



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

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

**Dydd Llun, 28 Tachwedd 2011
Monday, 28 November 2011**

Cynnwys Contents

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

Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reol Sefydlog Rhif 1.2
neu 21.3

Instruments that Raise No Reporting Issues under Standing Orders Nos. 21.2 or 21.3

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

Gohebiaeth y Pwyllgor
Committee Correspondence

Trafod Ymchwiliadau'r Pwyllgor ar gyfer y Dyfodol
Consideration of Future Committee Inquiries

Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi 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

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	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol

National Assembly for Wales officials in attendance

Steve George	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk
Dr Alys Thomas	Gwasanaeth Ymchwil Research Service

*Dechreuodd y cyfarfod am 2.29 p.m.
The meeting began at 2.29 p.m.*

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

[1] **David Melding:** Good afternoon. I welcome everyone to this meeting of the Constitutional and Legislative Affairs Committee. In the event of an emergency please follow the instructions of the ushers, who will help us leave safely. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there is a translation on channel 1. Amplification of proceedings can be accessed via channel 0. Please switch off all electronic equipment as they can interfere with our broadcasting equipment.

2.30 p.m.

**Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reol
Sefydlog Rhif 1.2 neu 21.3**

**Instruments that Raise No Reporting Issues under Standing Orders Nos. 21.2 or
21.3**

[2] **David Melding:** The first one is CLA58, the Substance Misuse (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011. I do not see Members indicating that they have any queries or objections.

**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
Orders Nos. 21.2 or 21.3**

[3] **David Melding:** The first one is CLA57, the Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011. There are some technical points, which Gwyn will elaborate on if they are pressing enough.

[4] **Mr Griffiths:** Pwynt syml yw hwn: mae'r rheoliadau hyn, unwaith eto, yn Saesneg yn unig oherwydd eu bod yn cael eu gosod gerbron Senedd y Deyrnas Unedig. Nid wyf yn credu bod pwynt inni gymryd camau pellach ar hyn o bryd gan eich bod wedi cytuno eisoes y bydd trafodaethau gyda Senedd y DU ynglŷn â hyn.

Mr Griffiths: This is a simple point: the regulations, once again, are in English only because they will be laid before Parliament. I do not think that there is any point in taking further steps at present because you have already agreed that discussions will be held with Parliament on this issue.

[5] **David Melding:** Are Members content with that? We have established our views about current procedures.

[6] The next one is CLA59, the Carers Strategies (Wales) Regulations 2011. We have a merits report, as these are significant regulations—or at least the Carers Strategies (Wales) Measure 2010 is a significant piece of legislation, and we note it for its importance in that respect. Gwyn, you also had a technical point, which I believe has now been addressed, but is there anything that you want to say on the merits, in particular?

[7] **Mr Griffiths:** Na. Yr oedd pwynt technegol ynglŷn â chychwyn y pŵer i wneud y rheoliadau hyn. Mae'r pŵer cychwyn bellach wedi'i ddefnyddio ac felly nid oes pwynt technegol. Mae pwynt yn ymwneud â rhinweddau'r rheoliadau, sef eu bod yn nodi,

Mr Griffiths: No. There was a technical point about commencing the power to make these regulations. The commencement power has now been used and therefore there is no technical point. There is a point relating to the merits of the regulations, which is that they note,

[8] 'Rhaid i strategaeth gael ei chyhoeddi yn Gymraeg ac yn Saesneg oni bai nad yw'n rhesymol ymarferol i wneud hynny.'

'A strategy must be published in English and in Welsh unless it is not reasonably practicable to do so.'

[9] Mae hyn yn mynd yn groes i'r hyn sydd yn Neddf Llywodraeth Cymru 2006 ynglŷn â deddfwriaeth lle mae disgwyliad y bydd pethau yn Gymraeg ac yn Saesneg, a'u bod o statws cyfartal os cânt eu gwneud ar yr un pryd. Mae'r Llywodraeth wedi ymateb ac yn tynnu sylw'r pwyllgor at y ffaith nad yw'r strategaethau hyn yn ddeddfwriaeth. Er hynny, mae'n cytuno â sylw yn yr adroddiad drafft fod angen darpariaethau manwl i baratoi'r strategaethau ac y byddant yn weithredol am gyfnod o dair blynedd. Mae'r Llywodraeth yn cytuno bod yr amgylchiadau

This contravenes what is in the Government of Wales Act 2006 about legislation where there is an expectation that things will be in Welsh and English, and that there will be equality of status if they are made at the same time. The Government has responded and draws the committee's attention to the fact that these strategies are not legislation. However, it agrees with a comment in the draft report that detailed provisions are needed to prepare the strategies and that they will be operational for a period of three years. The Government agrees that circumstances

pan na fyddai'n rhesymol ymarferol i gyhoeddi'r strategaethau yn ddwyieithog yn brin iawn, sy'n codi'r cwestiwn pam mae angen y pwynt yn y rheoliadau o gwbl.

under which it would not be reasonably practicable to publish the strategies bilingually are likely to be very few, which raises the question of why the point is needed in the regulations at all.

[10] **Simon Thomas:** Yr wyf am danlinellu hynny—pam mae angen y geiriad hwnnw? Mae'n rhoi'r argraff bod gwanhau yn digwydd yn y drefn o wneud pethau'n ddwyieithog. Yr ydym ni i gyd yn gwybod bod pob un o'r cyrff hyn yn dod naill ai o dan Fesur y Gymraeg (Cymru) 2011 neu o dan y comisiynydd iaith, pan fydd hi'n dechrau ar ei gwaith. Felly, pam cael y geiriad hwn o gwbl? Nid yw'n ddiffygiol o ran y ddeddfwriaeth ond mae'n anfon neges gwbl anghywir yn y cyd-destun dwyieithog. Mae'n debyg mai sylw gwleidyddol yw hwnnw, ond mae'n rhywbeth inni fod yn ofalus yn ei gylch, fel pwyllgor. Pe bai'r ymadrodd hwn yn cropian i mewn i ddeddfwriaeth, byddem am atal hynny rhag digwydd.

Simon Thomas: I want to emphasise that—why have that wording? It gives the impression that the current system of doing things bilingually is being weakened. We all know that all of these bodies either come under the Welsh Language (Wales) Measure 2011, or under the language commissioner, when she starts her work. Therefore, why include that wording at all? There is no deficiency as far as the legislation is concerned, but it sends the wrong message in the bilingual context. Perhaps that is more of a political point, but it is something for us to be careful about, as a committee. If that expression were to start to creep into legislation, we would want to prevent that from happening.

[11] **David Melding:** I do not think that it is a political point—it is accepted policy that there are two official languages and they are both of equal validity. It is difficult to see why that wording needs to be used. Also, given the nature of the strategies and their preparation, in what circumstances would it be reasonable not to provide them in Welsh? It seems strange.

[12] **Eluned Parrott:** I agree with Simon that it sets a dangerous precedent for similar pieces of legislation in the future and that it is not in the spirit of the bilingual policies to which we all adhere.

[13] **David Melding:** I think that that is how we all feel, so we will draft a letter accordingly and submit that.

[14] **Mr Griffiths:** Mae'r rheoliadau hyn yn ddarostyngedig i'r weithdrefn gadarnhaol ac, felly, bydd cyfle i godi'r pwyntiau yn y drafodaeth yn y Siambr

Mr Griffiths: The regulations are subject to the affirmative procedure and, therefore, there will be an opportunity to raise these points in the debate in the Chamber.

[15] **Simon Thomas:** Hoffwn ofyn cwestiwn i Gwyn ar y pwynt hwn, wedi imi ailddarllen y geiriad. Pe bai rhywun yn mynnu drafftio rhywbeth yn Saesneg yn unig gan ddweud mai drafft yn unig ydyw, gan ddibynnu ar y geiriad hwn, ond bod y comisiynydd iaith newydd yn defnyddio'r Mesur iaith i ddweud bod yn rhaid iddynt ei wneud yn ddwyieithog, a fyddai ganddynt ddadl gyfreithiol? Pa ddeddfwriaeth sydd o'r pwys mwyaf?

Simon Thomas: I would like to ask Gwyn a question on this point, having reread the wording. If someone insisted on drafting something in English only, saying that it was only a draft and they were depending on this wording, but the new language commissioner used the language Measure to state that they must do it bilingually, would they have an argument in law? What legislation takes precedence?

[16] **Mr Griffiths:** Byddai angen i'r cyrff perthnasol gyfiawnhau i'r comisiynydd pam

Mr Griffiths: The relevant bodies would have to justify to the commissioner why it is

nad yw'n rhesymol ymarferol i wneud hynny. Gallai fod achos dros gynnal adolygiad barnwrol i mewn i'r peth pe bai rywun am gymryd y cam costus hwnnw. Fodd bynnag, mae hynny'n annhebygol.

not reasonably practicable to do so. There might be a case for a judicial review into the matter if someone wanted to take that costly step. However, that is unlikely to happen.

[17] **Simon Thomas:** Mae hi'n annhebygol, ond yr ydym yn cymylu'r broses o ddeddfu mewn ffordd ddiangen. Dylai deddfu fod mor syml ag sy'n bosibl er mwyn i bobl ei ddeall. Beth bynnag yw'r mater ynglŷn â'r iaith, dylai fod yn syml—hynny yw, eich bod yn dilyn un drefn yn hytrach na bod trefn arall hefyd, sy'n cymylu'r peth. Efallai y gallwn godi'r mater hwnnw hefyd yn yr ohebiaeth.

Simon Thomas: It is unlikely, but we are blurring the process of legislating in a way that is unnecessary. Law-making should be as simple as possible so that people understand it. Whatever the issue regarding the language, it should be simple—that is, that the same procedure is followed as opposed to there being another system as well, which blurs the situation. Perhaps we can raise that issue as well in our correspondence.

[18] **David Melding:** Okay, we will agree the report and strengthen the letter and make these points.

[19] We will now move on to discuss CLA60, the Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012. Once again, there is a merits report on this, which Gwyn will outline. There is an issue here about overturning, or setting aside, existing Orders relating to local development and the circumstances in which these new procedures, or alternative procedures, would be used. Gwyn?

[20] **Mr Griffiths:** Yn anffodus, Gadeirydd, mae'r offeryn hwn wedi dod gerbron y pwyllgor ar ei ben ei hunan. Mae'n un o gyfres o offerynnau fydd yn dod gerbron y pwyllgor yn ymwneud â galluogi awdurdodau cynllunio lleol i gyflwyno Gorchmynion datblygu lleol o dan Ddeddf Cynllunio Gwlad a Thref 1990. Y rheswm y mae hwn wedi dod ar ei ben ei hunan yw ei fod yn ddarostyngedig i'r weithdrefn gadarnhaol, ac felly mae angen slot yn amserlen y Cyfarfod Llawn i'w drafod.

Mr Griffiths: Unfortunately, Chair, this instrument has come before the committee on its own. It is one of a series of instruments that will come before the committee relating to enabling local planning authorities to present local development Orders under the Town and Country Planning Act 1990. The reason that this has been sent on its own is that it is subject to the affirmative procedure, and it is therefore necessary to find a slot in the Plenary timetable to discuss it.

[21] Mae gweddill yr offerynnau yn y pecyn hwn yn ymwneud â Gorchmynion o'r fath sy'n mynd drwy'r broses negyddol, ac felly mae modd eu gwneud yn hwyrach yn yr amserlen ar gyfer rhoi'r pwnc hwn ar waith. Dyna'r rheswm pam mae hwn ar ei ben ei hunan. Yr ydym wedi tynnu sylw'r pwyllgor ato oherwydd ei fod yn arwyddocaol ac oherwydd mai hwn yw'r cyntaf yn y pecyn. Yn anffodus, nid oes gennym weddill y pecyn ar hyn o bryd.

The remaining instruments in this pack relate to similar Orders that are going through the negative procedure, and which can therefore be made later in the schedule for putting this subject in place. That is why this is on its own. We have drawn the committee's attention to it because it is significant and because this is the first in the pack. Unfortunately, we do not have the rest of the pack at the moment.

[22] **David Melding:** I should say that I think that this Order and the regulations on carers strategies are scheduled to be discussed next week in Plenary. Members may wish to make a special note of that. Are there any comments on this?

- [23] **Suzy Davies:** I have a question for Gwyn. Under point 1.2 on page 46, it says that
- [24] ‘The result of the amendment is that compensation would be payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the withdrawal taking effect.’
- [25] Does that mean that compensation is not payable if a subsequent planning permission application is not made?
- [26] **Mr Griffiths:** I am sorry; I am not sure where that is.
- [27] **Suzy Davies:** It is on page 46.
- [28] **Mr Griffiths:** I am sorry, I do not have the pack of papers.
- [29] **Suzy Davies:** I am referring to the local development Orders regulatory impact assessment, specifically point 1.2 in the last third of the paper on purpose and intended effect. It is just to make sure that I have understood what has been said.
- [30] **Mr Griffiths:** It is in the regulatory impact assessment?
- [31] **Suzy Davies:** Yes.
- [32] **Mr Griffiths:** Yes, it is within 12 months of the withdrawal. So, if you do not do it within 12 months, then you will have lost your—
- [33] **Suzy Davies:** However, if you do not make your application within 12 months, the suggestion is that you are not entitled to compensation regardless of whether you would have been had you previously been required to make the application. Is that part of the intention of the draft?
- [34] **Mr Griffiths:** I am not sure. I am afraid that I did not scrutinise this personally, and that point is not one that I have looked at. However, I can have a look at it.
- [35] **Suzy Davies:** It is just to double-check, because if it is not doing what it is intended to do and it has done something inadvertently, we need to know.
- [36] **Mr Griffiths:** I think that it does what it is intended to do, otherwise it would have been picked up in the scrutiny process. However, I will double-check that point and write to you and copy in other Members.
- [37] **Suzy Davies:** That would be lovely.
- [38] **Simon Thomas:** You might not like what it does. [*Laughter.*]
- [39] **Suzy Davies:** No, it does not matter; I just want to it to be looked at.
- [40] **Julie James:** I think that it is a double negative. If your extant planning consent is withdrawn by the local authority under these provisions, you get compensation, but if you remake the application under the correct provision within 12 months, your compensation is removed. So, I think that it is a double set of negatives. That is why it is saying that it would not happen very often.
- [41] **David Melding:** Gwyn will look into it.

[42] **Suzy Davies:** I tried that interpretation, but I could not get it to stick—

[43] **Julie James:** That is what it was intended to cover anyway.

[44] **David Melding:** Do we agree the merits report? I see that we do. Thank you.

2.41 p.m.

Gohebiaeth y Pwyllgor Committee Correspondence

[45] **David Melding:** The Minister has gone the other way now and given us chapter and verse on how he has calculated these charges. I think that it meets all of our requests for information, so it shows that it is often worth following points up and that Ministers do respond. So that closes that matter.

Trafod Ymchwiliadau'r Pwyllgor ar gyfer y Dyfodol Consideration of Future Committee Inquiries

[46] **David Melding:** We have a paper before us. In fact, we discussed future inquiries at our meeting on 14 July. We identified the possibility of a Welsh jurisdiction emerging as one of the subjects that would warrant our attention. Obviously, the Government has now made it known that it is looking at this question. The brief in front of us takes that into account as well, and provides us with some draft terms of reference. Before I ask Members whether we will agree to do this inquiry and, secondly, to agree the terms of reference, as the paper notes, I think that it is very important that we do not provide an alternative consultation to the one that the Government is going to undertake. We need to focus on issues that will help the consultation and clarify the situation of how viable a Welsh jurisdiction is. There are different opinions on that. We should probably concentrate on legal and constitutional witnesses, and then this report could be used by the Government in taking this issue forward for further examination. I think that that would be the best approach. That is my direction from the chair, but it is not something that I can require you to agree. You may have different views.

[47] **Eluned Parrott:** Do we know the time frame for the Government's inquiry on this? I would not wish for our inquiry to be ongoing at a time when it would not be possible for us to feed into its considerations.

[48] **David Melding:** I am not sure whether we know when the Government is going to do this.

[49] **Dr Thomas:** All that it has said so far is that it will be initiating the public debate in early 2012.

[50] **Simon Thomas:** It has not actually called it a consultation. It has talked about leading a public debate rather than a formal consultation, so far anyway. That is something to bear in mind. At the moment, we are not treading on anyone's toes.

[51] **Julie James:** I have a question about the specific terms of reference. I am content with the general issue.

[52] **David Melding:** Do we think that this is a worthy subject for our next report? Is it timely, and could we add value? I see that we agree. In that case, we need to consider the terms of reference. Are Members happy with them? I do not want them to be narrow, but they

should not be so wide that we would end up conducting the general debate ourselves, which should not be the purpose of our inquiry.

[53] **Julie James:** I am happy with all of that. I have a question about what recommendations might look like in the context that we have just been discussing. Are we looking to distil the evidence that has been placed in front of us without expressing our view—which I would prefer—or were we thinking that we would come to some conclusion? I was less happy with the second option.

2.45 p.m.

[54] **David Melding:** My direction from the chair would be that we do not want to gainsay the general debate, so coming up with something that is highly prescriptive is probably not the best course for us to take. That also goes beyond the accepted work of this committee. Our position is to clarify the position and set evidence in front of those who are then going to take forward the issue and make the decision. That leaves room for justified inference from what our findings state, but I would like us to concentrate on the viability of a Welsh jurisdiction—it will be interesting for us to produce some evidence on that—and also the implications for the Assembly and the work that we oversee. That is the best focus that we can bring to the debate.

[55] **Simon Thomas:** Mae gennyf ddau gwestiwn ar y cylch gorchwyl—yr wyf yn hapus gyda'r hyn sydd wedi ei amlinellu. Mae'n bwysig inni gael rhyw syniad o'r berthynas rhwng yr aelod o'r cyhoedd sy'n ceisio deall y deddfu sy'n digwydd yma a sut y gall gael mynediad at hynny. Mae'n bosibl y gellid cynnwys hynny yn y dadleuon dros ac yn erbyn awdurdodaeth gyfreithiol ar wahân i Gymru, ond efallai y dylem fod ychydig yn fwy penodol ac edrych arno fel rhywbeth sy'n crisialu'r sefyllfa ar gyfer y person ar y stryd, gan y byddai hynny'n cyfiawnhau'r ymchwiliad dipyn yn fwy hefyd.

Simon Thomas: I have two questions on the terms of reference—I am happy with what has been outlined. It is important that we have some idea about the relationship between the member of the public who is trying to understand the legislating that is done here here and how they can access that. That could, possibly, be included in the arguments for and against a separate Welsh jurisdiction, but we should perhaps be more explicit and look at it as something that explains the position for the person in the street, as that would also justify the inquiry a little more.

[56] Yn ail, yr ydym yn sôn yn benodol am Ogledd Iwerddon yn y cylch gorchwyl, ond nid am yr Alban. Gwn fod y sefyllfa'n wahanol yn yr Alban a bod ganddi gyfundrefn gyfreithiol bur wahanol beth bynnag. Mae'r Prif Weinidog ei hun wedi dweud ei fod yn rhagweld rhywbeth tebyg i drefn Gogledd Iwerddon yn datblygu yma. Ai dyna pam yr ydym wedi dewis Gogledd Iwerddon? A ydym yn cau'r drws ychydig ar beth sy'n digwydd yn yr Alban drwy sôn am Ogledd Iwerddon yn unig? Hoffwn fod yn gliriach ynghylch y ddau beth hynny.

Secondly, we specifically mention Northern Ireland in the terms of reference, but not Scotland. I know that the situation is different in Scotland, and that it has a very different legal system anyway. The First Minister himself has said that he foresees something similar to the Northern Ireland system being developed here. Is that why we have chosen Northern Ireland? Are we closing the door a little on what is occurring in Scotland in talking only about Northern Ireland? I would like to be clearer on those two things.

[57] **David Melding:** We could include in the terms of reference an examination of the present jurisdictions in the United Kingdom—I do not think that that is a problem—which would include England and Wales, Scotland and Northern Ireland. I suppose that the United Kingdom is also a jurisdiction for some things. So, I hope that that deals with that point.

[58] On your second point about public access and the need for the legal system to be as clear as possible, this does not mean that everything can be readily understood—in the sense of being able to read everything in legal statute and understand it—but it should be possible to understand the system in a general way, and how it operates. That is important, but I think that that could emerge in the ‘for and against’ arguments. The overall tone is less that we would want to conclude that there should be a jurisdiction, it is more that there could be one and that these would be the advantages and some of the challenges. I sense that that is the tone that we should take, and that Members would agree on that approach.

[59] **Suzy Davies:** Leading on from that, are we being very clear that we are just examining future issues around jurisdiction rather than jurisprudence, namely the administration of law rather than the philosophies and thoughts behind this type of law? In the suggestions here, there is specific reference to common law. Are we interested in expanding whether common law is the appropriate mindset for interpreting Welsh law in future, or is that too big for this particular inquiry? The second is about witnesses—

[60] **David Melding:** We will talk about witnesses separately. Again, it is for us to agree the terms of reference and then allow things to emerge. The evidence will be developed as we take forward the inquiry and receive evidence, written and oral. We need to be careful about not being didactic in what we are doing; it is an examination of where the British constitution is now in relation to Wales as a legal entity, or remaining a legal entity within the England and Wales jurisdiction. I do not think that we want to have a set of recommendations that state that we should now establish this or that so that, in 25 years’ time, you will have a legal system that looks like whatever. I sense that that would not be the best direction for us to take.

[61] **Suzy Davies:** So, we should keep within quite narrow parameters on that.

[62] **David Melding:** Yes, as that would help us to complete this work within a reasonable timescale, to inform the more general debate.

[63] **Eluned Parrott:** I would just add a point about the second point, looking at the arguments for and against a separate Welsh jurisdiction. Given that we are not hoping to develop a position of our own, in which we are for or against such a proposal, my concern is that, rather than saying that we shall look at arguments for and against, which would tend towards a polarised position, we should perhaps suggest that we are taking evidence on the potential benefits, the barriers and the costs, in a less emotive and less subjective sense. I think that that just might help to clarify the point that we are not talking about developing an argument and a narrative of our own.

[64] **David Melding:** Okay; that is helpful. We can alter the second point to read more in terms of the present arrangements and their ease of operation compared with the opportunities offered by a Welsh jurisdiction. I think that there is also an argument that a Welsh jurisdiction is emerging, it would seem; although this is not agreed by all lawyers and constitutional experts, it is by the majority, as far as I can work out. So, we can look at that again, and if it is emerging, then it may be time for a little more formality to clarify the debate around that. However, let us not use the phrase ‘arguments for and against’.

[65] Do you want me to talk about the witnesses? We have a suggested list. This would be for oral evidence. With a bit of luck, every person or institution on this list would submit written evidence, and a fair number of them, I would hope, would agree to be witnesses. Is there anything on that list that you object to, or is there anything that you would like to add to it?

[66] If we are happy with that list—

[67] **Suzy Davies:** Sorry; I meant to mention something. I think that some of the names mentioned here are privy councillors. I am guessing that they are, as I am not 100 per cent sure. If they agree to come to give evidence to us, we could also ask them to give evidence in their capacity as privy councillors, as they should have some knowledge of common law jurisdictions in other parts of the world, rather than just the British context.

[68] **David Melding:** There certainly are some privy councillors—I can see at least two, and there may be more.

[69] **Suzy Davies:** If they are not experienced in dealing with other common law jurisdictions in the Commonwealth, perhaps we could add a couple to the list who are.

[70] **David Melding:** Okay. I do not understand the finer points of the issue of privy councillors and their experience of common law systems, but perhaps you could liaise with Gwyn to see that that issue is covered.

[71] **Julie James:** There is one other thing. You just have a list of institutes and so on—for example, the Hywel Dda Institute of Swansea University. However, I know that its current pro vice-chancellor is, strictly speaking, no longer a member of the law school. However, as the pro vice-chancellor, I know that he would very much like to come.

[72] **David Melding:** If you want to add named individuals—

[73] **Julie James:** It is Professor Iwan Davies. He has already told me that he would like to speak to us on this matter. He is known to have a point of view, shall we say.

[74] **David Melding:** So, in the first instance, we shall ask for written evidence, and make a judgment based on that as to whether they would be likely to come to give oral evidence and whether we would benefit from that. We may ask one or two of them directly to give oral evidence and move to that stage. If Members want to add any other names in the next week or so, please let Steve George know and he will circulate the list to everyone. As long as I do not receive an objection, I am happy to add names. When we come to make our final decisions on who we can schedule to see, we might have to make a judgment if all have responded enthusiastically and we have too many potential witnesses. However, we can jump that fence when we get to it.

[75] **Simon Thomas:** Regarding the earlier discussion that we had about looking at the UK-wide picture, rather than looking directly to Northern Ireland, we have listed Northern Ireland specifically in the list of potential witnesses, so that should now read ‘Witnesses who can look at the issue either from the Irish perspective or from a UK jurisdiction perspective’, without going over the top.

[76] **David Melding:** Yes, that is wholly appropriate, especially at the first stage of giving written evidence.

[77] **Mr Griffiths:** Y rheswm bod sylw penodol wedi ei roi i Ogledd Iwerddon yw oherwydd ei fod yn rhannu mwy o gyfraith gyda Chymru a Lloegr nag yw'r Alban. Mae hefyd yn rhan lai o'r Deyrnas Gyfunol nag yw Cymru, felly o ran nifer y barnwyr, bargyfreithwyr a chyfreithwyr sydd eu hangen i gynnal sefydliad ar wahân, bydd ei phrofiad yn fwy defnyddiol i ni na phrofiad **Mr Griffiths:** The reason why specific attention was given to Northern Ireland is because it shares more law with England and Wales than Scotland does. It is also a smaller part of the United Kingdom than Wales, so in terms of the number of judges, barristers and lawyers needed to maintain a separate system, its experience will be more useful to us than the experience of a larger part of the

rhan fwy o'r Deyrnas Gyfunol.

United Kingdom.

[78] **Simon Thomas:** Yr wyf yn derbyn hynny'n llwyr; yr oeddwn am ychwanegu golwg ychydig yn ehangach, dyna i gyd. **Simon Thomas:** I completely accept that; I wanted to add a wider perspective, that is all.

[79] **David Melding:** You do not want to exclude Scotland, because some interesting evidence may be available there.

[80] **Simon Thomas:** We are taking evidence, so we will listen.

[81] **David Melding:** Yes, I think that that is perfectly reasonable. Okay, we have agreed the terms of reference and we can add one or two names if necessary to the list, but what is there is agreed. The secretariat will now proceed. We hope to put out the invitation to submit evidence within the next couple of weeks; we hope to do that before Christmas. So, we will probably be in a position to start taking evidence at the end of January. That will be the timetable.

2.57 p.m.

Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting

[82] **David Melding:** The next meeting is a week today on 5 December. We have a paper to note, namely the minutes of our previous meeting. That concludes today's proceedings. Thank you very much.

Daeth y cyfarfod i ben am 2.58 p.m.
The meeting ended at 2.58 p.m.