



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

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

**Dydd Iau, 14 Gorffennaf 2011
Thursday, 14 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

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 (yn dirprwyo ar ran Peter Black) Welsh Liberal Democrats (substitute for Peter Black)
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

Bethan Davies	Clerc Clerk
Stephen Davies	Cynghorydd Cyfreithiol Legal Adviser
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk
Owain Roberts	Y Gwasanaeth Ymchwil Research Service
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 2.15 p.m.
The meeting began at 2.15 p.m.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
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. A special welcome to Eluned Parrott, who is subbing for Peter Black. I hope that I am not giving anything away, but it is likely that you are going to become a member of this committee, so we look forward to your contributions to its work. We do not expect a fire alarm test, so if you hear the alarm please follow the instructions of the ushers who will help us to leave the building safely. Headsets are available to give you a translation of anything that is said in Welsh, and you can amplify the sound on channel 0; the translation is on channel 1. Please switch off all mobile phones or other electronic equipment.

2.16 p.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**

[2] **David Melding:** The negative resolution instruments are before us. I do not know whether the legal advisers want to say anything, but two of these instruments are bouncing back, as it were, namely CLA15 and CLA16, consequent to earlier reports that we made, I understand.

[3] **Mr Griffiths:** Mae'r ddau offeryn hyn yn cywiro gwallau a nodwyd gan y Pwyllgor Materion Cyfansoddiadol cyn yr etholiad. Mae hefyd yn werth nodi bod yr offeryn cyntaf, CLA13, hefyd yn cywiro materion a dynnwyd i sylw'r Llywodraeth gryn amser yn ôl, lle'r oedd y ddeddfwriaeth yn anghyson drwy gyfeirio at y Cynulliad a Gweinidogion Cymru mewn manau gwahanol wrth gyfeirio at yr un peth. Awgrymodd y pwyllgor y dylid tynnu'r ddeddfwriaeth at ei gilydd neu ei chydgrynhoi ac mae hynny hefyd wedi digwydd. Felly, mae tri o'r pedwar offeryn hyn yn adlewyrchu sylwadau a wnaethpwyd gan y pwyllgor blaenorol.

Mr Griffiths: These two instruments correct errors noted by the Constitutional Affairs Committee before the election. It is also worth noting that the first instrument, CLA13, also corrects matters that were brought to the Government's attention a considerable time ago, where the legislation was inconsistent in referring to the Assembly and Welsh Ministers in different places when referring to the same thing. The committee suggested that the legislation should be collated or consolidated and that has also happened. So, three of these four instruments reflect comments made by the previous committee.

[4] **David Melding:** Do Members have any questions or are you happy with that? I see that you are content.

[5] We will move on to item 3, that is, instruments that raise issues to be reported to the Assembly. There no instruments in this category, so I formally record that. Sorry, have I jumped ahead?

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

[7] **David Melding:** Sorry, I thought that you were capturing CLA17 in your previous contribution.

[8] **Mr Griffiths:** Mae'n ddrwg gennyf, Gadeirydd. Mae CLA17 yn offeryn ychwanegol a gyflwynwyd yr wythnos hon. Felly, gwneuthum y gwiriadau technegol arferol fel mater o frys fel ein bod yn gallu ystyried y mater heddiw yn hytrach na'i ohirio tan yr hydref. Yn ôl y disgwyl, nid oedd pwyntiau technegol yn codi felly mae modd rhoi adroddiad technegol clir ynghylch yr offeryn ychwanegol hwn, sy'n ymwneud â'r gwasanaeth iechyd. Mae'n deillio o'r Mesur cyntaf a ddaeth gerbron y Cynulliad yn ôl yn 2007, sef y Mesur Gwneud Iawn am

Mr Griffiths: Sorry, Chair. CLA17 is an additional instrument that was submitted this week. I therefore made the usual technical checks as a matter of urgency so that we could consider the issue today rather than delay it until the autumn. As expected, no technical points arose so it is possible to give a clear technical report regarding this additional instrument, which is to do with the health service. It arises from the first Measure that came before the Assembly back in 2007, namely the NHS Redress (Wales) Measure 2008. The only reason why I refer it to it

Gamweddau'r GIG (Cymru) 2008. Yr unig reswm yr wyf yn cyfeirio ato'n benodol yw oherwydd bod y pwyllgor blaenorol wedi ystyried y prif reoliadau yn gynharach eleni ac wedi gwneud sylwadau ar y pryd ynglŷn â'r ymgynghoriad. Yr oedd cryn bryder pan aeth y Mesur drwy'r Cynulliad ynglŷn â'r ffaith ei fod yn Fesur fframwaith, a bod cymaint o bethau yn cael eu gadael i reoliadau. Wedi i'r pwyllgor ystyried y mater, gwnaethpwyd y sylw canlynol:

[9] 'Er y credwn fod y pryderon cyffredinol ynghylch Mesurau 'Fframwaith' yn parhau i fod yn rhai dilys (ac er ein bod yn nodi'r amser sylweddol aeth heibio ers pasio'r Mesur), rydym yn fodlon y bu'r ymgynghoriad ar y Rheoliadau drafft hyn yn drylwyr a chynhwysol a'i fod wedi ymateb i'r pryderon a godwyd'.

[10] Y diffyg sy'n codi heddiw yw bod y rheoliadau o'n blaen, er yn dechnegol gywir, yn gohirio rhoi ar waith rhai agweddau ar y rheoliadau gwreiddiol, hynny yw, y rhai sy'n ymwneud â phroblemau trawsffiniol. Mae hynny'n awgrymu na fu digon o ymgynghori gyda'r gwasanaeth iechyd gwladol mewn rhannau eraill o'r Deyrnas Gyfunol cyn bod y rheoliadau gwreiddiol wedi cael eu gwneud neu byddent wedi pennu dyddiad priodol yn yr achos hwnnw.

[11] Felly, yr wyf yn tynnu hynny at sylw'r pwyllgor, gan fod y pwyllgor blaenorol wedi gwneud sylw ar yr ymgynghoriad wrth ystyried y prif reoliadau. Mae'n bosibl i'r pwyllgor wneud dim sylw ynglŷn â hynny a gadael i'r mater fynd yn ei flaen fel adroddiad technegol clir a hynny'n ddiwedd y mater, neu, os hoffech, gallwn ystyried y mater ymgynghori yn fwy trylwyr—nid oedd cyfle i wneud hynny heddiw, gan eu bod ddim ond wedi eu gosod ddeuddydd yn ôl, a phapurau'r pwyllgor wedi mynd allan eisoes. Fodd bynnag, mae amser ar gael i'r pwyllgor ystyried y rhain ymhellach yn y cyfarfod cyntaf yn nhymer yr hydref os yw'n dymuno.

[12] **David Melding:** It is open to Members to tell me what they think that we should do. Do Members think that this should be brought back to examine the wider point on consultation?

[13] **Antoinette Sandbach:** I know that cross-border health issues in north Wales are a

specifically is because the previous committee considered the substantive regulations earlier this year and commented at the time on the consultation. There was considerable concern when the Measure went through the Assembly about the fact that it was a framework Measure, and that so many things were being left to regulations. The committee having considered the issue, the following comment was made:

'While we believe that the general concerns about 'Framework' Measures remain valid (and while we note the considerable amount of time that has elapsed since the Measure was passed), we are content that consultation in respect of these draft Regulations has in our view been thorough, inclusive and responsive to concerns raised during it.'

The flaw that arises today is that the regulations before us, although technically correct, delay the implementation of some aspects of the original regulations, that is, those that are to do with cross-border problems. That suggests that there was insufficient consultation with the national health service in other parts of the United Kingdom before the original regulations were made or they would have set an appropriate date in that case.

Therefore, I draw that to the committee's attention, as the previous committee commented on the consultation in considering the substantive regulations. It is possible for the committee to make no comment on that and to let the matter pass as a clean technical report and for that to be the end of the matter, or, if you want, we could consider the issue of consultation more thoroughly—there was no opportunity to do so today, as they were only laid two days ago, and the committee papers had already been issued. However, time is available for the committee to consider these further in the first meeting of the autumn term if it wishes to do so.

real issue. There would be some value in looking at whether there should be further consultation.

[14] **David Melding:** Okay, we will follow your suggestion, Gwyn, and look at it during the first meeting next term.

2.21 p.m.

**Offerynau 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**

[15] **David Melding:** As I said earlier, there are no items for us to consider that require reporting to the Assembly.

**Trafod Ymchwiliadau'r Pwyllgor ar gyfer y Dyfodol: Darpariaethau ynghylch
Gweinidogion Cymru yn Neddfau'r DU, Llywodraethu Ystad y Goron yng
Nghymru, Awdurdodaeth Cymru?
Consideration of Future Committee Inquiries: Provisions about Welsh Ministers
in UK Acts, the Governance of the Crown Estate in Wales, a Welsh Jurisdiction?**

[16] **David Melding:** We have three papers in front of us. The immediate inquiry that we hope to commence is on provisions about Welsh Ministers in UK Acts. There is a full note that includes the terms of reference. I would like us to look at the terms of reference in detail, so that we can agree them. We then have some information on the governance of the Crown estate in Wales and a future Welsh jurisdiction. This follows the discussion that we had last week in committee. Perhaps we can first focus on the provisions about Welsh Ministers in UK Acts, because we want to get cracking and call witnesses and evidence. Do Members have any comments on the paper, particularly the terms of reference?

[17] **Antoinette Sandbach:** I suspect that this goes outside the terms of reference, but it relates to some business that went on in the Assembly yesterday in terms of the procedures and Standing Order No. 26. I wonder whether the terms of reference should be amended to include that or whether that would be the subject of a separate inquiry.

[18] **David Melding:** I am not quite following you. Does this relate to the amendments that we voted on yesterday?

[19] **Antoinette Sandbach:** Yes.

[20] **David Melding:** That would not come under the scope of this inquiry. It would be the Business Committee that would commence work on reviewing the current Standing Orders in terms of how they permit scrutiny and whether they are robust enough. This inquiry will particularly focus on the powers that end up with Welsh Ministers and the various triggers that can give them those powers, whether we are content or otherwise with them and whether we want to make recommendations about how that system could better operate.

[21] **Simon Thomas:** Dim ond un cwestiwn sydd gennyf. Er bod yr ymchwiliad hwn yn edrych ar ddarpariaethau ynghylch Gweinidogion Cymru yn Neddfau'r Deyrnas Gyfunol, a yw'n briodol i ni ei ehangu i edrych ar ddarpariaethau cyffredinol a
Simon Thomas: I have only one question. Even though this inquiry is looking at provisions about Welsh Ministers in Acts of the United Kingdom, is it appropriate for us to expand it to look at general provisions made in Measures previously and which will,

wnaethpwyd mewn Mesurau cynt ac a fydd, o bosibl, yn cael eu gwneud mewn Deddfau'r Cynulliad? Er bod yr elfen o graffu yn wahanol—am ein bod yn cael llawer mwy o gyfle i graffu ar y darpariaethau hyn os ydynt wedi cael eu gwneud mewn Mesurau ac os ydynt yn cael eu gwneud yn awr mewn Deddfau yn y Senedd—mae egwyddor o hyd ynghylch faint o ddarpariaethau a ddylai fod, drwy gymalau Harri'r VIII ac ati, yn caniatáu i Weinidogion gwneud rheoliadau heb ddod yn ôl at y Senedd. Mae hynny hefyd yn fater sydd yn cyffwrdd â'r ymchwiliad hwn. A ydym am ei gynnwys fel rhan o'r ymchwiliad neu a ydym am ei wneud wedi i sawl Deddf fynd drwy'n lle hwn fel y gallwn weld beth yw'r patrwm? Yr wyf yn tynnu sylw at hynny fel rhywbeth y gallem edrych arno, naill ai fel rhan o'r ymchwiliad hwn neu yn y tymor hir.

possibly, be made in Acts of the Assembly? Although the scrutiny element is different—as we have much more opportunity to scrutinise these provisions if they have been made in Measures previously and if they will now be made in Acts in the Senedd—there remains the principle of how much provision there should be, through Henry VIII clauses and so on, allowing Ministers to make regulations without coming back to the Senedd. That is also a matter that touches on this inquiry. Do we want to include it as part of the inquiry or do we want to do it after a few Acts have gone through this place so that we can see what the pattern is? I flag that up as something that we could look at, either as part of this inquiry or in the longer term.

[22] **David Melding:** Would the relevant UK Government devolution guidance note cover that point, or does it not cover Henry VIII powers?

[23] **Mr Griffiths:** It would cover Henry VIII powers, but it would not cover powers that are granted by the Assembly to Welsh Ministers.

[24] **David Melding:** Right.

[25] **Julie James:** I can see why the Member brings that up as an issue, but it is a separate issue to that in the paper. The committee could consider that at a later stage, but they are two separate issues. One is how we scrutinise what the UK gives us, and the other is whether the Assembly is doing its job in scrutinising. I see them as two rather distinct issues. I do not have a problem with looking at that at a future date, but I quite like the terms of reference as they are.

[26] **David Melding:** The core principle is that the conduit should be the National Assembly, even if that is done through mechanisms such as Sewel. If Ministers are getting powers over devolved areas, there has to have been a process whereby the Assembly is the primary tap that permits that or not. The question of whether we give Ministers too many powers is an interesting one, but perhaps not one that we want to look at immediately. We are looking at general mechanisms, not Acts only, but whatever else is used currently to pass powers to Ministers.

[27] **Simon Thomas:** Mae cwestiwn am ddatganoli gweinyddol sydd ynghlwm â hynny, onid oes?

Simon Thomas: There is a question on administrative devolution that links in with that, is there not?

[28] **Mr Griffiths:** Oes, a phwerau sydd yn cael eu dirprwyo o dan Ddeddf Cymunedau Ewropeaidd 1972 i Weinidogion i wneud is-ddeddfwriaeth.

Mr Griffiths: Yes, and powers that are delegated under the European Communities Act 1972 to Ministers to make subordinate legislation.

[29] **Julie James:** On that basis, do we need to broaden the first bullet point slightly, or are we being advised that that is good enough? It seems quite specific.

[30] **David Melding:** We need to add ‘and other statutory mechanisms’ or something such as that that would catch everything that is relevant. It is the power being delegated that we want to examine and how the channels operate.

[31] **Julie James:** Other than that, it is the Assembly that we are really after, is it not?

[32] **David Melding:** Yes. So, apart from that, are Members happy with the terms of reference? I see that you are.

[33] There is a list of suggested witnesses; we can add to it as we go along if we feel it necessary. If you have suggestions or if you think that any of those suggested are inappropriate—although I suspect that you will not—or if you want to add organisations or, in exceptional circumstances, individuals, now is the time to say so.

[34] **Simon Thomas:** Un person amlwg—nid wyf yn siŵr a yw yn y swydd o hyd—yw Gallagher, sef y person a oedd yn gyfrifol am y nodiadau cyfarwyddyd datganoli a’r berthynas rhwng y gwledydd datganoledig. Nid wyf yn siŵr ai ef sydd yn dal yn y swydd yn Swyddfa’r Cabinet. Fodd bynnag, dylem geisio cael rhywun fel hynny i ddod i’r pwyllgor.

Simon Thomas: One obvious person—I am not sure whether he is still in post—is Gallagher, who was responsible for the devolution guidance notes and the relationship between the devolved countries. I am not sure whether he is still in post in the Cabinet Office. However, we should attempt to get someone of that sort to come to the committee.

[35] **David Melding:** It is Jim Gallagher, I think. He is no longer in post. I suggest that the initial course of action should be to ask for written evidence from some of those people at least. I will ask the secretariat how it feels that that could be structured. We will want to take oral evidence from some people in committee, and we can start to schedule that work. That suggestion has been noted, and we will follow that up.

[36] **Julie James:** Cardiff University and Swansea University—there might be a university in north Wales that does this as well, but I do not know—run modules on devolution in their politics courses. I think that it would be good to talk to a Wales-based professor or lecturer.

[37] **David Melding:** Someone might come from the Wales Governance Centre, I suspect. That would probably cover that.

[38] **Julie James:** It is just that the senior lecturer mentioned is in Aberdeen.

[39] **David Melding:** Right. Also, the Hywel Dda Institute is based in Swansea.

[40] **Julie James:** I know that that is the—

2.30 p.m.

[41] **David Melding:** If we feel, as the inquiry goes on, that there is something that we are not catching, we will have time to see whether there are any other witnesses that we can bring in. However, we need to be fairly focused, because I hope to do most of this work in the first part of next term, with a clear intention to issue a report by the end of the autumn term. We will probably want to start the next inquiry towards the end of the autumn term as well. So, that is the way that the rhythm of the work is likely to proceed.

[42] **Eluned Parrott:** On a point of balance, looking across the devolved nations, we have in our list of possible witnesses Scottish academics and the two Welsh university research

centres, and it might be useful, in the first instance, to get written evidence from people who have studied all of the devolved nations. It might also be useful to look to Northern Ireland to see what its experience has been.

[43] **David Melding:** Yes, it would be good to identify sources of best practice where other jurisdictions have slightly different or radically different methods to ensure that the number of powers, or the route to the powers, is more tightly regulated.

[44] **Antoinette Sandbach:** I would like the Bar Council to be added to the list.

[45] **David Melding:** Okay. Does the secretariat have any suggestions about who could be early oral witnesses for the first few meetings, because I suspect that we will want to meet with some of these organisations?

[46] **Mr Griffiths:** I suppose that it depends on whether you want someone with answers or someone with questions to start with.

[47] **David Melding:** That is very profound. [*Laughter.*]

[48] **Mr Griffiths:** If you want the questions, then I would start with the academics, but if you want the answers, then I would go to the politicians.

[49] **Simon Thomas:** It is usually the other way around. [*Laughter.*]

[50] **David Melding:** I think that, after receiving written evidence from the Hywel Dda Institute and the Wales Governance Centre, is very unlikely that we would want to do anything other than ask them in. So, I suggest that we see whether they are in a position to come in, as well as University College London's constitution unit and possibly the Hansard Society. I have added the name of Alan Trench; I do not know whether he is still based at the constitution unit, but I would like to take evidence from him. So, we will start with that group. We will also probably want to meet with the Bar Council and the Law Society, but perhaps we should wait until we have had their written evidence. Similarly, we are not quite sure about the availability of people such as Dr Paul Cairney. I expect that we will take some of this oral evidence via video link. It would be quite reasonable to offer that to someone based in Scotland or from the House of Lords committee. I think that we have enough to get going there.

[51] I just want to note that the governance of the Crown estate inquiry is likely to commence in the second half of the term. It is just a scoping paper at the moment, so we do not need to agree anything further at this stage. However, it is for you to note, and if you want to come back with comments then you can either make them now or submit a note to the secretariat as to whether we are going along the right lines of what we want to look at.

[52] **Simon Thomas:** Hoffwn ofyn cwestiwn cyffredinol ynglŷn â'r ffordd yr ydym yn mynd i ddelio gydag ymchwiliadau. Mae posibilrwydd o ddechrau ymchwiliad newydd tra'n bod hanner ffordd drwy un arall, onid oes? Nid oes rhaid gorffen a chyhoeddi adroddiad cyn dechrau un arall. Mae modd i ni fod yn hyblyg.

Simon Thomas: I would like to ask a general question about how we will deal with inquiries. There is the possibility of starting a new inquiry while we are half way through another, is there not? We do not have to finish and publish a report before starting another. We can be flexible.

[53] **David Melding:** Yes, but I do not think that we want to be racing on with two or three inquiries that are more or less at the same stage.

[54] **Simon Thomas:** Yes, but, as we get to the end of one, we can start another.

[55] **David Melding:** That is right. We will want to move to the next one and, by the time that we look to report, we may want to come back to tweak the drafts and so on. We just do not want to have a meeting that decides that we want another week's reflection on the paper; we would also want to be working on the next inquiry when we meet. It is definitely how I anticipate that we will want to work. I will be guided by Members in practice, obviously, but I am sure that that is how we will want to work.

[56] Finally, I wish to note that, on the issue of a Welsh jurisdiction, we are just sketching out some of the issues at present. It is my expectation that we would look to start that work in the new year. It is fair to say that it is already running; it is an important issue already. However, we were thinking that that would allow us to see some of the initial practices in the fourth Assembly now that we are a full parliament. We could also capture a bit more evidence by giving the outside community and the legal profession, which are clearly thinking about this, a bit more time to develop some of their ideas. Then it would be timely, in the new year, to start conducting our work.

[57] **Eluned Parrott:** May I clarify whether you mean the new year in January or the new Assembly year in September?

[58] **David Melding:** I think that we would be looking to start something on a Welsh jurisdiction in the spring term, which will start in January. I would imagine that we would be starting to move into that work in the second half of that term. Is that okay? Are we happy? I see that we are.

[59] To conclude, we are happy with the terms of reference for the inquiry on provisions about Welsh Ministers in UK Acts, with the slight amendment that we made, and the list of witnesses. If other names or organisations come up, please let us know as soon as possible. We have taken note of the papers on the governance of the Crown estate and a Welsh jurisdiction. Any comments that you wish to make on them will be fine. In due course, we will move to agree the terms of reference for those inquiries.

2.37 p.m.

Gohebiaeth y Pwyllgor Committee Correspondence

[60] **David Melding:** We have had a response from Leighton Andrews, which is slightly defensive, but it is there for us to note. Do Members have any comments? I see that you do not. Do officials have any comments? I see that you do not.

[61] **Simon Thomas:** It is on the record now.

[62] **David Melding:** Yes, indeed.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[63] **David Melding:** The next meeting will be held on Monday, 19 September. The time and place is to be confirmed. I say 'place', but it will be in the National Assembly building. It is the committee room that is to be confirmed.

[64] I wish everyone a pleasant summer recess, and I will see you in the autumn term.

That concludes proceedings for this afternoon.

Daeth y cyfarfod i ben am 2.38 p.m.
The meeting ended at 2.38 p.m.