



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

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

Dydd Llun, 22 Medi 2014
Monday, 22 September 2014

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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

Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
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

Eraill yn bresennol
Others in attendance

Duncan Higgitt	Staff Cynorthwyol Aelod Cynulliad, Plaid Cymru Assembly Member Support Staff, Plaid Cymru
Bethan Jenkins	Aelod Cynulliad, Plaid Cymru, Aelod yn gyfrifol am y Bil Assembly Member, Plaid Cymru, Member in charge of the Bill
Matthew Richards	Uwch-gynghorydd Cyfreithiol, Comisiwn Cynulliad Senior Legal Adviser, Assembly Commission

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Clerc Clerk
Francesca Rowley	Dirprwy Glerc Deputy Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 14:05.
The meeting began at 14:05.

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. I have an apology from Julie James and I understand that Alun Davies will be along to substitute this afternoon. I say to Members and visitors today that we do not expect a routine fire drill. If we hear the fire alarm, please follow the instructions of the ushers, who will help us to leave the building safely. 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. Please switch any mobile device onto silent.

14:06

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:** These are listed. Are Members content? I see that you are.

Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under Standing Order 21.2 or 21.3

[3] **David Melding:** Item 3 is on instruments that do raise reporting issues. Again, they are listed. Are there any queries on our reports? I see that there are not. Thank you; we approve those.

Papur i'w Nodi
Paper to Note

[4] **David Melding:** Item 4 is a paper to note. It is correspondence regarding the Children's Commissioner for Wales review. Can I suggest to Members that we are likely to want to make some sort of response and that we consider this in our private session following this meeting? Do we agree to do that? I see that we do.

Tystiolaeth mewn perthynas â'r Bil Addysg a Chynhwysiant Ariannol (Cymru)
Evidence in relation to the Financial Education and Inclusion (Wales) Bill

[5] **David Melding:** We come on then to the Financial Education and Inclusion (Wales) Bill and I am pleased to welcome Bethan Jenkins, who is the Member in charge of this. Bethan, do you want to introduce the team that is with you this afternoon?

[6] **Bethan Jenkins:** Yes. On my right, I have Matthew Richards, who is the lawyer on the team, and Duncan Higgitt, who works with me in my office and who has been doing a lot of the work on this Bill.

[7] **David Melding:** Welcome all. We will now put a series of questions to you on the Bill and its structure, and I will just start by asking the initial question, which is always the same. Are you content that all sections of the Bill are within competence?

[8] **Bethan Jenkins:** Yes. We have had advice from many quarters, but obviously this has been accepted by the Presiding Officer as being within competence and so we have exercised all manners of making sure that it is within competence.

[9] **Suzy Davies:** Hello, Bethan. Just to stick with this question of competence for a moment, you said that you had spoken to people in a number of quarters—obviously, we have the Presiding Officer's view there—could you give us an indication, apart from your own legal advice, about who you might have spoken to this about this, to give us just a rough idea?

[10] **Bethan Jenkins:** We have spoken to people in terms of the consultation that we have had—the widespread consultation that I initiated, not only the formal consultation, but one that I did via my office. We have also had external teams go out to summer fairs and so forth, so that would have been something that those people would have commented on. With regard to competence, obviously they were part of the very early discussions. As you will see from the explanatory memorandum, I was looking at issues such as cold-calling zones and many

councils, such as Swansea, had come to me saying that they wanted to limit the amount of betting shops on their street corners. We took advice then from the drafting lawyer. Obviously, we could not delve into those areas, and that is why, as you will question later, I presume, that we wanted to put within the financial inclusion strategies some of those core elements, if only to educate people about what they could do and to empower them to be able to choose the right resources or the right educational tools, because we do not have powers over the financial sector in Wales.

[11] **Suzy Davies:** Thank you for that. So, the issue of competence, because of the financial nature of some of this, was brought to your attention by some consultees. Did any in particular talk about section 12? I know that it is something that we raised with you in another committee here and I wondered if you had had a chance to look at it. This is the section that says that if councils are not of a mind that there is reasonable access to financial advice and management advice—I cannot remember the exact words, I am afraid—they would offer this advice themselves. You will remember that I raised a question with you then whether that was in competence, bearing in mind that financial services are not devolved and are already heavily regulated.

[12] **Bethan Jenkins:** Obviously the issue that you raised with regard to the listing of potential organisations on the website is something that we are looking into and we have committed to do for the other committee. However, with regard to competence, the advice that I have had is that this provision relates to the powers and the duties of local authorities, and their members' officers. So, when we talk about financial management, that means the use of financial services, and managing debt—it would not touch on the financial sector in any way. So, that is the advice that we have had.

[13] **Suzy Davies:** So, that is section 12(2), which specifically says that the council will offer that itself. You have examined that to be certain that it does not—perhaps inadvertently—wander over the line of financial services, as opposed to saying, 'Here's a list of local providers'.

[14] **Bethan Jenkins:** Well, that is the advice that I have had. I do not know whether you want to expand on that any more than I already have, Matthew.

[15] **Mr Richards:** If I may, Chair, I do not think that I can add a great deal to what Bethan has said. The provision in 12(2) does not impose—in fact, none of the provisions in the Bill impose—any duties on financial institutions, and neither does it give them any powers. As Bethan has said, the provision is really about educating people to understand what financial services are out there. It is not about promoting those financial services; it is about promoting an understanding of them. So, our view is that the Bill is concerned with the powers and the duties of local authorities, rather than financial institutions.

[16] **Suzy Davies:** I understand why you would say that it is in competence, but it is this dividing line about it being fine to impose a duty or indeed to give a power to a local authority to do certain things, but you cannot give them the power, or the duty, to do something that is outside competence on another score, and as financial services—. This is what I am hoping you will explain to me: the difference between financial management and advice, and financial services.

[17] **Bethan Jenkins:** On financial management, as I put that in the Bill, the definition that I have used includes, and I quote: 'using financial services and managing debt'. We have looked at examples in other countries of the definitions that we have used—they have not just been plucked out of the air.

[18] **Suzy Davies:** Have you looked at the definitions in the various financial services

Acts though, to make sure that you are not—. I do not want to labour the point, Chair, but this is quite an important one, that a really good intention could be undermined by this, inadvertently.

[19] **David Melding:** We have a fairly clear answer that all this is constructed with the local authority in mind, which, obviously, has an educative function and duty, and it has general economic wellbeing functions, as I understand, to promote economic vitality, in particular, in its area. On anything that would impose a duty or a power on a financial institution, which would be beyond competence, presumably, I think that the Member has already indicated that that is not—

[20] **Suzy Davies:** That is not what I am talking about. I am talking about a local authority itself giving financial advice, and I think that there is a line that needs checking there.

[21] **Bethan Jenkins:** Well, we can provide you with a note, but I would not say that they would be giving—. I know what you mean. In section 12, we say:

[22] ‘(a) include on its website information about where to obtain advice about financial management; and

[23] (b) provide that information on request.’

[24] But it would not be about—

[25] **Suzy Davies:** Well, it is 12(2) specifically—the one that says that it would do it itself if it was not minded—. I mean, it may just be a little light tinkering with drafting to completely keep yourself safe on that.

[26] **Bethan Jenkins:** I think that, as I said to you earlier, obviously you think that we should go a step further, but when we said in the Bill that we would consult with experts, and that that would go out to general consultation, we would think that the local authorities would be able to cover that issue by consulting widely. There would not be any duties on anybody else apart from the local authority.

[27] **Suzy Davies:** This committee is about the sort of specifics of drafting, really, to make sure that things are 100% clear, rather than the policy intention. But if you are happy that I have covered everything, Chair—

[28] **Bethan Jenkins:** Okay. Well, we can look into it further; I am not against that—it is fine. We can look into it, and provide a note, can we not?

[29] **Mr Richards:** Yes.

[30] **Suzy Davies:** That is fine; lovely. Thank you very much.

[31] **David Melding:** Okay. Are there any further questions, Suzy?

[32] **Suzy Davies:** No, that is fine on that, thank you.

[33] **David Melding:** Okay. Eluned has the next questions.

[34] **Eluned Parrott:** Thank you, Chair. Bethan, I think that there has been a lot of support for the general intention of the policy in this direction, but can you explain to us why you believe that primary legislation was the most appropriate way forward to deliver this?

[35] **Bethan Jenkins:** Thank you for the question. I think that what we would say is that it is an important core life skill, so that is the reason why it needs to be in primary legislation. It also needs to be in primary legislation because we do not want it just to be at a whim of a Government, in terms of when they decide that something is in trend or is not in trend. At the moment, the Programme for International Student Assessment is the talk of the day, but we do not want it just to be about the here and now—we want to enshrine financial education and inclusion for future generations. Also, we have talked to quite a lot of businesses—Duncan was meeting with the Federation of Small Businesses last week—with regard to the skills that are necessary for future generations. We are finding that young people do not have those skills, so we want to make sure that the Bill has a backbone for those young people as they grow up.

14:15

[36] The last thing that I would say is that, when I spoke to the Organisation for Economic Co-operation and Development—we referred to it in the other committee—it said that this would be showing a world lead in enshrining this in primary legislation. Yes, there are different ways of doing it. Yes, different countries legislate in different ways. However, this would be showing the way. As opposed to always looking at other countries and thinking, ‘Where can we pick up on what they are doing?’, perhaps Wales could be the first in the world in this regard. That is what I would say, in terms of why we need the legislation.

[37] **Eluned Parrott:** Thank you. You will be aware, though, that the Welsh Government’s response has been that it believes that the policy intentions could be delivered with existing legislation, for example, the Local Government Act 2000, which could be used to require local authorities to promote financial inclusion strategies. Why do you feel that the existing legislation that is available to us to use is not adequate to deliver this particular agenda?

[38] **Bethan Jenkins:** At the moment, we are seeing wide variation, not only in the local authorities and their financial inclusion strategies, or lack thereof—I think that only one has a strategy—but on the education side, where there is huge variation in how it is delivered at the moment, from some schools having 260 hours in financial education to others having two hours. Yes, you reference the Local Government Act 2000, but if that were working, and if the Minister says that that is the vehicle for it, then why is the Minister not using those powers now?

[39] At the moment, we have not had an update since 2010 on the Government’s financial inclusion strategy. There is no way of knowing how local authorities are acting, apart from the consultation that we had. Unfortunately, bodies like the WLGA did not see fit to respond. So, if it is not a priority now under the current system, why should I rely on the Government to say that it will change in future? I think that it needs to have primary legislation, because we cannot just assume that things will change under ministerial guidance or the current Act, which is very broad. It does not mention financial inclusion in any way; it mentions wellbeing and so forth, but it does not mention financial inclusion.

[40] **Eluned Parrott:** However, there are a number of different Acts that we are talking about here, because you have several prongs in terms of your policy intention; it is not just, for example, an education prong. Of course, there is broader societal education as well, if you like. Do you not think that this is, perhaps, over-egging the pudding to be going for legislation in an area where, for example, we could set, if it is school education that you are primarily concerned, strategies and guidance through the existing legislation that will deliver the things that you want? Is this, perhaps, overdoing it?

[41] **Bethan Jenkins:** I do not think that it is overdoing it, because we are making sure

that it is there, that it is strong, that it is robust and that it is locked in for future generations. At the moment—for example, on the educational front—any changes are made through subordinate legislation. While there is some element of scrutiny via the lawyers on committee, not all of that would be coming to committee for you, as Assembly Members, to see. At the moment, the Government is not making any moves to make this a priority. It says that it could issue guidance and do things in this area, but it is not. Primary legislation will make sure that it happens and that it has to happen. The Bill has checks and balances in place to make sure that it does.

[42] I wanted to have one place for it, really, because I know what you say in terms of the fact that there are other wider societal benefits. However, at least if there is one place for financial education enshrined in primary law, then we all know where we are at. We are having a debate at the moment about the laws and powers that we have as an Assembly. We need people to understand laws, and I think that this law would provide that very simple way for people to understand what rights they have in terms of accessing financial education and inclusion.

[43] **Eluned Parrott:** In the drafting of your law, what efforts have you made to ensure that you are consolidating rather than duplicating?

[44] **Bethan Jenkins:** We had discussions, as I said on the other committee, about whether you would make it a standalone subject or whether you would do it in other ways. We have chosen to go down this way of being hands-off in terms of delivery and content; it is about enshrining it in law to make sure that that backbone—I keep using that word, but that is what it is—is there. That is why I thought that that would be the most effective way of doing it. I do not really understand—perhaps you would want to ask the Minister about this—the duplication conflict argument. I think that it just provides a way of it moving forward, and then that would come on top of it. So, Donaldson and any review of numeracy GCSE would sit on top of what I am proposing as opposed to muddying the waters in any way.

[45] **Eluned Parrott:** Okay, thank you.

[46] **David Melding:** The Minister says that the policy intentions of your Bill, as drafted, do not convey the policy intentions in the explanatory memorandum, or rather the Bill as drafted does not convey the policy intentions in the explanatory memorandum. What is your response to that?

[47] **Bethan Jenkins:** Well, I do not understand that, if I am honest. We spent a lot of time writing up the explanatory memorandum, to make sure that it was detailed and effective, and that people who were not Assembly Members could understand it. We outlined why it was needed, because many people in our communities are struggling in relation to accessing services and are in huge amounts of debt. We also mentioned in the explanatory memorandum what we could not do, because we do not have the powers in terms of the financial sector. If you would like to ask the Minister—because we see some explanatory memoranda from the Government and they are not as detailed as what we have tried to do. We think that the Bill is clear, short and concise, and we think it marries up with the explanatory memorandum, so we are a bit confused.

[48] **David Melding:** We will have a chance to speak to the Minister in due course. The Minister also says that the powers under section 9(2), for guidance, are too wide. Again, I wonder how you react to that observation that the Minister has made.

[49] **Bethan Jenkins:** Well, I think it is a bit odd to hear that argument. We are not saying that they have to issue guidance, as it depends whether the local authority seeks that guidance, and that is why we wrote it in that way. Also, we want to make sure that the local authorities

concerned would be able to seek guidance if they so wished, and so I would argue that it would not be a problem. Matthew, I do not know if you have anything to add?

[50] **Mr Richards:** Only that the provision in relation to guidance under section 10 is fairly widely drawn in order to give Ministers discretion. Ministers obviously have powers to issue guidance in a way that is similarly widely drawn under all sorts of other items of legislation, so I do not think that this power is particularly unusual.

[51] **David Melding:** I am slightly confused—we are talking about section 9(2) in the first instance, and then the Minister says that, under section 10, the powers to draft guidance are unnecessary.

[52] **Bethan Jenkins:** Well, we do not think it is unnecessary. As I said, the Minister may wish to put forward guidance if the local authority needs it. It is a general power; it is not specific.

[53] **David Melding:** So, on the one hand, there is too much scope for guidance, and then on the other hand, whether it is necessary or not. So, as far as you are concerned, both approaches are appropriate to what you are seeking to do in the Bill?

[54] **Mr Richards:** May I just add a word there? Obviously, there is no obligation under this Bill to issue guidance; if the Minister thinks that that power is unnecessary, the Minister does not have to issue it. It is simply a method of futureproofing the Bill.

[55] **David Melding:** May I just ask, finally for the moment, what it is that you are seeking to do in this Bill? Is it to strengthen legislation by increasing the duties on local authorities, rather than leaving them with lots of powers? What was your motivation? Clearly, there is a lot of flexibility in the available legislation to achieve a lot of these objectives.

[56] **Bethan Jenkins:** As I have said before, we need to have more assurance than we have at the moment that it is outcome based, and that is why we have put checks and balances in place with regard to the strategy, changing the strategy and the annual report, so that we can see how progress is made through putting these duties on local authorities. If it were true that the current legislation was working, I would not be sitting here today, asking for this Bill to go forward, as I would be satisfied with the progress that is being made.

[57] **David Melding:** So, I am right in assuming that one of the key things that this Bill would do is translate quite a lot of existing powers into duties. Is that a simplification or would that be the gist of a lot of the intention here?

[58] **Mr Richards:** What the Bill will do, certainly in terms of financial education, is that it will not turn it into a duty on the Minister, but it will put the requirement to teach financial education on the face of primary legislation. In terms of the financial inclusion strategies, as Bethan has said, arguably, there are existing powers under which some of these things could be done, but those powers are very wide. What this Bill would do is specifically—

[59] **David Melding:** But powers are not duties.

[60] **Mr Richards:** No.

[61] **David Melding:** That is what I am trying to nail here in terms of its robustness, because the Member has said that she wanted more backbone in the legislative system, and I am trying to be helpful and trying to see if it is part of the criterion.

[62] **Mr Richards:** Local authorities may do certain things under existing legislation.

Under this Bill, if it is passed, they will be required to do certain things—

[63] **David melding:** Okay. So, we are treating it—

[64] **Mr Richards:** Also, they would be required to do certain things specifically about financial education and financial inclusion.

[65] **Simon Thomas:** I ddilyn y pwynt hwnnw, os wyf wedi deall y Bil yn iawn, y ffordd y bydd hwn yn cael ei orfodi ar awdurdodau lleol, mewn ffordd, yw trwy eu gorfodi i adrodd yn gyson ar y cynnydd yn y maes. A yw hynny'n gywir?

Simon Thomas: To follow up on that point, if I understand the Bill correctly, this will be imposed on local authorities by, in a way, forcing them to report back regularly on progress in this area. Is that correct?

[66] **Bethan Jenkins:** Ydy.

Bethan Jenkins: Yes.

[67] **Simon Thomas:** Felly, mewn ffordd, rydych chi'n crynhoi'r pwerau sydd ganddynt eisoes, achos mae ganddynt y pŵer cyffredinol hwn i weithio er lles y gymuned, onid oes? Felly, rydych chi'n crynhoi y rheini, ond, yn benodol, rydych chi'n dweud wrthynt, 'Mae'n rhaid ichi ddweud wrthym, sef y cyhoedd, neu'r Llywodraeth, beth ydych chi'n ei wneud bob blwyddyn yn y maes hwn'. A yw hynny'n deg o ran y ffordd ymlaen, jest i mi gael deall hynny?

Simon Thomas: So, in a way, you are consolidating the powers that they already have, because they have this general power to operate for the benefit of the community, do they not? So, you are consolidating those powers, but, more specifically, you are saying to them, 'You have to tell us, namely the public or the Government, what you are doing every year in this area'. Is that a fair analysis in terms of the way forward, just so that I understand it?

[68] **Bethan Jenkins:** Ydy.

Bethan Jenkins: Yes.

[69] **Simon Thomas:** Hoffwn symud ymlaen at gwpl o bethau eraill sy'n anarferol yn y Bil hwn. Rydym wedi trafod sawl gwaith yn y Cynulliad y cymal machlud, ond mae gennych gymal gwawr, fel petai, yn y Bil, sy'n gorfodi rhan o'r Bil i ddod i rym beth bynnag y bydd Gweinidogion yn ei wneud. A yw hynny oherwydd nad ydych yn ymddiried mewn Gweinidogion i weithredu Biliau meinciau cefn?

Simon Thomas: I would like to move on to a couple of other things that are unusual in this Bill. We have discussed sunset clauses several times in the Assembly, but you have a sunrise clause, as it were, in your Bill, which would force a part of the Bill to come into force regardless of what Ministers do. Is that because you do not trust Ministers to implement backbench Bills?

[70] **Bethan Jenkins:** Diolch am y cwestiwn, Simon. I fod yn deg, nid yw hyn ynglŷn â Gweinidog penodol. Mae'n ymwneud â'r ffaith ein bod am sicrhau bod hyn yn digwydd, a, beth bynnag yw lliw y Llywodraeth, os yw hyn mewn deddfwriaeth, rydym yn gallu sicrhau ei fod yn digwydd. Yn anffodus, nid yw deddfwriaeth meysydd chwarae Dai Lloyd, a basiwyd sbel yn ôl, yn 2010, o hyd wedi dod i rym. Dim ond yn awr y mae'r Llywodraeth yn ymgynghori ar y rheoliadau, ac nid ydym yn dal i fod yn siŵr pryd fydd hynny'n cael ei weithredu. Mae'n bwysig, pan fydd Aelodau mainc gefn yn cael

Bethan Jenkins: Thank you for the question, Simon. To be fair, this is not about any specific Minister. It relates to the fact that we want to ensure that this actually does happen, and, regardless of the colour of Government, if this is enshrined in legislation, we can ensure that it is enforced. Unfortunately, Dai Lloyd's legislation on playing fields, which was passed a fair while ago, in 2010, still has not been implemented. It is only now that the Government is consulting on the regulations, and we still do not know when that will be implemented. It is important, when backbench Members have the opportunity to

y cyfle i ddod â deddfwriaeth gerbron, fod y ddeddfwriaeth yn cael ei gweithredu. Felly, nid ydym wedi gweld hyn yn cael ei ddefnyddio o'r blaen, ond rwy'n credu ei bod yn iawn i ni osod yr agenda ar gyfer y dyfodol er mwyn sicrhau bod ein Biliau ni yr un mor bwysig i bobl Cymru ag y mae'r rhai a gyflwynir gan y Llywodraeth.

[71] **Simon Thomas:** Rydych chi'n iawn wrth sôn am Filiau—yr un y gwnaethoch chi sôn amdano—ac rwyf i'n cofio'r Mesur am faeth mewn bwyd ysgol, gan yr oedd hwnnw'n hwyr iawn yn cael ei rhoi ar waith hefyd. Wedi dweud hynny—rydym newydd drafod adrannau 9 a 10—dim ond mewn dau fan y mae pŵerau i wneud rheoliadau neu ganllawiau. Nid ydych yn rhoi lot o bwerau disgresiwn i'r Gweinidog, gan fod llawer o'r Bil ar wyneb y Bil, sy'n gwneud y Bil yn hawdd i'w ddeall o leiaf. Felly, a oes wir angen y cymal gwawr? Rwy'n deall y cyddestun, ac, a dweud y gwir, os yw'r Cynulliad yn cymeradwyo'r Bil, mae 95% ohono'n cael ei basio ar y diwrnod y caiff ei gymeradwyo, onid ydyw?

[72] **Bethan Jenkins:** Rwy'n cymryd y pwynt. Rydym wedi rhoi eithaf lot o *safeguards* yn y Bil fel bod y Cynulliad yn cael cymeradwyo'r hyn sy'n digwydd. Eto i gyd, fel rwyf wedi'i ddweud o ran pwysigrwydd addysg a chynhwysiant ariannol, mae'n bwysig bod hyn yn digwydd a'n bod ni'n gweld pobl ifanc yn cael budd o hyn yn y dyfodol, heb orfod aros ac aros. Rwy'n cymryd y pwynt, ond rwy'n dal i weld hwn fel rhywbeth angenrheidiol.

14:30

[73] **Simon Thomas:** Yn yr un ffordd, rydych chi'n rhoi proses—rwy'n credu mai proses negyddol yw hi—graffu i'r Cynulliad ar gyfer Gorchymyn cychwyn y Bil. Rwy'n meddwl bod y pwyllgor hwn wedi gwneud y ddadl honno sawl gwaith yn y gorffennol, a bod yn onest, ond, ai dyna o ble rydych chi wedi cael y cysyniad hwnnw hefyd?

[74] **Bethan Jenkins:** Ie, er mwyn ceisio sicrhau bod y Cynulliad yn cael cymeradwyo'r hyn sy'n digwydd, ond, rwyf wedi clywed yr hyn y mae'r Gweinidog yn ei ddweud hefyd, o ran y system negyddol a

bring forward legislation, that that is implemented. We have not seen this mechanism used in the past, but I think that it is right for us to actually set the agenda for the future in ensuring that our Bills are given just as much prominence in the eyes of the people of Wales as Government Bills.

Simon Thomas: You are right in your reference to legislation—such as the Measure that you spoke about—and I remember that the implementation of the Measure relating to the nutrition of food in schools was very late. Having said that—we have just discussed sections 9 and 10—it is only in two places that there are powers to make regulations or guidance. You are not giving a great many discretionary powers to the Minister, as a lot of the Bill is on the face of the Bill, which makes it very easy to understand at least. So, do you really need the sunrise clause? Even though I understand the context, truth be told, if the Assembly approves the Bill, then 95% of the Bill will be passed on that day that it is approved, will it not?

Bethan Jenkins: Yes, I accept your point. We have placed a number of safeguards in the Bill so that the Assembly gives its approval to this. However, as I have said, in terms of the importance of education and financial inclusion, it is important that it does happen and that we see that young people benefit from this, without having to wait too long for that. I accept your point, but I still think it is necessary.

Simon Thomas: In the same way, I think that it is the negative scrutiny process that you set out for the Assembly for the commencement Order for the Bill. This committee has made that argument several times in the past, but is that where you have had that concept?

Bethan Jenkins: Yes, we wanted to ensure that the Assembly would decide what happens, but I have also heard the Minister's comments, in terms of the negative and affirmative procedures, and I am happy to

chadarnhaol, ac rwy'n hapus i edrych ar newid hynny yn y dyfodol, os na fydd y Gweinidog yn meddwl ei bod yn gwneud synnwyr cael system negyddol. Fodd bynnag, fel rydych chi'n dweud, mae hyn i sicrhau bod y pethau yma'n dod nôl atom ni i'w sgrwtineiddio, yn hytrach na dim ond i'r Gweinidogion.

[75] **Simon Thomas:** Mae'r Gweinidog wedi rhoi tystiolaeth yr ydym wedi ei gweld heddiw, ond, hefyd, rydym ni, fel pwyllgor, wedi argymhell dulliau o gwmpas y Gorchymyn cychwyn sawl gwaith hefyd. Felly, awgrymaf fod hynny yn rhywbeth i chi ei ystyried, i weld ai honno yw'r ffordd fwyaf priodol i'r Bil yma weithio. Yn ogystal, gan eich bod wedi ymateb i'r ffaith bod y Gweinidog wedi rhoi'r dystiolaeth honno, nid wyf yn credu bod gen i gwestiwn, dim ond gosodiad.

[76] **Bethan Jenkins:** Ydy, mae hynny'n iawn. Rwy'n hapus i edrych ar hynny eto.

[77] **David Melding:** I should clarify that we have had a letter from the Minister. The Minister will give oral evidence in a couple of weeks, on 6 October. Suzy wants to come in.

[78] **Suzy Davies:** I will just pick something out of that last answer. Simon is quite right that we talk about these commencement proceedings quite a lot. They may not sound like the most exciting part of a Bill, but they have exercised us a little in the past. I have a couple of questions to ask in particular on 14(3), which is on the possibility of annulling an Order. What is worrying you that would make the Assembly need to look at a commencement Order? What are you scared that the Government might sneak through, basically?

[79] **Bethan Jenkins:** I think that it was more about drafting. I know that your committee has been exercised about these issues. It was about wanting to make sure that it was an effective piece of legislation more than anything. However, Matthew is here to answer the questions on specifics.

[80] **Suzy Davies:** I was just genuinely curious as to whether there was a meeting of minds on this.

[81] **Bethan Jenkins:** That is what it is about. We have committees here for a good reason, and we want to learn from them, and that is why I was trying to be proactive in putting these things through. It was not that I thought that anything would come up that I would be scared of.

[82] **Suzy Davies:** Excellent answer. [*Laughter.*] On the same point, I will ask you about the drafting of this, because I think that there is an element of confusion here, for me anyway. If you read 14(3), it says that

[83] 'A statutory instrument containing an order under section 14(2)(b) is subject to annulment'.

look at changing that, if the Minister feels that it is not appropriate to have it through the negative procedure. However, as you say, we are endeavouring to ensure that these things come back to the Assembly for scrutiny rather than simply going to Ministers.

Simon Thomas: The Minister has given us evidence, and I have seen that today, but, we, as a committee, have recommended methods around that commencement Order several times. Therefore, I suggest that that is something that you do consider, in terms of whether it is more appropriate for this Bill to operate in that way. As you have responded to the fact that the Minister has given evidence, I do not have a specific question, so that is just a suggestion.

Bethan Jenkins: That is fine. I would be more than happy to look at that again.

[84] However, actually, Orders are made under 14(1). I assume that you refer to an Order under 14(2)(b) because the annulment bit is only to relate to incidental, consequential or transitional provisions. You are not trying to introduce a power of annulment for different days for different purposes. Am I right?

[85] **Mr Richards:** Your understanding is right.

[86] **Suzy Davies:** Do you think that the drafting grabs that, or, am I being overly picky?

[87] **Mr Richards:** We would be happy to look at it if the committee thinks that that is something we need to look at. My explanation of this is that 14(1) is the power to make an Order, and an Order under 14(1), which includes incidentals and so on, is subject to scrutiny, by negative procedure in this case. I suppose on reflection, to be crystal clear, that 14(3) could say something like, 'A statutory instrument under section 14(1) containing an Order', et cetera, and that that may add some clarity. If the committee thinks that that is a point of concern, I am sure that Bethan would be happy for us to look at that for future stages of the Bill.

[88] **Suzy Davies:** It is just a drafting issue, rather than it being about policy. So, I am happy with that.

[89] **David Melding:** We have all had sight of the Minister's letter. However, it is important that I put this on record. What sort of co-operation or input have you had with the Welsh Government regarding the drafting and preparation of the Bill?

[90] **Bethan Jenkins:** We have not had discussions with regard to specific drafting. In fact, they did not raise it with me when I had a meeting. However, I only managed to have a meeting relatively recently with the Minister for education, although I met Jeff Cuthbert previously. All the discussions have been more about the policy intentions, and they have never raised any issues with regard to drafting, until now. So, we have drafted it with support from lawyers and those involved in the team that I have been allocated.

[91] **David Melding:** Presumably, the Welsh Government has not offered any drafting advice, up to this stage.

[92] **Bethan Jenkins:** No. Sorry, Simon—. Oh, sorry. I am trying to do the chairing from here.

[93] **David Melding:** Simon, sorry.

[94] **Simon Thomas:** Mae'n anodd gyda dau Gadeirydd. [*Chwerthin.*]

Simon Thomas: It is difficult with two Chairs. [*Laughter.*]

[95] Roeddwn eisiau gofyn, gan eich bod wedi dweud nad yw Llywodraeth Cymru wedi cynnig dim, a ydych wedi gweld deddfwriaeth mewn unrhyw wlad arall sy'n ymdrin â hwn, sydd wedi bod o gymorth wrth ddrafftio hwn neu sy'n rhan o gynnwys hwn? A yw mor wahanol nad oes modd gwneud hynny?

I wanted to ask, since you say that the Welsh Government has not put anything forward, whether you have seen any legislation in any other country that deals with this issue, and which has been of any use in drafting this or which has been incorporated into this? Or, is it so different that you were not able to do that?

[96] **Bethan Jenkins:** Fel rwy'n siŵr dy fod yn gwybod, rydym wedi edrych ar yr hyn y mae gwledydd eraill yn ei wneud. Rydym

Bethan Jenkins: As I am sure you know, we have looked at what is happening in other countries. We have spoken to the OECD

wedi siarad gyda'r OECD am sut mae gwledydd eraill yn gweithredu. Nid ydym wedi edrych ar enghreifftiau, ond maent yn ei wneud mewn ffyrdd gwahanol iawn. Rydym yn gwybod, ar hyn o bryd, nad oes digon o ddata i weld yn sicr beth yw'r ffordd orau. Pan wyf wedi siarad â'r OECD ar lefel bersonol, mae'n dweud bod fy Mil i yn arwain y ffordd. Felly, pam peidio â gweithredu os yw mor amrywiol ar draws Cymru? Rhaid inni sicrhau bod un ffordd o wneud hyn. Felly, yr ateb yw 'Ddim yn benodol', ond rydym wedi cymryd darnau o wybodaeth o wledydd gwahanol mewn ffyrdd gwahanol.

about how other countries operate in this area. We have not looked at specific examples, but there is a great divergence in terms of the approach. We know, at present, that we do not have sufficient data to see for certain what the best approach is. When I have spoken to the OECD on a personal level, I was told that my Bill is leading the way. So, why not act if there is so much divergence in approach across Wales? We have to ensure that there is a single approach for the whole of Wales. So, the answer is 'Not specifically', but we have taken elements from different countries in different ways.

[97] **David Melding:** Let us go back on to what I was probing. You said that you had had a couple of meetings with Ministers. Having seen the Minister's letter to us, were any of these points previously raised with you in the discussions you had?

[98] **Bethan Jenkins:** They questioned why primary legislation was needed, and referenced the LNF and the numeracy GCSE, but there was nothing with regard to how it was drafted specifically. I hope to be meeting with the new Minister, Lesley Griffiths, on Wednesday, so, hopefully, we can see—

[99] **David Melding:** There may be a change of heart, who knows?

[100] **Bethan Jenkins:** Who knows? We can but try.

[101] **David Melding:** It obviously set out a long list of its reservations about using this as a legislative vehicle. However, we will form our own judgment. Are there any further questions? Are we content? Well, thank you very much, Bethan, and to your team, for coming in this afternoon.

14:38

Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r Cyfarfod

Motion under Standing Order 17.42 to Resolve to Exclude the Public from the Meeting

[102] **David Melding:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42.

[103] Does any Member object? I do not see any Member objecting, so please clear the public gallery and switch off the broadcasting equipment.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:38.
The public part of the meeting ended at 14:38.*

