



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

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

**Dydd Iau, 7 Gorffennaf 2011
Thursday, 7 July 2011**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynnddi 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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Julie James	Llafur Labour
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
Antoinette Sandbach	Ceidwadwyr Cymreig Welsh Conservatives
Simon Thomas	Plaid Cymru The Party of Wales

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

Stephen Davies	Cynghorydd Cyfrieithiol Legal Adviser
Steve George	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 9.00 a.m.
The meeting began at 9.00 a.m.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest

[1] **David Melding:** Welcome to this meeting of the Constitutional and Legislative Affairs Committee. I will make the usual housekeeping announcements. We do not anticipate a test of the fire alarm, so should we hear it, please follow the instructions of the ushers and leave the building. Headsets are available. Interpretation is on channel 1 and amplification of proceedings is on channel 0. Our proceedings can be conducted in English and Welsh. Please switch off all mobile phones and other electronic devices.

[2] I have not received any apologies. In fact, we are all present.

9.01 a.m.

Offerynnau nad ydynt yn Cynnwys unrhyw Faterion i'w Codi o dan Reol
Sefydlog Rhif 21.2 neu 21.3
Instruments that Raise no Reporting Issues under Standing Order Nos. 21.2 or
21.3

[3] **David Melding:** Other than that CLA12 breached the 21-day rule, there is nothing to note, unless Members wish to raise any other issues. I see that you do not.

**Offerynnau sy'n Cynnwys Materion i'w Codi gyda'r Cynulliad o dan Reol
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**

[4] **David Melding:** There is one affirmative resolution instrument, and that is CLA10. Steve will give a brief report on the written report that we have received about that.

[5] **Mr Davies:** The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 are composite regulations, that is, they apply to both England and Wales. The regulations amend some provisions in relation to the regulation of radioactive substances in order to provide a more user-friendly system for stakeholders while maintaining the necessary level of protection for the public. The regulations transpose some elements of the carbon capture and storage directive. There is one technical reporting point and one merits reporting point. The technical point is that, under Standing Order No. 21.2, the regulations have not been made bilingually. The Government has responded in the same fashion as it did to regulations that we have discussed previously relating to the water industry. It has said that, because they are composite regulations and the draft must be laid before the Assembly and the Houses of Parliament, it is not practicable to make them bilingually. I suggest that the committee might want to write to the Minister to notify the Government of our concerns. As we have discussed previously, there does not seem to be any reason why it could not make them bilingually.

[6] **Antoinette Sandbach:** I understand that point. I am just wondering whether, as composite regulations, they refer to UK statute. Presumably, that statute, having been passed in Parliament, is in English only.

[7] **Mr Davies:** That is correct.

[8] **Antoinette Sandbach:** If the regulations are translated into Welsh, what happens in relation to the UK statute to which they refer?

[9] **Mr Davies:** Often, they are made in English only. The point that has been raised in the past is that some of the areas could have been legislated on by Welsh Ministers, and the legislation could therefore be made bilingually. As the Government decided to allow Whitehall to draft the regulations, they have been made in English only. The decision was made early on, and therefore the regulations were made in one language only. The point is that they could be made in Wales.

[10] **Simon Thomas:** Y pwynt yw mai dewis y Llywodraeth yw gwneud pethau yn y modd hwn, ac mae'n siŵr ei bod yn fwy hwylus o lawer i wneud y rheoliadau ar y cyd â San Steffan. Fodd bynnag, byddai modd gwneud rheoliadau ar wahân i Gymru ac i Loegr. Yr un rheoliadau a fyddant, ond byddant yn gallu cael eu gwneud yn ddwyieithog wedyn.

Simon Thomas: The point is that it is the Government's choice to do things in this way, and it is no doubt much more convenient to make the regulations jointly with Westminster. However, separate regulations for Wales and for England could be made. They would be the same regulations, but they could then be made bilingually.

[11] Wrth gwrs, nid yw'r ffaith bod y ddeddfwriaeth o dan statud San Steffan yn rhwystro'r rheoliadau rhag bod yn Gymraeg. Mae nifer o Ddeddfau San Steffan sydd â rheoliadau ynghlwm wrthynt sydd wedi'u

Of course, the fact that the legislation comes under Westminster statute does not prevent the regulations from being made in Welsh. There are many Westminster Acts with associated regulations that have been made in

gwneud yn Gymraeg ac, yn enwedig os yw'r statud yn San Steffan yn rhoi hawl i Weinidogion Cymru wneud y rheoliadau, byddant yn cael eu gwneud yn ddwyieithog. Mae tuedd yma, onid oes? Heb dresmasu ar ofidiau eraill, mae mynediad i ddeunydd yn Gymraeg wedi bod yn bwnc pwysig i'r Cynulliad yr wythnos hon. Felly, efallai y dylem danlinellu bod cyfle i wneud y pethau hyn yn Gymraeg o bryd i'w gilydd a helpu i dyfu'r arfer o ddeddfu yn Gymraeg, achos pan ddeuwn i ddeddfu'n llawn fel Senedd, bydd angen deddfu'n ddwyieithog. Yr ydym yn colli cyfle i feithrin sgiliau o bryd i'w gilydd ac mae pobl yn gallu mynd yn bwdr a diog yn hytrach na meddwl yn gliriach am bosibiliadau. Nid oes dim y gallwn ei wneud yn ei gylch, ond mae'n rhywbeth i ni gadw ar y gweill.

Welsh and, especially if the statute in Westminster confers the right to Welsh Ministers to make regulations, they will be made bilingually. There is a trend here, is there not? Without trespassing on other concerns, access to material in Welsh has been an important subject for the Assembly this week. So, perhaps we should emphasise that there is an opportunity to do these things in Welsh from time to time and help to grow the practice of legislating in Welsh, because when we come to legislate fully as a Parliament, we will need to legislate bilingually. We lose opportunities to develop skills from time to time, and people can become shiftless and lazy rather than thinking more clearly about possibilities. There is nothing that we can do about it, but it is something for us to bear in mind.

[12] **David Melding:** I call on Julie James. Perhaps you can respond at the end, Gwyn.

[13] **Julie James:** I want to ask a question, so you will probably be able to answer it at the same time. I do not understand the process. If these regulations have been laid in English, because they were made in Westminster, is there a reason why they cannot just be translated into Welsh or do they have to be laid in the Assembly in order for them to be bilingual? I am not sure what the issue is. If they have to be laid in the Assembly in order for them to be bilingual, then I understand why they always end up in English. I happen to know quite a lot about this particular set of regulations; they are desperately needed and need to be exactly the same in England and Wales for lots of reasons, about which I can bore you later, if you would like me to. I just do not understand the process.

[14] **David Melding:** Finally, from the chair, I want us to get to general principles that the Government can be encouraged to apply. I suppose that if something requires an affirmative resolution, the Government realises that it is of more interest; therefore, a fully bilingual process seems imperative most of the time, unless there are exceptional reasons not to have it. Presumably, it was the Government that first identified that these regulations would come under the affirmative procedure, unless it responded to something that a previous committee did in this field. So, I wonder whether we can give the Government some guidance on when we would expect legislation to be laid bilingually, unless the most exceptional circumstances demanded such swift action for the public good that normal practice was suspended.

[15] **Mr Griffiths:** The question of whether it is affirmative or negative will normally be set out in the enabling legislation. There are few examples of where the Government has the choice as to the procedure to be adopted. What has happened here is that the regulations were drafted in Whitehall and agreed by the Government here, but that is quite a common process for implementing European legislation, for example. Legislation is drafted in Whitehall and then adapted and translated here and made separately for Wales. In this case, it has been decided that, rather than do that, the regulations will be allowed to go through as joint England-and-Wales legislation. The Welsh Minister is making them for Wales and the Secretary of State is making them for England. I do not think that there is a real reason why they need to be made jointly, unless Julie knows better, but it has been decided that this should be done on this occasion. I wonder, and that is one reason why it is a useful matter for this committee to keep an eye on, whether the reductions in staffing in the Government leads it to think that this may be an easy way of reducing the workload by letting Whitehall handle

regulations that can be made jointly when there is the option of making them separately for Wales.

[16] **Julie James:** So, does that mean that if they are made by the UK Government and the Welsh Ministers agree with that, they cannot just be translated, because they must be made in Wales to be bilingual.

[17] **Mr Griffiths:** They can be translated—a prime example of that was the original Welsh Language Act 1993, for which a courtesy translation was prepared—but that would have no legal standing. For the Welsh text to have legal standing, it has to be laid and approved by the Assembly—

[18] **Julie James:** Simultaneously with the English regulations?

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

[20] **Julie James:** I thought that that was the case, but wanted it confirmed.

[21] **Peter Black:** The issue of legal standing is important, because we are building up a series of Welsh laws and the laws made by the National Assembly for Wales should be bilingual. So, if we pass laws here, they should be passed bilingually so that we have an English and Welsh volume of those laws that can be consulted. That is an important consideration, and, certainly, given that it will be the affirmative procedure, we would expect them to be bilingual.

[22] **David Melding:** I should emphasise that if something requires the affirmative procedure—and the Government makes that decision when it makes the primary legislation, not when they make the regulations—then it needs to be done bilingually, as a matter of course. Only the most exceptional of circumstances would allow us not to refer specifically in a merits report to the fact that that has not been done, because if the Government realises that something is of the sensitivity to require the affirmative resolution, then it needs to be done in a fully bilingual fashion. So, could we draft something along those lines? Are we happy with the draft report?

[23] **Mr Davies:** There was one further point of merit. These regulations implement some of the provisions of the carbon capture and storage directive, and the deadline for doing so was 25 June. That deadline has been missed. The Government has stated that it is regrettable and that it was caused by internal pre-legislative clearance processes, but it has not made clear whether that was in Cardiff or London. So, I just want to flag up that it has missed the transposition deadline. However, only eight out of all European Union countries have managed to transpose on time with regard to this particular directive.

[24] **Julie James:** Having practised law myself, being only a week late is pretty good.

[25] **Davis Melding:** We will not commend it for that, but we will be kinder about it in our report. So, the draft is reasonable, and I see that everyone is happy with that.

9.12 a.m.

Cynnig Cydsyniad Deddfwriaethol Atodol: Bil Senedd y DU ynghylch Lleoliaeth Supplementary Legislative Consent Motion: Localism Bill

[26] **David Melding:** We do not have a written report, before us because this was only laid yesterday. Gwyn will now give us an oral report.

[27] **Mr Griffiths:** Gobeithio bod yr Aelodau wedi cael cyfle i weld y memorandwm a osodwyd gan y Llywodraeth ddoe. Dyma'r trydydd cynnig ar femorandwm i'w osod ynglŷn â'r Bil Seneddol ynghylch Lleoliaeth, sy'n mynd drwy San Steffan ar hyn o bryd. Efallai y cofiwch y cafwyd un ar y gwasanaeth tân ac achub ychydig wythnosau yn ôl. Bydd y rhain yn dod gerbron pwyllgorau'r Cynulliad yn fwy rheolaidd oherwydd ehangder cymhwysedd deddfwriaethol y Cynulliad. Mae'r rhain eto'n codi o welliannau sydd wedi'u gosod gan y Llywodraeth.

Mr Griffiths: I hope that the Members have an opportunity to look at the memorandum that was laid by the Government yesterday. This is the third motion on a memorandum to be laid regarding the Localism Bill, which is currently going through Westminster. Perhaps you will recall that there was one on the fire and rescue service a few weeks ago. These will come before the Assembly's committees more often because of the Assembly's wider legislative competence. These arise from amendments that have been laid by the Government.

[28] Gosodwyd 22 o welliannau i gyd, ond dim ond dau ohonynt sydd wedi'u nodi gan Lywodraeth Cymru i fod yn berthnasol i gymhwysedd deddfwriaethol y Cynulliad. Mae'r ddau yn ymwneud â thair—mae'r naill yn ymwneud â blaendaliadau tenantiaid a'r llall yn ymwneud â thrwyddedu tai amlfeddiannaeth. Maent yn welliannau technegol. Mae'r cyntaf yn ymwneud â newid y trefniadau ar gyfer sicrhau hawliau tenantiaid ynglŷn â blaendaliadau, ac mae'r ail er mwyn eithrio adeiladau a reolir gan gydweithrediadau tai o'r gofynion trwyddedu. Mae'r Llywodraeth yn amlwg yn meddwl eu bod yn berthnasol i Gymru, ac mae'r ddeddfwriaeth sy'n cael ei diwygio yn ddeddfwriaeth Cymru a Lloegr. Nid oes pwerau'n cael eu rhoi i Weinidogion, ac felly nid wyf yn gweld unrhyw broblem gyda'r cynnig cydsyniad deddfwriaethol hwn na'r memorandwm.

Twenty-two amendments were laid in total, but only two of them have been noted by the Welsh Government as being relevant to the legislative competence of the Assembly. Both relate to housing—one relates to tenants' deposits and the other to the licensing of houses in multiple occupation. They are technical amendments. The first relates to changing the arrangements regarding tenants' rights on deposits, and the second relates to the exclusion of buildings managed by housing co-operatives from the licensing requirements. The Government obviously thinks that these are relevant to Wales, and the legislation that is to be amended is England-and-Wales legislation. There are no powers being given to Ministers, so I do not see any problem with this legislative consent motion or the memorandum.

[29] **David Melding:** The memorandum will be discussed in Plenary on Tuesday, 12 July. Other than to note Gwyn's report, are Members content or want to propose any further action?

9.15 a.m.

[30] **Simon Thomas:** Hoffwn ofyn cwestiwn. Yn y rhan sy'n ymwneud â hyrwyddo democratiaeth leol a deisebu awdurdodau—os wyf yn deall hwn yn iawn—ddwy flynedd yn ôl byddem wedi pasio cynnig cydsyniad deddfwriaethol i alluogi San Steffan i ddeddfu o blaid hwn. Yn awr, yr ydym yn pasio cynnig cydsyniad deddfwriaethol i ddiddymu'r cymalau perthnasol hynny, sy'n gymalau sydd heb ddod i rym—yn ôl yr hyn a ddeallaf o'r memorandwm hwn—yng Nghymru eto. A

Simon Thomas: I have a question. In the part that deals with promoting local democracy and petitioning authorities—if I have understood this correctly—two years ago we would have passed a legislative consent motion to allow Westminster to legislate in favour of this. Now, we are passing a legislative consent motion to revoke those relevant clauses, which have not come into force—from what I understand of the memorandum—in Wales yet. Am I understanding that process correctly?

wyf yn deall y broses honno'n iawn?

[31] **Mr Griffiths:** Nid yw memorandwm y Llywodraeth yn gwbl glir, oherwydd mae wedi atodi dau femorandwm blaenorol, a chredaf mai un o'r rheini sy'n ymdrin â'r pwynt hwnnw. Mae hwnnw wedi mynd drwy'r Cynulliad eisoes. Dim ond y ddau fater hyn ynghylch tai sydd gerbron y Cynulliad ar hyn o bryd.

Mr Griffiths: The Government's memorandum is not entirely clear, because it has appended two previous memoranda, and I think that one of those deals with that point. That has already passed through the Assembly. It is only these two housing issues that are before the Assembly at present.

[32] **Simon Thomas:** Felly, dim ond y ddau hynny sy'n gwbl berthnasol i'r hyn y byddwn yn ei drafod yr wythnos nesaf.

Simon Thomas: Therefore, only those two are entirely pertinent to what we will be discussing next week.

[33] **Mr Griffiths:** Ie.

Mr Griffiths: Yes.

[34] **Simon Thomas:** O'r gorau; dim ond ein bod yn deall.

Simon Thomas: Okay; as long as we understand.

[35] **David Melding:** Therefore, are you content? I see that you are.

9.16 a.m.

Dyddiad y Cyfarfod Nesaf Date of Next Meeting

[36] **David Melding:** Okay, that concludes formal business this morning, other than to say that we will meet next on 14 July, with the time and place to be confirmed. Thank you very much for your attention. I now close the meeting.

*Daeth y cyfarfod i ben am 9.16 a.m.
The meeting ended at 9.16 a.m.*