



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

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

Dydd Llun, 17 Mawrth 2014
Monday, 17 March 2014

Cynnwys **Contents**

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

Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reol
Sefydlog 21.2 na 21.3
Instruments that Raise no Reporting Issues under Standing Order 21.2 or 21.3

Papurau i'w Nodi
Papers to Note

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi 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**

Jocelyn Davies

Plaid Cymru (yn dirprwyo ar ran Simon Thomas)
The Party of Wales (substitute for Simon Thomas)

Suzy Davies

Ceidwadwyr Cymreig
Welsh Conservatives

Julie James

Llafur

Labour

David Melding Y Dirprwy Lywydd a Chadeirydd y Pwyllgor
The Deputy Presiding Officer and Committee Chair
Eluned Parrott Democrataid Rhyddfrydol Cymru
Welsh Liberal Democrats

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
Dr Alys Thomas Y Gwasanaeth Ymchwil
Research Service
Gareth Williams Clerc
Clerc

Dechreuodd y cyfarfod am 14:30.
The meeting began at 14:30.

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

[1] **David Melding:** Good afternoon and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I have apologies from Simon Thomas, and I am very pleased to welcome Jocelyn Davies to our meeting this afternoon. Jocelyn has sat in many times and is familiar with our work. You are most welcome, Jocelyn. I am also very pleased to inform Members that there is a delegation visiting from the Provincial Assembly of the Punjab. They are here with the Westminster Foundation for Democracy and are observing some of our proceedings. The Punjab has Pakistan's largest province in terms of population, so it is not very similar to us in that respect, but we hope that the delegation enjoys its programme here.

14:31

Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o
dan Reol Sefydlog 21.2 na 21.3
Instruments that Raise no Reporting Issues under Standing Order 21.2 or 21.3

[2] **David Melding:** We move to item 2 and the instruments that raise no reporting issues. They are, however, listed, should Members have any issues. Are Members content? I see that you are. Is there a report?

[3] **Mr Williams:** There is an affirmative resolution.

[4] **David Melding:** So, there is an affirmative resolution in the list. I just emphasise that point.

14:32

**Papurau i'w Nodi
Papers to Note**

[5] **David Melding:** We move on to papers to note. We have had a response from Alun Davies, the Minister for environment. It is a sort of steady-as-we-go until they take forward their intentions with the Bill. I am not sure that we need to do anything further than just note the exchange of correspondence that we have had with him. Are Members happy?

[6] **Suzy Davies:** Will we write again, perhaps when we are a little clearer about the intention of the Bill?

[7] **David Melding:** When the Bill is published, that will be the time to interact once again, I suspect.

[8] **Suzy Davies:** Okay.

[9] **David Melding:** Then we have a letter and memorandum from the First Minister relating to disqualification from membership of the National Assembly for Wales. Now we have seen the memorandum, and you know the terms of our inquiry, I think our terms of reference reflect the issues that the First Minister raises or the Government refers to in the memorandum. I also consider this memorandum to be very helpful. It clearly wants us to do a serious bit of work and gives us the maximum room for manoeuvre, so I find this particularly welcome. Do any Members want to make comments on this and how it might affect our intentions in this inquiry? As I said, I think it reflects more or less the sort of concerns that we have already raised in planning the inquiry. We will go to Jocelyn first, then Julie.

[10] **Jocelyn Davies:** I have just one or two comments, because it did occur to me when I was reading this that, obviously, there are international comparators that we should consider looking at, to see what happens elsewhere, and whether people are prevented from standing in elections, or which way around things are. It just occurred to me, in relation to the term 'disqualification'—that is, disqualification from what? Is it from continuing with your employment? I know some people just lose salary for the election period but can go back to their job afterwards if they are unsuccessful in the elections. It seems that some people then risk losing their job completely. It seems to me that, if we are trying to serve democracy, and from what this memorandum says, we want the biggest pool of people to be able to stand if they choose to do so. I think that is a good starting point, is it not: what people's actual experiences are?

[11] As regards the last election, there is reference to the fact that this affected some Members who were here. I do not think that anybody would deliberately set out to defeat themselves—very serious candidates—in taking up their positions here. However, when I went to speak to my new Members after we had discovered what had happened, it occurred to me in conversations with them that only one, I felt, from their reaction was familiar with that Order and the list. So, I think it was perhaps by luck more than judgment that more people had not been affected by this in the past. If you come from a local government background, you may be sitting on a whole host of outside bodies, and so on, and it could affect—. We would not want to deter people or catch them out, because I do not think that anyone would deliberately set out to do that.

[12] **David Melding:** I think that it is very important that we get that range of evidence, because knowledge of the disqualification Order I do not think was very extensive. I suppose that our likely recommendations will shape how important we think some of these issues are, because should we, for instance, conclude that a Member has a week after election to resign from any disqualifying office, or that you are deemed to have resigned from anything that

would disqualify you by being elected, there are mechanisms that could make this system quite a lot smoother, which would negate the need to be too prescriptive or concerned about how we publicise everything and try to resolve issues by ensuring that no-one is caught unawares, as it were.

[13] **Julie James:** Following on from that point, almost everybody who is affected by this is employed in the public sector or engaged in the public sector in some way. The rules for almost all of those public sector bodies are set out by the Assembly. I know that there are some exceptions to that where the UK Government sets the rules, but a lot of them are set out by the Assembly. So, perhaps we could also look to see whether we have inequities in that system and things which discourage people from standing for office for no effective reason. For example, why should a politically restricted employee of the Commission, the Assembly, a local authority or a health board not all be covered by the same set of rules? The purpose of those rules is to prevent you from holding political office to the detriment of your public sector duties, but why should that rule be stricter in some areas of the public sector than others? So, I think we could make some comments on that, if we can get the research on it.

[14] **David Melding:** I think that that is likely to be a key area in our consistency; there is a lot of ad hocery in the current approaches.

[15] **Julie James:** Indeed. The other point, which I think you started to touch on, is this issue of when exactly you are expected to resign. If it is on election, you could have an automatic resignation point, but if it is on nomination, that would be much more difficult. If it is, as I think some of them are, on seeking selection or selection by political party, which discriminates against people who are seeking party nominations as opposed to standing as independents, that is another set of rules. So, I think that there are some complexities here, Chair.

[16] **David Melding:** There are. The comments have framed the question very nicely.

[17] **Suzy Davies:** My point is related a little bit to what we discussed at the last meeting. It is to do with similarities between the rules here and in other parts of the UK. National parks are a good example of how things are different in England compared with Wales, to Wales's detriment. Are we expecting a response from the Secretary of State? I notice that the First Minister had written to him to inform him that we were doing this, but I could not tell whether he was anticipating a reply or if it was just a notification.

[18] **David Melding:** Have we written to the Secretary of State inviting written evidence?

[19] **Mr Williams:** We can.

[20] **David Melding:** We can do that.

[21] **Suzy Davies:** It is not a suggestion; I was just curious, as he had been informed, whether he was keeping a watching brief.

[22] **David Melding:** I think, looking at international practice, or at a lot of countries, especially in the Commonwealth, with similar parliamentary systems to ours, we might find that the general position is that, by being elected, you are deemed to have resigned from anything that would have disqualified you. If that is the practice in lots of places, we might suggest that we ought to follow that because it is the quickest way to resolve these potentially quite—

[23] **Suzy Davies:** They have been caught out, have they not?

[24] **David Melding:** It had a huge effect on the Members affected, obviously.

[25] **Julie James:** Just on that point, I think that most of the UK legislation, which is the only thing that I am familiar with, is intended to bar you from nomination, because the point is that you ought not to be politically campaigning while holding a public office in which you should be politically neutral. So, I think that the disqualifications actually are deliberately intended to start from nomination, and that is why, in some cases, they are from selection, because you are deemed to be holding political office at that point and then the disqualification kicks in.

[26] **David Melding:** Again, I think that, as the First Minister hints, if that is the reasoning behind disqualification, we may say that it should apply only to relatively few positions, because excluding people completely from the political process is a real issue.

[27] **Julie James:** If you would not mind my giving you an example, because it pertains to myself, eight years before I stood for office—just so everybody is clear how long ago it was—I was the returning officer for the City and County of Swansea, I do not think that anybody would be very happy if I had been selected as a party candidate and then run an election and had to resign as the returning officer only after I was elected. It is a clear nonsense, is it not?

[28] **David Melding:** If one of the commissioners was selected and then there was a year to go before the election, clearly, that would not be a sustainable position.

[29] **Julie James:** There are some positions in which it is absolutely clear, but then, on the other hand, to give you the opposite example, a lowly committee clerk, as somebody who does not give advice to the committee but is merely part of the administrative—very important administrative—part of the committee, is also barred, because they are in the same political category as a returning officer. So, it seems to me that there are some inequities in that and that is because, at the moment, in local government anyway, it is done on a salary bar and not on a position bar. You can apply to be removed from a position, but almost nobody does. So, there are some nuances in this that I think it would be nice to have a look at and to flesh out.

[30] **David Melding:** Okay, I think that all of this will be captured. I do not think that I have heard anything that we will not be looking at and, potentially, be receiving evidence on. Gareth, is there any indication of when our first evidence session might be, or do you have anything to add?

[31] **Mr Williams:** Our first evidence session is likely to be on 28 April, so that is the first week back after the Easter recess.

[32] **David Melding:** We have got pretty much until the end of the summer term, do we not? So, I suspect that, by the time we have seen the written evidence, there may be one or two witnesses whom we will want to bring in, but I am not sure that there will be dozens, if I can put it that way.

[33] **Julie James:** I am sorry if I should know this, but do we have a list of proposed witnesses at the moment?

[34] **David Melding:** We have identified two that probably will give evidence—

[35] **Mr Williams:** Then we were going to wait until we had the consultation responses in to choose someone on the basis of—

[36] **David Melding:** We are at liberty to say which two we are likely to hear from, are we?

[37] **Mr Williams:** Yes—the Electoral Commission and the Electoral Reform Society.

[38] **Julie James:** Might I suggest that you actively seek a response from the local government monitoring officers group, because that is the professional association for the chief legal officers for all local authorities and, obviously, it is one of the organisations most affected by this? They are the people who impose the rules that I have just been discussing.

[39] **David Melding:** That is helpful. Is there anything else? I see that there is not. That concludes business for today, which was a very short meeting to compensate for lots of long ones that we have had this term. Thank you very much.

*Daeth y cyfarfod i ben am 14:44.
The meeting ended at 14:44.*