



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales
Y Pwyllgor Cymunedau, Cydraddoldeb a
Llywodraeth Leol
The Communities, Equality and Local Government
Committee

Dydd Iau, 12 Ionawr 2012
Thursday, 12 January 2012

Cynnwys
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Cynnig Gweithdrefnol
Procedural Motion

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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Janet Finch-Saunders	Ceidwadwyr Cymreig Welsh Conservatives
Mike Hedges	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Bethan Jenkins	Plaid Cymru The Party of Wales
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Gwyn R. Price	Llafur Labour
Kenneth Skates	Llafur Labour
Rhodri Glyn Thomas	Plaid Cymru The Party of Wales
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Louise Gibson	Cyfreithwraig, Llywodraeth Cymru Lawyer, Welsh Government
Stephen Phipps	Y Tim Moseg a Rheoleiddio, Llywodraeth Cymru Ethics and Regulation Team, Welsh Government
Carl Sargeant	Aelod Cynulliad, Llafur (Y Gweinidog Llywodraeth Leol a Chymunedau) Assembly Member, Labour (The Minister for Local Government and Communities)

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

Bethan Davies	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Leanne Hatcher	Dirprwy Glerc Deputy Clerk
Rhys Iorwerth	Ymchwilydd Researcher
Bethan Roberts	Cynghorydd Cyfreithiol Legal Adviser

Dechreuodd y cyfarfod am 9.29 a.m.
The meeting began at 9.29 a.m.

**Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions**

[1] **Ann Jones:** Good morning, everybody. Welcome to the first meeting of the Communities, Equality and Local Government Committee of 2012. I hope that we are all refreshed and ready to go. Members should switch off their mobile phones, pagers and BlackBerrys off, because they affect the translation and broadcasting equipment. We have a full committee, which is good. Does anybody wish to record an interest, other than what they have already recorded on the register of Members' interests? I see that there are none.

9.29 a.m.

**Bil Is-ddeddfau Llywodraeth Leol (Cymru)—Sesiwn Dystiolaeth Cyfnod 1: y
Gweinidog Llywodraeth Leol a Chymunedau
Local Government Byelaws (Wales) Bill—Stage 1 Evidence Session: the Minister
for Local Government and Communities**

[2] **Ann Jones:** I am delighted to welcome the Minister in charge of this, Carl Sargeant, the Minister for Local Government and Communities. Minister, will you please introduce your officials for the record?

[3] **The Minister for Local Government and Communities (Carl Sargeant):** Good morning, Chair; good morning, committee. Happy new year to you all. I will ask my team to announce their full titles.

[4] **Mr Phipps:** I am Stephen Phipps from the ethics and regulation team. I am the policy lead for the Bill.

[5] **Ms Gibson:** I am Louise Gibson from legal services. I am the lead lawyer.

9.30 a.m.

[6] **Ann Jones:** That is great. Thanks very much for that. Minister, you have laid the Bill and we are at the scrutiny stage. Before we move to questions, do you wish to make an opening statement to set this in context?

[7] **Carl Sargeant:** Thanks, Chair. I have a brief opening statement. I am very grateful for the opportunity to present the Bill to the committee today and to respond to Members' questions. I introduced the Bill in November. It is the first Bill to be introduced since the National Assembly obtained its greater legislative competence following last year's referendum. As such, it marks a historic step in the development of a distinctive statute book for Wales. The Bill fulfils our commitment to simplifying the process for making, amending and revoking bye-laws in Wales by removing the need for confirmation from Welsh Ministers. The Bill also introduces a more effective and efficient means of enforcement through the option of the use of fixed penalty notices. We have also taken the opportunity in the Bill to consolidate and, where appropriate, modify existing bye-law provisions in the Local Government Act 1972.

[8] Although the Bill may not have dominated the headlines, it contains very practical solutions and proposals that will remove the layer of unnecessary bureaucracy to facilitate more timely and direct responses from local authorities to the problems they face in their communities. The Bill reflects the positive support for our proposals during consultation. I think that I am looking forward to some of the questions you may ask me this morning, but I have a very capable team with me to answer some of the main technical questions, should

there be any.

[9] **Ann Jones:** Thanks very much for that. I will start the questions. This piece of legislation was a commitment of the previous Welsh Government in 2007—

[10] **Rhodri Glyn Thomas:** It was the One Wales Government.

[11] **Ann Jones:** Thanks very much for that, Rhodri Glyn; I think we know what it was. I am wondering about the timing and why the Bill has been introduced now. Why has it taken this long to get the Bill to this stage?

[12] **Carl Sargeant:** You are right, Chair; this was a commitment of the One Wales Government. Obviously, we had a very busy schedule of legislation in the last Assembly term. You will recognise that we introduced the local government Measures in 2008 and 2010, which were both significant pieces of work on the area of local government. Indeed, they were some of the largest Measures that went through the Assembly. So, it was partly to do with capacity, but our commitment remained, and that is why we have introduced this now. It was ready to go, and we believe that it is now a key to starting a new style of Government in bringing forward a Bill that will reduce bureaucracy for local government, which, again, was a commitment we made to support local decision making. This is one step in that proposal.

[13] **Ann Jones:** Thanks very much. Peter, do you want to ask the next question?

[14] **Peter Black:** Thank you, Chair. Your main policy objective in the Bill is to simplify the process of making, confirming and enforcing bye-laws in Wales. How have you identified the risks involved in simplifying the process in this way? What are those risks?

[15] **Carl Sargeant:** The main risk is a procedural one with regard to doing it properly. We believe that, by removing the requirement for confirmation by a Minister, we will remove a layer of bureaucracy. I believe that local government is very capable of following procedures for the delivery of this. We think that the risk is minimal. The risk being only a lack of proper scrutiny and consultation. However, if authorities follow the procedure, there is little risk in taking this forward.

[16] **Peter Black:** Do you think that there is a danger of them not following procedure?

[17] **Carl Sargeant:** It will all be subject to legal advice. We will be giving some guidance on model bye-laws, but we will not leave them high and dry. We will give them advice on that process. There will be flow charts for people to understand the process of taking this forward, including consultation timelines and so on. It will be very clear. I would find it hard to believe that a local authority was unable to follow the guidelines of procedures to take through a new bye-law.

[18] **Peter Black:** Will you be taking steps to ensure that the powers granted to local councils will only be exercisable by the full council?

[19] **Carl Sargeant:** That is already covered under regulations in the Local Government Act 2000, where it is stated that powers cannot be revoked by executive bodies if they are exercised by the full council.

[20] **Peter Black:** Is that the same for new laws?

[21] **Carl Sargeant:** Yes, that will continue.

[22] **Janet Finch-Saunders:** Could this Bill have been used as an opportunity to better define the meaning of ‘good rule and government’ as a basis for making bye-laws in Wales?

[23] **Ann Jones:** I thought that you wanted to ask about the risks; that was not your question.

[24] **Janet Finch-Saunders:** Sorry. My colleague Peter has touched on this: some concerns have already been raised that the fixed penalty method may be seen by some local authorities as a viable income stream. How will you deal with that?

[25] **Carl Sargeant:** Procedurally, the bye-law must first be brought into effect, and must have gone through a consultation period with interested parties—local people and local interest groups. That is a full consultation that will explore the rights and wrongs of creating the bye-law and whether it should proceed. Once it has proceeded, people will then understand fully whether a fixed penalty notice will be attached to it or not. With regard to the good rule and government element of this, people will understand that if they breach a bye-law that surrounds a nuisance of local concern, whatever it may be, there will be an effect and, ultimately, it will be a court decision.

[26] **Janet Finch-Saunders:** Currently across Wales, a quarter of fixed penalty notices have not been paid. Although there have been some successful cases in court, there are about 305 that have not been paid and no further action has been taken. Does that not make a farce already of the system?

[27] **Carl Sargeant:** That is a matter for local authorities. If they believe that there is a local problem and they find a solution through a bye-law, then it is for them as the authority to complete the process. I cannot be responsible for local or legislative authorities making bye-laws in order to claim fines. The process is open to them and they can pursue it if they wish to. You say that authorities have not completed the process, but that is a matter for them.

[28] **Mike Hedges:** Peter Black asked about whether you will ensure that councils deal with this as full councils. How can you ensure that this is dealt with by full council at every stage? It is not just a case of bringing in a bye-law and there it is, but a process of meetings. The first meeting will decide that you want a bye-law to deal with dogs on the beach and the second will decide which beaches you wish to have involved in it, then you have the third meeting, and it will not be until the fourth meeting that you actually agree to the bye-law. So, the bye-law should go before the full council at each stage, rather than as a finished article, which was dealt with under executive powers and brought before the full council at the end, or that the initial discussion is dealt with by the full council and the power devolved to the executive to implement it. The Local Government Act 2000 gives the executive lots of powers once the council has decided on an overarching policy. It is the executive power that deals with it. I want to see a system that means the full council dealing with a bye-law at every stage, rather than for it to be dealt with by the executive.

[29] **Carl Sargeant:** I point you to the fact that the regulations under the Local Government Act 2000 already give the power for full council to deal with this. I have often been accused of micromanaging local authorities, so what I would not want to do is to interfere with the process. If a council delegates the work of continuing with a bye-law to the executive, then my view is that that is right and proper. That is democracy. If the committee has a view on that, I would welcome it.

[30] **Mike Hedges:** I ask you to look at that further.

[31] **Carl Sargeant:** I will certainly do that, and I will pass a note to the committee on the details.

[32] **Ann Jones:** That may be something that we can bring out in future evidence sessions with other witnesses.

[33] **Joyce Watson:** Good morning, Minister, and a happy new year. In the Bill, you restate the power of authorities to make bye-laws for good rule and government. How exactly have you defined ‘good rule and government’?

[34] **Carl Sargeant:** I am surprised that you are asking this question; Peter Black is usually the one who asks me for definitions. [*Laughter.*] We always have an interesting debate on definitions. The good rule element is an existing power from the Local Government Act 1972. No definition was provided in that Act, although that is not to say that it is right or wrong. However, it includes a clear understanding of what good rule and government is for local authorities that already deal with this. One key element to understand this better, and how I started to understand it, is that the rule can only be used in the governance of suppression or prevention of a nuisance. That makes it much clearer to people. If it is taken as prevention and suppression of nuisances, it makes it more definitive of what we mean by it and what local government already understands by the process.

[35] **Ann Jones:** Mike wants to come in on this and Peter Black wants to come in on the back of that question. I want to point out, Minister, that all my committee members are good committee members, and that they all ask searching questions.

[36] **Carl Sargeant:** Of course, Chair, I would not dare to say otherwise. [*Laughter.*]

[37] **Mike Hedges:** I am looking for a backstop on this. From what I can see—please tell me if I am wrong—under the Act, if someone does not like a bye-law, their only recourse is to judicial review; there is no appeal to the Minister. I ask you to consider that, if more than one third of a council and more than 20% of the population by petition object to a bye-law—as is done with planning—you would call it in and rule on it. Otherwise, you could have a situation in which a council, on the casting vote of a chair, could decide to bring in a bye-law that was extremely unpopular. I want some sort of backstop, rather than saying that the only thing that people can do is go to the cost of going to judicial review.

[38] **Carl Sargeant:** Chair, I agree with you in that there are many searching questions, including this one from Mike. [*Laughter.*]

[39] At present, I do not entirely agree with you on the process, Mike. We have introduced the Bill to remove the level of bureaucracy associated with Welsh Ministers interfering in local bye-laws. I fully understand what you are saying, but the purpose of the bye-law consultation process is so that councillors or people who may have objections can raise them. If I was to follow your suggestion, a Welsh Minister could, in effect, be called in at every opportunity, subject to the 40% or 50% rules to which you referred, to confirm all bye-laws, which would defeat the object of introducing the Bill.

[40] **Mike Hedges:** My experience of bye-laws is that most of them have the support of nearly everyone—90% of the population and 100% of councillors tend to be in favour of most bye-laws. I agree with the Bill; I am not being negative on the Bill. Take planning as an example; although local authorities have planning powers, Ministers can call certain things in. Does such a power need to be held as a reserve power? Most bye-laws—99.9% of them—will have unanimous support, or very close to it. If there is a problem, rather than forcing people to go to the expense of a judicial review, there should be some form of call-in procedure at the end. I am asking you to give some consideration to that.

[41] **Carl Sargeant:** Of course, I will bear your comments in mind. However, again, by a

Welsh Minister becoming the arbitrator, to remove the threat of a judicial review around a decision— [*Interruption.*]

9.45 a.m.

[42] **Ann Jones:** Hold on, Mike. This is an evidence session. You have asked the Minister a question, and he has said that he will take it back. It is for this committee to take that further, if we think it necessary, and to put it in some sort of report later. There is nothing to be gained by having the conversation at this stage. Peter is next, and then Janet Finch-Saunders, on this same issue.

[43] **Peter Black:** Minister, I do not expect you to know the answer to this question, but perhaps you could give an undertaking to provide a note. Is there any case law that would better define good rule and government?

[44] **Carl Sargeant:** Have we got the answer?

[45] **Ms Gibson:** I can give you a brief indication. There is a body of case law, but by the nature of good rule and government for the prevention and suppression of nuisances, there is no definition. Case law considers it on a case-by-case basis. The best lead case is *Kruse versus Johnson*, which is a Queen's Bench case, and states that a bye-law made pursuant to this power may be reasonably administered by a local authority. The onus is always on the local authority to exercise its powers reasonably in respect of bye-law making.

[46] **Peter Black:** I was not expecting a definition. The case law would be useful to help us better understand the term. A note on that would be useful.

[47] **Janet Finch-Saunders:** I just wanted to pick up on the consultation aspect. Consultations vary in certain aspects; there is consultation by means of publishing a statement on the internet, or in a newspaper, and we have to recognise that, because it could act negatively on residents of Wales.

[48] **Carl Sargeant:** If I may respond briefly to that, Chair, consultation is really important. It is about communication access points, and that is endless—where do you stop with interested parties? You tend to always miss somebody out; that is the nature of it. I want to be clear that, when I issue guidance to local authorities, that is a consistent way of consulting and advertising that. People will know that you cannot have one authority consulting only via the web, while another does it via newspapers. There has to be a consistent approach to accessing information about bye-laws. That goes for all sorts of things that the Welsh Government does as well—there has to be a simple approach so that people know where to access this information.

[49] **Ann Jones:** Do you want to ask your question, Janet?

[50] **Janet Finch-Saunders:** I have asked my question about good rule and government already.

[51] **Ann Jones:** I do not think that he answered it.

[52] **Janet Finch-Saunders:** Could this Bill have been used as an opportunity to better define the meaning of good rule and government as a basis for making bye-laws in Wales?

[53] **Carl Sargeant:** I have tried to explain that the process is not defined, and never has been. We believe that there is a common understanding across local authorities that use this rule. I am happy to provide some case law surrounding that, but we have gone as far as we

can in not closing off the opportunity for bye-laws to be created by local authorities.

[54] **Janet Finch-Saunders:** Following on from that, how does this fit in with your collaboration agenda? You will have each individual authority making its own bye-laws, yet you have them working together on many different functions. How does that dovetail?

[55] **Carl Sargeant:** The issue is that there are 22 local authorities, and they are all legislative bodies that can create bye-laws. I do not have a region with the legal standing to create bye-laws. What I would hope—again, through this consultation process around the Bill—is that there would be consistency. However, at the end of the day, bye-laws are usually there for local issues, providing solutions to local problems. A problem in Monmouth may be very different to a problem in Flintshire. We will be able to ensure some consistency in the decision-making process for the bye-laws that have to be confirmed by Ministers, particularly those about children and working regulations. Bye-laws are very local, we believe. That does not fly in the face of collaboration. However, at the moment, there are 22 local authorities. Please do not take anything from what I have said in that respect for the moment.

[56] **Ann Jones:** I was going to ask for us not to become involved in that question.

[57] **Gwyn R. Price:** How are nuisances defined? Are authorities given sufficient powers to enable them to effectively tackle those nuisances?

[58] **Carl Sargeant:** There is a common definition of ‘nuisance’, but it is similar to the good rule and government element of this—the definitions are clearly understood by the bodies that already have powers to create bye-laws. The definition, which is a person or a thing that causes annoyance or bother, could be used in many different guises. However, this is very similar to the good rule and government element of this. The power to tackle nuisances sits alongside the powers contained within the Clean Neighbourhoods and Environment Act 2005, which is already in place in order to tackle a range of anti-social behaviour, such as littering, dog-fouling and so on. So, the opportunity to create bye-laws sits alongside that. We must remember that new bye-laws can be introduced only if there is no current provision to enable them to act in a reasonable way, such as in the Clean Neighbourhoods and Environment Act. So, you could not introduce a bye-law for something for which there is provision in the Clean Neighbourhoods and Environment Act.

[59] **Gwyn R. Price:** So, in your opinion, the Bill is sufficient.

[60] **Carl Sargeant:** I think so, yes.

[61] **Bethan Jenkins:** Rwyf yn deall yr hyn rydych yn ei ddweud am niwsans—nid wyf yn hoff iawn o'r gair Cymraeg am *nuisance*; credaf fod ‘amhariaeth’ yn air gwell. A oes unrhyw gamau y gellir eu cymryd i ddiogelu'r hawl i ddefnyddio'r pwerau i wneud deddf leol ar gyfer gweithredoedd o'r fath, o gofio na fydd angen cytundeb gweinidogol ar gyfer hyn yn y dyfodol os bydd y Bil yn cael ei gymeradwyo?

Bethan Jenkins: I understand what you have said about nuisance—I am not very fond of the Welsh word for nuisance; I think that *amhariaeth* is a better word. Are there any steps that could be taken to safeguard the right to use the powers to make bye-laws in order to prevent such acts, bearing in mind that there will be no requirement to seek ministerial agreement for this in the future if the Bill is passed?

[62] **Carl Sargeant:** Forgive me, the Welsh language is not my strongest point, so you may wish to offer alternative translations. However, on the issue around safeguards, as I said earlier, the Bill will require consultation before bye-laws are made under the provision. Subject to the bye-law provision being made, ultimately, without ministerial intervention, this

could be a matter for the courts. So, there are safeguards in place. It will not be the case that there will be nowhere to go if a bye-law is created and someone did not want it. However, I would like to think that, as Mike said earlier, when bye-laws are created, there is consensus that there is an issue that requires a bye-law to solve it. However, should a rogue authority create a bye-law that no-one liked but which is not subject to confirmation by a Minister, it is possible to challenge that through the courts.

[63] **Bethan Jenkins:** I take it that you will be looking for the majority opinion on that, because in any consultation, you will not get everyone to agree. I heard what Mike said, but some people might still have an issue following the consultation and they would therefore have to exercise their rights through the court process. That is my concern.

[64] **Carl Sargeant:** You are correct in what you say in terms of the process. However, local authorities and Governments make decisions that are not always popular with everyone. That is the way that things work. I would not like anyone to think that there was no recourse, as there is. Should someone not agree, there is a court procedure to take action beyond what I could do.

[65] **Kenneth Skates:** Minister, why do the Bill's provisions only apply to authorities listed in section 3 when there are other bodies in existence, such as private companies and charities that can make bye-laws that apply in Wales?

[66] **Carl Sargeant:** Our commitment was to create a local government bye-laws Bill, for local government, and to not go beyond that scope. That is why we have not included anybody else.

[67] **Ann Jones:** Minister, do you see any issues arising whereby another body, other than a local authority, would want the authority to make a bye-law and would put sufficient pressure on it? For example, the police could want something that the council would not necessarily think a bye-law would be essential for. Or does that come under good rule and government?

[68] **Carl Sargeant:** Local government has its own decision-making processes. If it feels that it is being lobbied or otherwise, it will make a decision around that—rightly or wrongly. That is democracy. It is for a local authority to decide whether it needs to make a bye-law or not.

[69] **Rhodri Glyn Thomas:** O ran y dirwy uchaf o £500, mae'n llawer uwch na'r hyn sydd yn y ddeddfwriaeth bresennol, sef £75. Pam yr ydych wedi'i chodi i £500?
Rhodri Glyn Thomas: On the maximum fine of £500, it is much higher than what is in the present legislation, namely £75. Why have you raised it to £500?

[70] **Carl Sargeant:** We have not raised it. The provision in the Bill is derived from the Local Government Act 1972. The maximum fine is set by specific bye-law powers that enable legislation. The amount does not exceed level 2 on the standard scale. We do not believe that it is unreasonable.

[71] **Ann Jones:** You have jumped ahead somehow, but carry on with that question.

[72] **Rhodri Glyn Thomas:** Mae adran 31 o Ddeddf Cyfraith Trosedd 1977 yn gwneud darpariaeth ar gyfer cynyddu dirwyon. A ydych wedi ystyried hynny ar gyfer adran 10 o'ch deddfwriaeth?
Rhodri Glyn Thomas: Section 31 of the Criminal Law Act 1977 makes provision for increasing fines. Have you considered that in relation to section 10 of your legislation?

[73] **Carl Sargeant:** That is a detailed and technical element of the fine structure. I may ask my colleagues to respond in a moment. We have transferred current legislation. The modifications to the Criminal Law Act 1977 and the local Government Act 1972 make provisions that indicate the levels of fixed penalty notices that are appropriate. We have transferred those across. They are not figures that we have plucked out of the air. Do you have any other further comments?

[74] **Mr Phipps:** Louise can give you the legal explanation. The £500 fine is level 2 on the standard scale, which is the equivalent of what is contained in the current 1972 Act. There is a long legal explanation for how you get from what it says in the 1972 Act to level 2 on the standard scale.

[75] **Ms Gibson:** We sought to ensure that we placed our Bill on the same legislative footing as the existing provision in current law and is fair and reasonable. So, the modification is made by the Criminal Justice Acts of 1982 and 1991, and both are in the Local Government Act 1972, to which the provisions in our Bill relate. Clause 10(4)(b) of our Bill provides the same, namely a further fine that will not exceed £5 for each day during which the offence continues. Following conviction, clause 10(2)(b) of our Bill prescribes the same level 2 fine, which is the standard scale fine.

[76] **Carl Sargeant:** So, it is not new. We have lifted that information and moved it across. Do you have any other detailed questions around that?

[77] **Rhodri Glyn Thomas:** Na. Rwy'n siwr eich bod chi wedi fy mherswadio bod angen gosod £500 fel dirwy. O ran y broses o geisio sicrhau y ddirwy honno drwy fynd ag eiddo pobl, yn eich deddfwriaeth, nid ydych yn gosod yr angen i gael cydsyniad Gweinidog i wneud hynny. A ydych yn caniatáu i gwmnïau sydd yn mynd ag eiddo pobl i gael perffaith ryddid i wneud hynny?

Rhodri Glyn Thomas: No. I am sure that you have persuaded me of the need to set the £500 fine. As regards the process of trying to secure that fine by seizing people's property, in your legislation, you do not set out the need for ministerial consent to do so. Will you allow companies that seize people's property to have perfect freedom to do that?

10.00 a.m.

[78] **Carl Sargeant:** We have taken a process forward with regard to seizure of property. This is a serious point. These actions could, potentially, derive from a bye-law. It is lifted from last year's Police Reform and Social Responsibility Act 2011. It strengthens the effectiveness to combat nuisance. The safeguard around this is that if the courts deliver a not guilty verdict, the property is returned back to the person. If there is a breach of the bye-law, then there is seizure of the property. I have seen this in action already in Manchester, where this procedure is used effectively in combating anti-social behaviour.

[79] **Rhodri Glyn Thomas:** Rydych felly'n rhoi perffaith ryddid i bobl fynd ag eiddo cyn bod unrhyw un wedi ei ddyfarnu'n euog o unrhyw fath o drosedd?

Rhodri Glyn Thomas: You are therefore giving people perfect freedom to seize property before anyone is found guilty of any offence?

[80] **Carl Sargeant:** It would be subject to the bye-law being created in the first place and what would constitute a nuisance. Those enacting the bye-law would need evidence in order to pursue the bye-law and then to go to court to act on that. So, hypothetically, if there was a bye-law on the playing of loud music in a town square after 10 p.m., it would be rather odd of someone enacting the bye-law to come to take the radio away at 9 p.m., but, after 10 p.m., it would be in breach of the bye-law and therefore the seizure of the property would take place. However, it would then go to court, where a suitable person would come to a decision on

whether that was right or wrong. It would have to be a clear breach of the bye-law, as subject to any police officer or community support officer acting in the same way.

[81] **Rhodri Glyn Thomas:** Gan droi at adran 5 o'r ddeddfwriaeth hon, sut fu i chi benderfynu ar y diffiniadau yn yr adran honno? Rydych chi'n sôn am is-ddeddfwriaeth 'anarferedig'. **Rhodri Glyn Thomas:** Looking at section 5 of the legislation, how exactly have you decided on the definitions in that section? It mentions 'obsolete' bye-law.

[82] **Carl Sargeant:** I thank the Member for his question. 'Obsolete' is a term. It has a definition.

[83] **Rhodri Glyn Thomas:** I am sure you can tell us about it.

[84] **Carl Sargeant:** It is used already in local government legal processes. 'Obsolete' means 'out of use', 'not current' or 'out of date'. That is how we have defined 'obsolete'. I hope that answers the Member's question.

[85] **Rhodri Glyn Thomas:** Yes.

[86] **Mark Isherwood:** Following on from that question, why retain the default power of Welsh Ministers to revoke bye-laws that they think have become obsolete?

[87] **Carl Sargeant:** Legislating authorities will have the powers to revoke bye-laws that they create so that they can create them and revoke them at the appropriate time subject to that. This is a fall-back position where there are bye-laws. We are sure that they exist, but we cannot identify them. There is no clear ownership of the bye-laws where they have been created in the past. Where there is no ownership of a bye-law, it cannot be revoked. Therefore, when a council asks for a revocation of a bye-law that it does not own, it would have to come to someone, that someone being a Welsh Minister. That is just a fall-back position. We do not intend to use this power, other than subject to application.

[88] **Mark Isherwood:** Given the proposed drafting of the legislation, would that prevent it being used in circumstances other than that which you describe, and what would the Welsh Government's response be if evidence was produced to show that, contrary to the Minister's understanding, it was not obsolete?

[89] **Carl Sargeant:** That is a judgment of whether a bye-law is obsolete or not, and that is something that I have had to take into consideration in the past week with regard to the decision I have made. In terms of the provision, as I said earlier, subject to a non-ownership of a bye-law, and where there is no-one to make a decision on revocation, it would be down to Welsh Ministers to make the decision around whether they consider that to be obsolete. Again, evidence provided by a third party external body that disagreed with the Minister's decision would be considered during the consultation process.

[90] **Bethan Jenkins:** Hopefully the local government representatives can answer this question, but I am a bit confused as to why there would be no ownership. Even if it was a different colour, surely the executive would pass that and it would hold. What does it take then for it not to have ownership?

[91] **Carl Sargeant:** New bye-laws will be very clear, but we have bye-laws that go back many years. One example may be—again, this is hypothetical—if a park was bought by several councils and a bye-law created around that, and the councils then disbanded, it would be about who that bye-law sits under. There would be a question as to the legal owner of the bye-law. In cases like that, where new owners came and asked for revocation, someone would

have to make a decision. There has to be a fall-back position for someone to do that, and I believe that it is fair that a Welsh Minister continues to do that, as is the current position. It is not a new thing.

[92] **Mike Hedges:** What process will the Minister follow when deciding to revoke an obsolete bye-law? With regard to the last answer you gave, if you take a park such as Margam Park, which was bought by West Glamorgan County Council and then passed on to Neath Port Talbot County Borough Council, would the power to revoke go to the new authority? We have had lots of changes in local government throughout Wales, but it is always something for the successor council. For example, something implemented by Loughor Urban District Council would have passed on to Lliw Valley Borough Council, which then became the City and County of Swansea. Would the power not keep on going through those local authorities so that it would reside with the most up-to-date one, so, even if it was done by a rural district council or an urban district council in 1950, it would be the successor county or county borough that would be able to do it now?

[93] **Carl Sargeant:** You are absolutely right. I fully agree with your last point, but what we are talking about, as I said in my opening remarks is not bye-laws that were created 50 years ago; we are talking about bye-laws that were created 150 years ago. In most cases, there will be a track to follow in terms of ownership and responsibility, but, as you may all be aware, in terms of land ownership and planning, there are often strips of land that people think they own and clearly do not, and no-one knows who owns them. We are in a similar position, and I am saying that we must have a fall-back position should there be unidentified ownership of a bye-law of which a council is requesting revocation. There has to be a fall-back body for that. While I fully support the point of your last question, it may not always be the case that that happens, and therefore we need to have someone in place, and we believe that that should be a Welsh Minister.

[94] The process is very similar to the process for the creation of a bye-law. The process for the creation of revocation is similar to that of consultation and so on. It may be useful at some point, Chair, for me to share with you the flow chart for the creation and revocation of bye-laws and I would be happy to send you a note on that if you do not have that.

[95] **Ann Jones:** Members would appreciate that.

[96] **Peter Black:** Schedule 1 contains a number of provisions that predate the National Assembly—the majority of which were made before 1940. In terms of consolidation, why has the opportunity not been taken to replace those bye-law-making powers with newer ones for Wales?

[97] **Carl Sargeant:** The process is about the creation and revocation of bye-laws. There are many bye-laws pre-1942, and it would be a huge task to consolidate them. We believe that local authorities are the primary owners of the bye-laws and, subject to them being obsolete, we would expect local authorities to keep a close eye on what is and is not used or useful and to take appropriate action. A raft of bye-laws predate that time, which would be extremely onerous to try to consolidate at this point.

[98] **Peter Black:** Perhaps you are anticipating a sudden rush of horse-drawn omnibuses. *[Laughter.]*

[99] **Carl Sargeant:** That is a great example of why we are not consolidating them.

[100] **Ann Jones:** Does anyone else have a question on this? I see that no-one does. Peter, please move on to question 12.

[101] **Peter Black:** The explanatory memorandum states that ministerial confirmation adds little value to the process for making most bye-laws. How have you reached that conclusion?

[102] **Carl Sargeant:** As I have always stated, the case for making bye-laws is that generally the issues are very local issues. They are made by local authorities, which are best placed to make such decisions. It is for the local democratic process to make those decisions. Therefore, why would I want to be involved in that process? It is not that I do not want to be involved in it, but it is an unnecessary level of bureaucracy.

[103] **Peter Black:** Yes, but there is a difference between you wanting to be involved and what value you add.

[104] **Carl Sargeant:** Those are similar points, because my action would be to confirm or otherwise, in which case why would I not make the decision on bye-laws in the first place? I do not instigate the bye-law; the process should therefore be completed by those who do. My role would be to act as a check and balance, I suppose, in confirmation or otherwise. I think that local authorities are, or should be, more than capable of making those decisions themselves.

[105] **Joyce Watson:** You have already touched on these issues. Under section 6, where are the safeguards to prevent an authority from making bye-laws that could, for instance, be ultra vires, now that ministerial confirmation is not required?

[106] **Carl Sargeant:** The creation of a bye-law will not be about the council coming in one morning and writing on a piece of paper, stating it is creating a new bye-law. It will be subject to full legal confirmation by legal officers. Again, councils are professional bodies and I would expect them to consult fully with their legal teams to ensure that their bye-laws are not ultra vires. I hope that our assistance in the form of providing model bye-laws, which we will issue in our guidance, will help authorities to proceed with creating bye-laws, should they wish to do so.

[107] **Ann Jones:** I think that Mike wants to come in on that.

[108] **Mike Hedges:** Is there not a duty on the council's legal officer to ensure that the council does not undertake anything that is ultra vires? Has the legal officer not got the power to stop the council from doing such a thing?

[109] **Carl Sargeant:** Yes.

[110] **Joyce Watson:** My next question has been asked by Bethan in a different way, but, under section 6, why is consultation only necessary in respect of the issue described in the initial written statement? Why is it not necessary to consult after the bye-law itself has been drafted? We have touched on this already.

10.15 a.m.

[111] **Carl Sargeant:** It is important that everyone understands the process. The process will be set out and defined very clearly so that people understand what is required to create a bye-law and to revoke a bye-law. Consultation will be part of that process. As I said, I am happy to share the flow chart with you. There seems to be little or limited point in consulting after the bye-law has been created. It is really important that you get views beforehand on the subject of the bye-law being considered. People who will be affected by it should be consulted and have their views taken on board before the bye-law is created. There are pros and cons to consultation before or after, but the fact is that there is a flow chart that people will fully understand with regard to the creation of bye-laws. The key to this is ensuring that people are consulted and that they are contacted to express their opinion on the creation of

such a bye-law.

[112] **Joyce Watson:** On consultation, we know that there are different levels of councils throughout Wales. I note in section 6 that you say that notice of the decision to make a bye-law must be published for at least one month in a newspaper and that a draft of the bye-law must be available on the authority's website. 'At least one month' is a good basis on which to start. However, if many authorities read that the requirement as being one month, an awful lot of subsidiaries—town councils and so on—will possibly not have met within that time and will not have an opportunity to respond. Will you give some consideration to that time frame?

[113] **Carl Sargeant:** I think that that is a reasonable ask, and I will ask my team to look at that.

[114] **Janet Finch-Saunders:** Following on from Joyce's question, that will happen following a decision to make a bye-law. I am more concerned about the consultation process in the initial stage. Some local authorities that have a cabinet can delegate that function to a specific cabinet member for that member to deal with the responses to the consultation. So, theoretically, you could have one member of a local authority deciding on an issue that affects several. I know of evidence of that happening.

[115] **Carl Sargeant:** If you can write to me, through the Chair, about those concerns, I will consider the issue. What really concerns me is the suggestion that there are local authorities or councils that are not engaging in the consultation process properly. I would be concerned about that. I would be happy to strengthen the guidance that we would issue, subject to the views of the committee.

[116] **Bethan Jenkins:** As Joyce mentioned, we have lots of consultation carried out by local authorities, and it varies in terms of rigour and effectiveness. You said earlier that it would end up in the courts, so I am concerned whether there is some sort of opportunity for people to have a right of reply or an appeal process before it reaches a court situation. Not everyone will always be happy with the culmination of the law. How do you balance wanting to put forward the majority opinion with that potential cohort of people who will not agree with how things have been played out in the initial stages? That is my concern in this.

[117] **Carl Sargeant:** I share the Member's concerns about consultation and the process of engagement. That is important. However, as I said earlier, when bye-laws and laws are created, it is not always at the will of everyone. That is a fact of life. What I would hope that we have in the provision for the creation of a bye-law is the publication of a statement and a local consultation—and I am happy to issue or strengthen guidance subject to the committee's recommendations or other recommendations about how we should do that. There is a precedent for good practice, but my concern is that authorities are not following the good practice. I do not want to overburden local authorities. From the consultation, there is a process for a decision on whether it will proceed or not by a council. That point will be the responding to the consultation. If a council then decides to pursue it—you can probably guarantee that there will always be objectors—it must then publish the draft, after which there would be at least a month, as Joyce pointed out, for interested parties to make any representations. I believe that the right time to do this is in the consultation phase, prior the drafting of the bye-law, because you either shape the bye-law or ditch it. Afterwards, it gets more difficult to change in the process. However, there is a case for ensuring that consultation is complete.

[118] **Peter Black:** On the issue of guidance, the Bill itself sets out a process to be worked through to deliver the bye-law, but it does not provide any provision for statutory guidance with regard to consultation. Are there provisions under another Act that give you that power, or would you require an amendment to this Bill to give you the powers to issue that guidance?

[119] **Carl Sargeant:** To issue statutory guidance?

[120] **Peter Black:** Any sort of guidance—statutory or non-statutory.

[121] **Carl Sargeant:** The provision is in clause 18 of the Bill—I am told. [*Laughter.*] I could have just said ‘clause 18’, but I was told.

[122] **Peter Black:** Yes, I heard Mr Phipps tell you. I asked you that question, because I was just looking through the explanatory memorandum where it sets out the list of Orders—

[123] **Carl Sargeant:** It might help to say that clause 18 states that

[124] ‘(1) The Welsh Ministers may give guidance to legislating authorities about—

(a) the procedure for making the byelaws to which section 6 or 7 applies;

(b) the enforcement of byelaws;

(c) anything related to these matters’.

[125] **Peter Black:** However, the power to make subordinate legislation is not listed in the explanatory memorandum.

[126] **Mr Phipps:** No, because it is not subordinate legislation in the sense of a statutory instrument; it is a document that is statutory guidance.

[127] **Peter Black:** So, would that guidance go through the positive or negative resolution procedure, or would it just be issued?

[128] **Mr Phipps:** It would just be issued.

[129] **Peter Black:** So, there would not be any debate in the Assembly about that or any chance for Members to call it in for a debate.

[130] **Carl Sargeant:** On the guidance?

[131] **Peter Black:** Yes.

[132] **Carl Sargeant:** No.

[133] **Peter Black:** Okay, I have made a note of that.

[134] **Mike Hedges:** I want to take you back to a question that I asked earlier about ensuring that the bye-law goes through the full council at each stage. If it goes through the full council at each stage, then, as well as having a statutory consultation, which could be a notice put in a newspaper or on the internet, which would be read by the few, it would almost certainly be reported by the local newspaper as well—whether a daily or a weekly newspaper—as a matter of importance that had gone through council. So you would get consultation in that way, which is one of the reasons why I was so keen—

[135] **Bethan Jenkins:** What if there is no local newspaper?

[136] **Mike Hedges:** Most places have a local newspaper of some kind, either weekly or daily, which would give an opportunity for the process to reach people. That is why I was

keen on it going through the full council at each stage, so that the consultation would not just be the formal issuing of notices, but people would actually read about it.

[137] **Carl Sargeant:** The Member's point is noted.

[138] **Janet Finch-Saunders:** In consulting on the initial statement, how are authorities to decide who is likely to be classed as being interested in, or affected by, the issue?

[139] **Carl Sargeant:** Again, that is a bit of an open-ended one. We have had experience of this before with Dr Dai Lloyd with regard to the creation of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010. If you start defining interested parties, then, inevitably, you define people who do not have to be consulted. I would like to think that councils act responsibly and that they are open to challenge if they do not act responsibly. That is why, therefore, we have left this as 'interested parties', which is more inclusive in nature, as opposed to actually naming bodies. However, I recognise the risk.

[140] **Janet Finch-Saunders:** How have you decided on the types of bye-laws to which the new procedure under section 6 will apply? That is, those listed in Part 1 of Schedule 1.

[141] **Carl Sargeant:** This goes back to an earlier question, Chair, when you asked about local determination in the decision and so on. I believe that there are elements of bye-laws—for example, around sites of scientific interest, national parks and the employment of children and young people—that have national significance, and we would want consistency of decision-making processes on those. I have removed them, so that they need ministerial confirmation, in order to have some sort of control around the decision-making processes. The others, I believe, are more effectively left to be decided locally. There is no science to this decision; it is about local interest and national interest.

[142] **Ann Jones:** We probably have time to pick Gwyn's questions up now.

[143] **Gwyn R. Price:** Some of them have been answered, thank you, Chair. How have you decided on the types of bye-laws that will need ministerial confirmation under the procedures outlined in section 7? Why did you decide not to include a duty on legislating authorities to consult locally on those types of bye-law?

[144] **Carl Sargeant:** I suppose that that is the converse of what Janet just asked, really—what I am keeping in as opposed to keeping out. I hope that I explained that reasonably well. I will just take you through the process of confirmation of the bye-laws again. We believe that local consultation should happen; it is non-statutory, but we still believe that it is the right thing to do. Then, the decision on whether we proceed with the bye-law is very similar to the alternative procedure without confirmation. The authority will make the bye-law, and then it will be published and ready for inspection by interested parties. That process will be under scrutiny by the people affected by the bye-law, which will be submitted to the Welsh Minister for confirmation. The Minister will fix a confirmation date as part of that process. We have sought to protect some of the potentially more significant national issues subject to bye-laws, as opposed to the more locally determined ones, which are often extremely important to the legislating authority. We have just taken that procedure and added the protection of ministerial confirmation. Hopefully that process has been explained clearly to you, Gwyn. Again, I am happy to send that flow chart through to you.

[145] **Gwyn R. Price:** I am interested in why you did not include a duty to consult.

[146] **Carl Sargeant:** Again, we have lifted this from a provision of the Local Government Act 1972. The provision recasts the existing procedures, so this is not a new procedure that we have created—it is just that we have transferred the procedure across into this new

provision on creating bye-laws.

[147] **Gwyn R. Price:** Yes, but in transferring it, you could perhaps look at it and make it a duty.

[148] **Carl Sargeant:** The decision was that we did not think that that would be appropriate. We have taken the procedure as it was, and as it is being used by local authorities currently.

[149] **Mike Hedges:** If all local authorities brought in a bye-law on, say, dog fouling, would you think of consolidating that into a Bill, rather than having 22 bye-laws?

[150] **Carl Sargeant:** The particular issue that you raise would not be dealt with in a bye-law, because it comes under the Clean Neighbourhoods and Environment Act 2005. However, the thrust of your question was whether I would consider that, and I probably would, if there was an application from the 22 authorities to create a single law on a certain issue as opposed to making 22 bye-laws—that would make sense. However, I would think and hope that local authorities, if they were considering that, would all do the same thing, so that we had consistency across Wales.

10.30 a.m.

[151] **Ann Jones:** Time has beaten us, I am afraid. Minister, we have a set of questions that we have not got to; it would be quite interesting to have written answers to some of them. I wonder whether we could submit them to you in writing, along with any other issues that the committee might want to pick up on when it has digested your evidence. We are taking evidence from other bodies that are likely to be affected by this, so we may end up with a number of issues that we may want to ask you to clarify. You will receive a copy of the transcript to check for accuracy; you cannot alter anything that you have said, so if you have said something that you should have not said, tough, it is on the record, and it is the same for me as well. I thank you and your officials for coming. Janet, you look perplexed.

[152] **Janet Finch-Saunders:** I have one last question.

[153] **Ann Jones:** No, I am sorry; we will write to the Minister. I have just said that we have run out of time, and it is not fair. We will write to the Minister with the questions and the Minister has agreed that he will respond to them.

10.31 a.m.

Cynnig Gweithdrefnol Procedural Motion

[154] **Ann Jones:** I move that

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

[155] I see that the committee is in agreement.

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.31 a.m.
The public part of the meeting ended at 10.31 a.m.*