



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

Y Pwyllgor Amgylchedd a Chynaliadwyedd **The Environment and Sustainability Committee**

Dydd Iau, 21 Mehefin 2012
Thursday, 21 June 2012

Cynnwys **Contents**

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

Gorchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012
The Natural Resources Body for Wales (Establishment) Order 2012

Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o'r Cyfarfod
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from the Meeting

Yn y golofn chwith, cofnodwyd y trafodion yn yr iaith y llefarwyd hwy ynddi. Yn y golofn dde, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

In the left-hand column, the proceedings are recorded in the language in which they were spoken. The right-hand column contains a transcription of the simultaneous interpretation.

Aelodau'r pwyllgor yn bresennol **Committee members in attendance**

Mick Antoniw

Llafur
Labour

| | |
|------------------------------|--|
| Keith Davies | Llafur Labour |
| Yr Arglwydd/Lord Elis-Thomas | Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair) |
| Russell George | Ceidwadwyr Cymreig Welsh Conservatives |
| Vaughan Gething | Llafur Labour |
| Llyr Huws Gruffydd | Plaid Cymru The Party of Wales |
| William Powell | Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats |
| David Rees | Llafur Labour |
| Antoinette Sandbach | Ceidwadwyr Cymreig Welsh Conservatives |

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

| | |
|----------------|---|
| Alun Davidson | Clerc Clerk |
| Catherine Hunt | Dirprwy Glerc Deputy Clerk |
| Lisa Salkeld | Cynghorydd Cyfreithiol Legal Adviser |
| Nia Seaton | Gwasanaeth Ymchwil Research Service |
| Graham Winter | Gwasanaeth Ymchwil Research Service |

Dechreuodd y cyfarfod am 9.33 a.m.
The meeting began at 9.33 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Yr Arglwydd Elis-Thomas:** Bore da a chroeso i gyfarfod diweddaraf y Pwyllgor Amgylchedd a Chynaliadwyedd. Mae'n dda gennyf weld Aelodau'n bresennol, yn enwedig Keith Davies; croeso arbennig i chi. Ni welaf bod aelodau o'r cyhoedd yma, ond dilynwn y rheolau arferol—dim ffonau symudol a dilynwch y tywysyddion os bydd argyfwng. Mae'r offer cyfieithu yn gweithio fel arfer. Rydym wedi derbyn ymddiheuriad gan Julie James.

Lord Elis-Thomas: Good morning and welcome to the latest meeting of the Environment and Sustainability Committee. I am pleased to see Members present, particularly Keith Davies; a particularly warm welcome to you. I cannot see anyone in the public gallery, but we will follow the usual housekeeping rules—no mobile phones and follow the ushers if there is an emergency. The translation equipment works as usual. We have received an apology from Julie James.

9.34 a.m.

Gorchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012
The Natural Resources Body for Wales (Establishment) Order 2012

[2] **Yr Arglwydd Elis-Thomas:** Rydym wedi derbyn copïau o'r Gorchymyn, a'r hyn roeddwn yn bwriadu ei wneud oedd agor y drafodaeth yn syth. Gall y drafodaeth gymryd ffurf sylwadau, fel y gwyddoch, neu gwestiynau neu gais am ragor o wybodaeth. Rwy'n agored iawn i'r pwyllgor graffu ar y Gorchymyn mor llawn ac mor fanwl ac y mynnwch. Byddwch yn ymwybodol o'n hawl i ofyn am fwy o amser o dan y Rheolau Sefydlog i drafod y Gorchymyn os ydych yn teimlo bod hynny'n briodol.

Lord Elis-Thomas: We have received copies of the Order, and I intended to open up the discussion from the outset. That discussion can take the form of comments, as you know, or questions or a request for further information. I am very open to the committee scrutinising this Order as fully and in as much detail as you wish. You will be aware of the right to ask for more time under Standing Orders to discuss the Order if you feel that that is appropriate.

[3] Yr unig beth y buaswn i'n ei ddweud am hynny yw mai hwn yw'r Gorchymyn cyntaf a bod Gorchymyn mwy sylweddol i ddod. Mae hynny wedi ei esbonio yn y memorandwm esboniadol ac yn y nodiadau rhagbaratöol neu friffio sydd gyda ni. Pwy sydd am siarad yn gyntaf?

The only thing I would say about that is that this is the first Order and that a more substantial Order is to come. That has been explained in the explanatory memorandum and in the briefing notes that we have. Who wants to speak first?

[4] **Antoinette Sandbach:** I am afraid, Dafydd, that I am quite unhappy with the Order as it is drafted, particularly as it, effectively, sets up the criteria for the body. There is no definition section. I do not think that it has been drafted particularly well and, in fact, we have not had the response from the Minister on the outcome of the consultation. Therefore, it is very hard for us to scrutinise the Order if we do not know what the Minister has established as the aims of the body. I can give you an example: if we look at the functions of the body, which is in article 7, the first criterion is to ensure 'that there is effective co-operation', but 'effective co-operation' is not in any way defined. It does not indicate how that can be judged or measured, or what that means.

[5] The briefing also makes it clear that there are a number of problems with it. I am very uneasy about the Order as it is drafted, going forward, when we do not actually know what the aims of the body are in ministerial terms. I mean, we have had the natural environment framework, but we have not had the outcome yet to that consultation. That makes it impossible for us to say whether this Order will achieve the aims that the Minister wants.

[6] **Mick Antoniw:** I have a couple of concerns as well. I would echo those points, because they are not unfair points. I will refer to two sections in particular that concern me a little. Under 'General incidental function of the Body' it reads:

[7] 'The Body may do anything that appears to it to be conducive or incidental to the discharge of its functions.'

[8] You get a little bit worried when you see the breadth of that creeping into what it actually entails. The other bit that concerns me is 'General financial duties'. In article 13(6), which makes provision for surpluses to be taken out of the body by the Welsh Government, it notes that

[9] 'Where it appears to the Welsh Ministers that the Body has a surplus'.

[10] These may be pedantic points to some extent. If there is a surplus and there are grounds for taking money out and back to the Government, that is one thing. However, it uses the words ‘it appears’—the Government thinks that there might be a few bob there. I do not want to be silly about this, but it seems to me that some of these terms are a little bit vague. I would like an understanding or an explanation as to why this is put in those terms. There may be a reason for it, but it is just that I do not know what that is.

[11] **David Rees:** There are words in here that allow vagueness, effectively. Also, there is the membership aspect. There is an indication about the tenure of a member; it tells us why a member can be removed or how a member may resign, but it does not tell us for how long a member is appointed or how often they may be reappointed. So, clarification on the whole Order needs to be put into place.

[12] **Llyr Huws Gruffydd:** Rwy'n cydfynd â'r pwyntiau sydd wedi eu gwneud. Rwy'n teimlo bod holl natur y ddogfen hon yn rhy amwys ac yn rhy gyffredinol. Rwy'n cytuno â sylwadau Mick a David, ac rwy'n cytuno â'r hyn y mae Antoinette wedi ei ddweud, yn ehangach, yn glŷn â'r hyn rydym wedi ei amlygu o'r blaen. Fy ngofid i, a'n gofid ni, rwy'n siŵr—rydym wedi defnyddio'r gymhariaeth o roi'r cart o flaen y ceffyl i raddau helaeth—yw ei bod hi'n anodd, heb i ni fod yn glir yn glŷn â beth yn union y bydd y corff hwn yn ei gyflawni, drafod sut bydd y strwythurau'n cael eu gosod allan i sicrhau bod hynny'n digwydd.

Llyr Huws Gruffydd: I agree with all of the points that have been made. I feel that the whole nature of this document is too vague and too general. I agree with Mick and David's comments, and I agree with what Antoinette said, more broadly, about what we have previously highlighted. My concern, and our concern, I am sure—we have used the comparison of putting the cart before the horse to a large extent—is that, without having more clarity about what precisely this body will achieve, it is difficult for us to discuss how the structures will be set up to ensure that that happens.

[13] **William Powell:** Pretty much everything that needs to be said has been said, and I would reiterate what Llyr has said. Mick's point was a particularly strong one, because the attraction of potentially raiding funds from this body needs to be seen in the context of the long-term nature of forestry, which will be subsumed into this, and investment decisions and commitments need to be considered as going 20 or 30 years down the line. Therefore, as Mick implied, there is a danger, as things currently stand, that you could have short-term decisions to meet funding gaps, or whatever, without due attention being paid to the long-term environmental functions that this body needs to exercise.

[14] **Antoinette Sandbach:** May I raise one point? I know, for example, that with other bodies like the Welsh Language Board—

[15] **Lord Elis-Thomas:** It is no longer in existence, sadly.

[16] **Antoinette Sandbach:** Some bodies were accountable to the National Assembly in terms of appointments, for example, which were ratified by the National Assembly. So, I wondered whether we might want to look at that. In her briefing, Nia indicated that we had asked that the body designated an additional accounting officer who would be accountable to the National Assembly for Wales for their discharge of duties as an accounting officer. I think that we made a recommendation about that as a committee, which this Order ignores. Mick has talked about clarification; I think that there should be a section on definitions and some sort of limits on the powers of this body—it could go hoofing off. We need to understand where the limit of the powers are in terms of the types of regulations it would make and so on. I just do not think that we have that information.

[17] **Mick Antoniw:** With regard to article 8, which I started reading last night and, for

the life of me, could not work out precisely what it was saying. I do not know whether it was me or the presentation, but I would like clarification as to exactly what it is saying when it says

[18] ‘In considering whether or not to exercise any power conferred upon it by or under any enactment, the Body must take into account the likely costs and benefits of the exercise or non-exercise of that power.’

[19] So far so good. However:

[20] ‘In deciding the manner in which to exercise any such power, the Body must take into account the likely costs and benefits of its exercise in the manner in question.’

[21] I do not understand what the purpose of that is and what it means. Again, maybe there is a reason for it, but it would be helpful to know that.

[22] **Yr Arglwydd Elis-Thomas:** Gwnaf un neu ddau o sylwadau, efallai, ar y drafodaeth yr wyf wedi ei chlywed hyd yn hyn. Nid wyf yn ceisio amddiffyn y Llywodraeth, y Gweinidog na neb arall, ond mae llawer o’r ieithwedd hon yn ieithwedd yr wyf yn gyfarwydd â hi yng nghyd-destun cyrff tebyg eraill. Nid yw’n beth anarferol i osod cyfrifoldeb neu bwerau i sicrhau bod modd gwneud pethau ‘cydnaws neu gysylltiedig’, fel, er enghraifft, yn adran 9. Ffordd o sicrhau nad yw’r corff yn cael ei lesteirio rhag gwneud unrhyw beth ar sail honiad bod yr hyn y mae’r corff yn ei wneud yn *ultra vires*, neu beth bynnag yw’r Lladin gywir. Mae’n debyg mai dyna yw sail llawer o hyn, ac rwy’n gobeithio y bydd hyn yn dod yn fwy amlwg yn y Gorchymyn nesaf. Mewn gwirionedd, wrth geisio crynhoi’r drafodaeth yn y ffordd honno, rwy’n meddwl fy mod yn cytuno â’r hyn y mae’r pwyllgor yn ei ddweud, oherwydd mae hi’n rhan o’n gwaith i sicrhau bod unrhyw offerynnau statudol neu ddeddfwriaeth sy’n dod ger ein bron i ni graffu arnynt yn addas i’w pwrpas. Felly, os nad ydym yn fodlon â hynny, rwy’n credu mai’r peth priodol i’w wneud yw gofyn am fwy o wybodaeth a chynnal trafodaeth bellach.

Lord Elis-Thomas: I will make one or two comments, perhaps, on the discussion that I have heard so far. I am not trying to defend the Government, the Minister or anyone else, but much of this phraseology is phraseology that I am familiar with in the context of other similar bodies. It is not an unusual thing to place responsibility or powers to ensure that a body may do ‘conducive or incidental’ things, as, for example, in article 9. It is a way of ensuring that the body is not hindered in doing anything on the basis of a claim that what it is doing is *ultra vires*, or whatever the correct Latin phrase is. It seems that that is what much of this is, and I hope that this will become more apparent in the next Order. In fact, in trying to summarise the discussion in that way, I think that I agree with what the committee is saying, because it is part of our work to ensure that any statutory instruments or legislation that come before us for scrutiny are fit for purpose. Therefore, if we are not satisfied with that, then I think the appropriate thing to do is ask for more information and hold further discussions.

9.45 a.m.

[23] **Antoinette Sandbach:** I am not really clear what the extra 20-day procedure is and whether, for example, we have powers as a committee to suggest amendments to the Order, or whether we can write and say, ‘We would like a definitions section’, and whether it would be useful for us—and I know that there are a number of qualified lawyers around the table, but I would not call myself a draftsman—to have a bit of legal advice on it. There is an Assembly lawyer—

[24] **Ms Salkeld:** During the 20-day period, the committee would be able to make recommendations on those types of things, and then the Minister would have to take them into account when laying any amended Order. If an amended Order is laid, a statement has to be laid with that, which would explain why any changes were made or not made. It would be open to the committee to do that if that procedure was followed.

[25] **Antoinette Sandbach:** From a procedural point of view, he has laid it now, so is the clock ticking, as it were?

[26] **Ms Salkeld:** Yes, a recommendation would have to be made by the committee by 5 July if it was to go to the further 20-day procedure. Otherwise, if nothing is done by 5 July, it follows the normal affirmative procedure—so, in a further 10 days there would be a resolution, or a motion would be put forward to approve this Order, and the Assembly would either pass that or not. There would be no further consultation or anything within that.

[27] **Antoinette Sandbach:** So this is really our opportunity to send it back and say, ‘Actually, this needs work’.

[28] **Ms Salkeld:** Yes, it would be the only opportunity for this Order.

[29] **Lord Elis-Thomas:** We would not be sending anything back; what we are doing is following the procedure laid out in the Public Bodies Act 2011, as we have just heard. Thank you very much for that.

[30] **David Rees:** I assume that the 20 days are 20 calendar days rather than 20 working days.

[31] **Ms Salkeld:** They are calendar days, but they exclude recess days, so the effect of the 20 days would be to take the period past the summer recess, which has implications for the setting up of the body.

[32] **David Rees:** So, it would actually take us into September. I wanted to check that it would not stop when we were not here.

[33] **Antoinette Sandbach:** It is important that we know the aims of the body from the Order that is establishing it. If we adopt the 20-day procedure, that timetable might help the Minister bring forward a statement or something else in the Assembly that will allow us to look at it during recess, hopefully. Otherwise, it will just go through and we get no other chance.

[34] **Yr Arglwydd Elis-Thomas:** Y dyddiad allweddol, felly, yw 5 Gorffennaf. Mae'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn ogystal yn edrych ar hwn yn gyfochrog. Felly, mae popeth rydym wedi trafod ei wneud y bore yma yn dod o fewn yr amserlen honno yn gwbl glir. Yr hyn rwy'n ei awgrymu yw ein bod yn ei ychwanegu at y rhestr o bethau rydym wedi eu trafod yn barod a'i chyflwyno a gofyn am ymateb gan y Llywodraeth o fewn yr wythnos, cyn inni gyfarfod nesaf. A oes unrhyw sylwadau eraill? Gwelaf nad oes.

Lord Elis-Thomas: The key date, therefore, is 5 July. The Constitutional and Legislative Affairs Committee is also looking at this in parallel with us. Therefore, it is clear that everything that we have discussed this morning about what we are going to do comes within that timetable. What I suggest is that we add it to the list of issues that we have already discussed and that we submit that list and ask for a response from the Government within a week, or before our next meeting. Are there any other observations? I see not.

[35] Thank you very much for your guidance there, Lisa. We must get our procedures

right, otherwise I will not be doing my job. David, you had something further.

[36] **David Rees:** There is this question of wording; perhaps I am being pedantic because I used to be involved with documentation a lot and I used to make sure that it was quite clear what was being said. Given that the words ‘appears to be’ are used throughout the Order, I think that we need clarification. What is meant by ‘appears’? Surely there should be a situation in which something does happen, and the ‘appears’ opens it up—to whom does it ‘appear’? To me, that gives people opportunity on the legal side of things to really argue cases one way or the other and make it very grey. That comes through the whole document. That is the type of terminology that needs to be revised to give us quite specific points at which things do or do not happen, and what does and does not give them permission to do something.

[37] **Antoinette Sandbach:** At the end of section 7(2)(a), I would say that it should read ‘or’ point (b). On the first criterion, it currently states

[38] ‘and any other person or body which is—

(a) referred to in article 6(1)(a), and

(b) affected by the relevant proposal.’

[39] So, it should be ‘or’ rather than ‘and’, because if you are affected by it—

[40] **Mick Antoniw:** It is always difficult to suggest substitutes, particularly in a committee that includes a number of lawyers who will almost certainly never be capable of reaching an agreement on precision. It seems to me that the important point is that we get the explanation and identify the areas of concern and perhaps some of the generic problems that we see. It would seem imprudent to do anything else at this stage.

[41] **Lord Elis-Thomas:** My view is that you seem to be making a fine fist of that already—all of you. [*Laughter.*]

[42] A hoffech imi ofyn am fwy o esboniad ar unrhyw bwyntiau eraill? Rwyf yn awyddus i gael esboniad am y llwybr hwn o ddau Orchymyn ac a allwn fod yn hyderus y bydd y Gorchymyn neu'r ddeddfwriaeth a fydd yn trosglwyddo pwerau penodol i'r corff yn y dyfodol yn llawnach ac yn gliriach na'r Gorchymyn hwn. Derbyniaf mai Gorchymyn rhagbaratoadol yw hwn, ond efallai fod gennym yr hawl i ddisgwyl mwy o eglurder mewn Gorchymyn rhagbaratoadol. Mater i'r Llywodraeth neu'r Gweinidog yw ymateb i'n cwestiynau yn hynny o beth.

Would you like me to seek further clarification of any other points? I am keen to get an explanation of this path of two Orders and whether we can have confidence that the Order or the legislation that will transfer specific powers to the body in the future will be fuller and clearer than this Order. I accept that this is a preparatory Order, but we may have a right to expect more clarity in a preparatory Order. It is up to the Government or the Minister to respond to our questions in that regard.

[43] **Antoinette Sandbach:** The simple point of a definitions section would help anyone who is trying to read, interpret or understand this. When certain words are used, it would mean that there would be definitions for those words. For example,

[44] “‘environment” (“amgylchedd”) includes, without limitation, living organisms and ecosystems.’

[45] I have not had the time to go through it line by line to try to pick out what the changes

might be, but a definitions section would give us a structure to start from. We could then go on from there. It would be useful for us to have a legal input where there is uncertainty on the face of the document. For example, where unlimited powers are granted to the organisation, our recommendation could be that there should be limits on the powers of the organisation, and, if so, what should they be? We should consider those types of things. At the moment, Dafydd, my fear is that the second Order might be much delayed and that this body is set up and already establishes the general functions of the Order. It could almost just go trotting off on its own.

[46] **Lord Elis-Thomas:** I mentioned the parallel scrutiny of the Constitutional and Legislative Affairs Committee. It will be considering some of these issues in relation to drafting and the appropriateness of clauses from a constitutional point of view, but it is for us to consider the Order from the policy point of view.

[47] **Antoinette Sandbach:** How can we decide on whether it achieves the policy objectives if we do not know what the Minister has decided on the outcome of the natural environment framework? We do not know what his decision is on the NEF, but I think that he is due to make a statement. Is he due to make a statement? Anyway, it might encourage him to make one, Dafydd.

[48] **Ms Seaton:** We have a general scrutiny session with the Minister next week, and you can certainly ask the Minister a question on the timetable for the announcement of the results of the NEF then.

[49] **Lord Elis-Thomas:** We are in a strong position here, because there is nothing surprising about our taking the attitude that we appear to be taking this morning, because it was the robust attitude that we took when we were looking at the business case. Although he was generous in the response that he gave to us on the business case by accepting at least two of our concerns, our concerns now are further enhanced by our first scrutiny of this Order. Is that a fair summary? As they ask juries in these courtroom dramas that I never watch, 'Is that the view of you all?' [*Laughter.*]

[50] **Russell George:** As I read this last night, to me, it just looked like a normal legal document. To someone who is not a lawyer, it was just a document full of wording that I did not understand, so I am glad that we have some legal people around the table.

[51] **Mick Antoniw:** I cannot tell you how glad I am that I now work in a body that welcomes my former profession. [*Laughter.*]

[52] **Lord Elis-Thomas:** We have also had some very clear views from Lisa, who is our official lawyer. I have nothing against colleagues around the table, but we do have an official lawyer.

[53] **Russell George:** That was my question, really. I could go through this line by line, but it would be difficult for me to make points and, as Antoinette said, she has not had the time to do so. I am just wondering what the process is, and whether we can get some legal expertise to go through it line by line, because it would take an awful lot of our time to do that and I do not know whether we have the capacity in our services to do that. What is the normal process for that?

[54] **Lord Elis-Thomas:** I am advised that, if we are to undertake detailed line-by-line scrutiny, it would require our resolving that we should take the enhanced procedure. That, of course, could be overturned by the Assembly in a vote, which would prevent us from doing that. That is the situation, is it not? Lisa, could you just summarise that more clearly than I did then?

[55] **Ms Salkeld:** With regard to terms being legally uncertain, those are things that the Constitutional and Legislative Affairs Committee would pick up. So, any drafting that the committee feels is unclear and out of step with what would usually be expected, for example, would be picked up by that committee. We would deal with anything that we felt was over and above that, from a policy perspective, such as that you could not see where the Minister was going because the policy was not clear, as Antoinette said. Those are the sorts of the issues that we would pick up rather than the legally uncertain terms, because they will be dealt with by the constitutional affairs committee.

[56] **Russell George:** So, perhaps we should stay away from that, if they are dealing with that side of it. We should leave it to them.

[57] **Antoinette Sandbach:** The difficulty is that the Constitutional and Legislative Affairs Committee has not had the involvement in the scrutiny of setting up the SEB in the way that we have. Therefore, it will not necessarily be alive to some of the issues, as we are.

[58] **Lord Elis-Thomas:** It will be alive to other things.

[59] **Antoinette Sandbach:** I am not suggesting that it would not be.

[60] **Llyr Huws Gruffydd:** Rwy'n clywed yr hyn y mae Russell ac Antoinette yn ei ddweud, ond rwy'n credu bod lle i ni, fel Aelodau, drafod â'n cyd-Aelodau a'n cyfeillion o'n pleidiau sydd ar y pwyllgor arall os oes unrhyw faterion o'r fath. Y perygl yw y byddwn yn ail-greu'r olwyn, ac y bydd gennym ddau bwyllgor yn gwneud yr un darn o waith, mewn gwirionedd.

Llyr Huws Gruffydd: I hear what Russell and Antoinette are saying, but I think that there is room for us, as Members, to discuss with our colleagues and our friends from our parties who sit on the other committee if there are such matters. The danger is that we will reinvent the wheel, and that we will have two committees doing the same work, in effect.

[61] **Yr Arglwydd Elis-Thomas:** Na, nid oes perygl o hynny o gwbl. Mae swyddogaethau'r ddau bwyllgor yn hollol glir, ac mae gennym gynghorwyr cyfreithiol a chlercod yma, felly nid oes eisiau inni boeni am hynny. Yr hyn sy'n bwysig yw ein bod ni fel pwyllgor yn canolbwyntio ar y materion polisi sy'n dod drwodd i ni, a dyna y buom yn ei wneud y bore yma. Nid oes eisiau ichi boeni dim am y drafodaeth a gawsom y bore yma.

Lord Elis-Thomas: No, there is no danger of that at all. The functions of both committees are quite clear, and we have legal advisers and clerks here, so we do not need to worry about that. What is important is that we as a committee focus on the policy issues that come through to us, and that is what we have done this morning. You do not need to worry at all about the discussion that we had this morning.

10.00 a.m.

[62] **David Rees:** I am not a member of the legal profession, but it is part of our job to try to work out what we understand from this, and make the Order as clear and as explicit as possible. Yes, there will be some legal terminology and jargon that will not be appropriate, but I am concerned that we cannot leave all that to the Constitutional and Legislative Affairs Committee because it has an awful lot to do with legislation coming through the system, and we have an overall look at it. If I were reading this trying to interpret it, I would want there to be a clear black-and-white picture, and for it to go somewhere, rather than for it to open up areas so that I would have to ask. 'Where does that actually take us?' We are also trying to make sure that the policy is clear. By reading the simple language here, can we say that that is actually the policy? If we cannot say it, there will be difficulty elsewhere.

[63] **Russell George:** I think that there is an advantage—*[Inaudible.]* *[Laughter.]*

[64] **Keith Davies:** Nid oeddwn gyda chi pan oeddech yn trafod y polisi yn y lle cyntaf, ond mae'r pwyntiau sydd wedi'u codi yn rhai cyffredinol i unrhyw gorff sy'n cael ei sefydlu. Beth yw ei bwerau? Pwy sy'n penderfynu arnynt? Wedyn, mae'r holl bethau am gyllid ac yn y blaen, a phwerau'r Gweinidog. Nid yw'n ymwneud â'r corff hwn yn benodol ond â chyrff yn gyffredinol.

Keith Davies: I was not with you when you discussed the policy initially, but the points that have been raised are general points for any body being established. What are its powers? Who decides on those? Then, there are all the aspects regarding finance and so on, and the Minister's powers. It is not to do specifically with this body, but with bodies in general.

[65] **Yr Arglwydd Elis-Thomas:** Fe gei di ddod eto. *[Chwerthin.]*

Lord Elis-Thomas: You can come again. *[Laughter.]*

[66] **Mick Antoniw:** I think that that is absolutely right. It is very difficult to distinguish and to separate the way things are presented, which policies they overlap with, the exercise of powers and the ability to remove moneys, and so on, which are clearly things that go into policy areas. To request explanations of the areas that we have identified is fine, I would suggest. It may well be perfectly okay for the constitutional affairs committee to do the technical scrutiny, but as long as we have identified the points and the concerns that we have, we are, to some extent, fulfilling that part of our duty.

[67] **Yr Arglwydd Elis-Thomas:** Rwyf yn teimlo ein bod wedi cael trafodaeth eithaf llawn a'n bod yn gytûn. Felly, gofynnaf i'r ysgrifenyddiaeth a'n cynghorwyr cyfreithiol, polisi ac ymchwil i lunio dogfen gryno i'w chyflwyno i'r Llywodraeth, gan restru ein gofynion. Cawn weld beth fydd yr ymateb yn ein cyfarfod nesaf.

Lord Elis-Thomas: I feel that we have had a fairly full discussion and that we are in agreement. I will therefore ask the secretariat and our legal, policy and research advisers to draw up a concise document to submit to the Government, listing our requirements. We will see what the response is at our next meeting.

[68] **David Rees:** Some valid points were made in the briefing, which clarified some issues, so I would be happy if those points could also be made in that.

[69] **Russell George:** Regarding the timescale, you mentioned that the committee's secretariat would draw that up and present it to the Government, and that we would wait for the Government's response, but time is ticking. Is the Government obliged to respond within a certain amount of time?

[70] **Mr Davidson:** I have pre-empted things a little by giving the Government some forewarning that the committee is likely to take some action requiring a swift response. So, I have asked it to be prepared to receive something from us today so that it can provide a response by next Tuesday. Admittedly, that does not give us much time before the meeting on Wednesday, but that is as quickly as we can do things in the circumstances. If Members felt that they wanted to take further action on the enhanced procedure, there would be enough time to do that before 5 July.

[71] **William Powell:** I just wanted to double check when the Constitutional and Legislative Affairs Committee is considering this, and also what level of liaison there will be between you on our behalf and David Melding and that committee to provide some useful context for the work that it will undertake.

[72] **Antoinette Sandbach:** Will that committee get a copy of what we have sent to the

Government, so that it is aware of what—

[73] **Lord Elis-Thomas:** Yes, we can do that. Lisa, do you have the timescale?

[74] **Ms Salkeld:** I think that it might be Monday when the Constitutional and Legislative Affairs Committee meets, but I am not certain.

[75] **Lord Elis-Thomas:** As you know, I have the highest regard for David Melding as Deputy Presiding Officer and Chair of the Constitutional and Legislative Affairs Committee. I have no issues with that whatsoever. However, I will have a conversation with him on your behalf, in addition to any material that we exchange, so that we are thinking and working together.

[76] **Russell George:** How many members are there of the Constitutional and Legislative Affairs Committee? Is it a committee of 10?

[77] **Lord Elis-Thomas:** I believe that it has five members, but they are all extremely learned. [*Laughter.*]

[78] **Russell George:** Would it be normal to ask them to come to our committee, or to join our committee?

[79] **David Rees:** Julie James sits on that committee.

[80] **Mick Antoniw:** Vaughan and I rotate—

[81] **Lord Elis-Thomas:** There is nothing to prevent us from having a joint meeting if we believe it appropriate.

[82] **Russell George:** No, if we felt that a joint meeting was needed.

[83] **Lord Elis-Thomas:** I will ask our legal, research and policy advisers and the secretariat to provide me with a brief for my discussion with the Chair of the Constitutional and Legislative Affairs Committee, to ensure that we collaborate. This is big business for both committees, as you make clear.

10.06 a.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from
the Meeting**

[84] **Yr Arglwydd Elis-Thomas: Lord Elis-Thomas:** I move that
Cynigiaf fod

*y pwyllgor yn penderfynu gwahardd y the committee resolves to exclude the public
cyhoedd o weddill y cyfarfod yn unol â Rheol from the remainder of the meeting in
Sefydlog Rhif 17.42(vi). accordance with Standing Order No.
17.42(vi).*

[85] Gwelaf fod y pwyllgor yn gytûn. I see that the committee is in agreement.

Derbyniwyd y cynnig.

Motion agreed.

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.07 a.m.
The public part of the meeting ended at 10.07 a.m.*