaps I could add that the official deadline for subsidiarity concerns in terms of reasoned opinion is next Monday, 4 March, which obviously means that the deadline is quite tight in terms of what we are able to do. However, there is nothing stopping

us from going informally and writing to the Commission raising concerns and going outside the subsidiarity protocol—

[39] **David Melding:** We could e-mail a letter tomorrow to the relevant Westminster committees just saying that this came to us late but that there has been some public concern expressed, and that we were a bit unsure as to the procedures that are to be followed. I suspect that the representations that we have received have also been made to Westminster, so we may find that there will be an open door to add concerns if they are thought to be merited.

[40] **Simon Thomas:** I think that, as long as we are in the union, Chair, we have a role to play in what the British state says in relation to—

[41] **David Melding:** I agree.

[42] **Simon Thomas:** We have a role within that. It is not just about Wales; it is about being part of the constitution of the United Kingdom.

[43] **David Melding:** Sure. A lot of people have made representations to us. Why should they know that it might have been the UK Parliament that was the relevant body? They made representations in good faith, so why should we not treat them as very serious? That is, practically, the most that we can do, although, as Owain said, we could still write to the Commission after the fact, as it were.

[44] **Suzy Davies:** I just want to check something. There must have been some confidence initially that there was not an issue on which reporting was needed. That is right, is it not? Everyone knew about this on 21 January, and yet we, as an Assembly, did not really look at it in any depth for a whole month. Is that the explanation behind that?

[45] **David Melding:** There are hundreds of potential items for us to look at.

[46] **Suzy Davies:** I was not being critical; I just wanted to know whether I had understood that correctly.

[47] **David Melding:** I brought it to our attention, I think, just because different people had e-mailed me. When you have a few people raising an issue and it is obviously not a concerted campaign, that is interesting. I have noticed, just from when I am out and about, that you do see e-cigarettes displayed now. There is an issue: are they medical or not?

[48] **Simon Thomas:** How do you measure their harm? I know that that is a policy matter, but it is still an issue.

[49] **Eluned Parrott:** This is an issue of categorisation of product and whether it is a medical product in the way that nicotine replacement therapy is. It is not currently categorised in that way. It is in a bit of a no-man's land. The EU generally categorises things on our behalf and we take that on. So, I am not entirely convinced that there is a subsidiarity issue here because it is categorising products in a way that it—

[50] **David Melding:** Sure. I agree; I do not know either. There seems to be enough ambiguity to merit us raising the issue.

[51] **Simon Thomas:** Categorising horse as beef, for example. [*Laughter.*]

[52] **David Melding:** Okay. I assume that we are happy. We will ask the secretariat to look at that issue as an example to see whether it was possible for us to have done a bit more, and whether it was an area that, on reflection, was under our purview or not.

[53] **Mr Griffiths:** Perhaps I can help with this. The reason that it was not picked up earlier is because there is a specific exception to the Assembly's legislative competence that relates to human medicine and medicinal products, including authorisations for use and regulation of prices. So, on the basis that this was to do with it being a medicinal product, we did not think that it was within competence.

[54] **David Melding:** Yes. The whole issue, though, is that it is not at the moment and it should become one. You are right that if it becomes one, it is no longer in our purview. However, at the minute, it is, although there is ambiguity—

[55] **Simon Thomas:** It is a UK issue, however. In Sweden, they have chewing tobacco that you do not get elsewhere in the EU. So, there is a subsidiarity issue. There is no doubt about that.

[56] **David Melding:** It is our job to be inquisitive and to test these things. So, thank you all for that. As I said, there are a few lines for us to follow up.

2.50 p.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from
the Meeting**

[57] **David Melding:** In order that we can conduct the remainder of the meeting in private, I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Orders Nos. 17.42(vi) and 17.42(ix).

[58] I see that there are no objections.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 2.50 p.m.
The public part of the meeting ended at 2.50 p.m.*