



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

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

**Dydd Llun, 23 Ionawr 2012
Monday, 23 January 2012**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynnddi 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

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
Owain Roberts	Y Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 2.33 p.m.

The meeting began at 2.33 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. I will make the usual housekeeping announcements. We do not expect a fire drill this afternoon, so if we hear the alarm, please follow the instructions of the ushers, who will help us leave the building safely. These proceedings will be conducted in Welsh and English. When Welsh is spoken, interpretation will be available through the headsets on channel 1. Should you need to amplify proceedings, you can listen to channel 0 in order to do that. Please switch off all electronic equipment completely, as leaving anything in silent mode will interfere with our broadcasting equipment.

2.34 p.m.

**Offerynnau nad ydynt yn Cynnwys unrhyw Faterion i'w Codi o dan Reol
Sefydlog Rhifau 21.2 neu 21.3
Instruments that Raise no Reporting Issues under Standing Order Nos. 21.2 or
21.3**

[2] **David Melding:** Are there any comments about the fact that we not have to report on them? Are we content? You will note that two have reached the 21-day rule. This has been taken up and there are particular reasons for it, which we do not need to dwell on, but it is understandable why that rule has been breached in these instances.

2.35 p.m.

**Offerynnau sy'n Cynnwys Materion i'w Codi gyda'r Cynulliad o dan Reol
Sefydlog Rhifau 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under Standing
Order Nos. 21.2 or 21.3**

[3] **David Melding:** There are no items that raise reporting issues.

**Gorchymyn y Swyddfa Gwell Rheoleiddio Leol (Diddymu a Throsglwyddo
Swyddogaethau) 2011
The Local Better Regulation Office (Dissolution and Transfer of Functions Etc)
Order 2011**

[4] **David Melding:** This raises some general issues about how these Orders might be dealt with, so we will have an opportunity of doing that because, strictly speaking, our Standing Orders do not capture these particular Orders at the moment and how they will be dealt with. That will emerge in our discussion with regard to an Order that amends primary legislation but does not require an LCM here. We will focus first on the actual Order before us before we have a discussion about how we might approach the general category that has now been identified, because we anticipate quite a few of these Orders coming in over the next few months. We have a paper that has been prepared by Gwyn, our legal adviser, so I will ask Gwyn to introduce the paper.

[5] **Mr Griffiths:** Fel y gwelwch, mae'r papur yn gymharol fyr, ac mae hynny'n adlewyrchu natur y Gorchymyn. Mae'r Gorchymyn yn diddymu swyddfa gwell rheoleiddio leol, sef sefydliad a sefydlwyd gan Ddeddf yn 2008, ac, yn rhyfedd iawn, roedd yr un Ddeddf yn darparu cyfundrefn ar gyfer diddymu'r swyddfa, a dyna sy'n digwydd yn yr achos hwn.

Mr Griffiths: As you will see, the paper is relatively brief, which reflects the nature of the Order. The Order dissolves the local better regulation office, which was established by an Act in 2008, and strangely, the same Act also provided a power to dissolve the office, which is what is happening in this case.

[6] Caiff swyddogaethau'r swyddfa eu trosglwyddo i Weinidogion Cymru i'r graddau y maent yn berthnasol i swyddogaethau Gweinidogion Cymru. Fel arall, cânt eu trosglwyddo i'r Ysgrifennydd Gwladol, gan gynnwys y cyfrifoldeb am swyddfeydd, staff ac ati, yn ogystal â dyledion ac unrhyw adnoddau ariannol. Mae'r polisi i'w weld yn synhwyrol o ran yr hyn sy'n digwydd i'r swyddogaethau, ond

The functions of the office are transferred to Welsh Ministers insofar as they are relevant to the functions of Welsh Ministers. Otherwise, they are transferred to the Secretary of State, along with responsibility for offices, staff and so on, as well as debts and any financial resources. The policy seems sensible in terms of what is happening to the functions, but I am happy to answer any questions on that.

rwyf yn hapus i ateb unrhyw gwestiynau am hynny.

[7] Mae'n fwy diddorol bod hon yn enghraifft o'r ffordd y caiff deddfwriaeth ei gwneud yn San Steffan drwy Orchymyn sy'n cael effaith ar naill ai bwerau Gweinidogion Cymru, fel yn yr achos hwn, neu faterion o fewn cymhwysedd deddfwriaethol y Cynulliad.

What is more interesting is that this in an example of the way in which legislation is made in Westminster by Order that has an impact on either the powers of Welsh Ministers, as in this case, or issues within the Assembly's legislative competence.

[8] Fel yr eglurodd y Cadeirydd, nid yw'n dod o fewn y drefn bresennol ar gyfer memorandwm cydsyniad deddfwriaethol ond mae'n dod o fewn y math o beth yr ystyriwyd y byddai'r pwyllgor hwn yn ei drafod fel Gorchymynion o dan Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006. Felly, o ran gwaith y pwyllgor hwn, mae'n ffitio'n gyfleus.

As the Chair explained, it does not fall within the current remit for dealing with legislative consent memoranda but it does fall within the kind of remit that it was considered that the committee should be discussing as Orders under the Legislative and Regulatory Reform Act 2006. Therefore, it fits conveniently within the work of the committee.

[9] Mae hefyd yn berthnasol i'r hyn fydd pwyllgor yn ei drafod fel rhan o'i ymchwiliad, sef y posibilrwydd o gael gwared â'r gwahaniaeth rhwng Rheol Sefydlog Rhif 29 a Rheol Sefydlog Rhif 30 o ran newid ym mhwerau Gweinidogion Cymru drwy Ddeddfau Seneddol. Mae hwn yn tynnu ein sylw at y ffaith bod hynny'n gallu digwydd drwy Orchymyn ac felly, pan fydd ystyriaeth yn cael ei rhoi i ddiwygio'r Rheolau Sefydlog, byddai'n gwneud synnwyr hefyd i ystyried Gorchymynion fel hyn gan y bydd rhai cymharol debyg yn dod o dan y Ddeddf cyrff cyhoeddus, sydd newydd orffen mynd drwy'r Senedd ac y bydd y Pwyllgor Busnes yn ei ystyried maes o law.

It is also relevant to what the committee will discuss as part of its inquiry, which is the possibility of doing away with the difference between Standing Order No. 29 and Standing Order No. 30 with regard to changes to Welsh Ministers' powers through parliamentary Acts. This draws our attention to the fact that that can also happen through Orders and, therefore, when consideration is given to amending Standing Orders, it would make sense to consider these sorts of Orders given that similar ones will appear under the public bodies Act, which has just completed its passage through Parliament and which the Business Committee will consider in due course.

[10] **David Melding:** This particular Order does not seem to raise any issues of concern in terms of what we would want to report in a merit report. Do Members agree with that?

[11] **Suzy Davies:** I have a point, but maybe I have not read things properly. There is an indication that the estate and staff, which are currently part of LBRO, would be transferred to the Secretary of State for Wales. Yet, the responsibilities of that organisation will go the Secretary of State for Wales and the Welsh Ministers. There does not seem to be an equivalent provision that the estate and staff, if needed, would pass to the Welsh Ministers. In fact, the explanatory note says that there are no financial implications. So, I think that there is a question to be answered there.

[12] **Mr Griffiths:** I think that the answer to that is fairly straightforward in that, although reference is made to the Secretary of State, these sorts of Orders will not specify which Secretary of State it is. In fact, it will be the Secretary of State with responsibility for local government in England, not the Secretary of State for Wales, who takes on the bulk of this.

[13] **Suzy Davies:** Oh, sorry, that is what I meant. I do not know why I said 'Wales'.

However, if responsibilities are coming to the Welsh Government, there is still the question of whether there is any money and staff to follow. Or is that implied in the way the Order is worded? I could not read that implication myself.

[14] **Mr Griffiths:** I do not know. From a reading of the Order, it appears that everything that currently belongs to, or is a liability of, the office will be transferred to the Secretary of State. However, whether there are any additional staff coming to Welsh Ministers, I am not sure.

[15] **David Melding:** I suspect that it is for the Government to negotiate that. However, as this is going to happen in England, there is no way of avoiding their transfer somewhere. So, it would have to be to Welsh Ministers, basically. Is that right, Gwyn?

[16] **Mr Griffiths:** Yes. The disadvantage that we have is that the explanatory memorandum is prepared by, in this case, the Department for Business, Innovation and Skills for the benefit of Parliament. Therefore, it is not written from a Welsh perspective, which is not particularly helpful.

[17] **Suzy Davies:** Well, the question has been raised anyway.

[18] **Mr Griffiths:** It is the sort of question that might helpfully be raised in the debate when the Minister moves the motion in Plenary.

[19] **David Melding:** Steve has just pointed something out—

[20] **Mr George:** We have the legislative consent memorandum.

[21] **David Melding:** Yes, and the final point in that on financial implications indicates that there is £200,000 in the main expenditure group and states that:

[22] ‘Any associated administration costs can be met from within the Local Government and Communities Delegated Running Costs budget.’

[23] They have obviously contented themselves that they have met the financial implications.

[24] **Suzy Davies:** It is a circuitous route, then. It will come via the English department to us, presumably.

[25] **David Melding:** They have certainly accommodated within the budget what needs to happen. Quite whether they have received the exact transfer is another issue.

[26] **Mr George:** We can mention that in the report as a specific issue that the Minister might want to try to address during the debate.

[27] **David Melding:** That comment aside, we are content for the matter to proceed. We do not have any issues that relate to the actual merit of the Order. On the general point of how we are going to deal with such Orders in future, although this type of power to amend primary legislation by Order is rare, it is not unknown. When they come along, there can be quite a few Orders attached to them. It could run to tens of Orders on related matters. On this particular issue, they relate to the Local Better Regulation Office and its dissolution. We could have quite a lot of Orders to deal with. Therefore, a mechanism is required.

[28] I should tell committee members that the Welsh Government has already identified this as a matter that needs to be addressed and that is not currently captured in Standing

Orders. Very helpfully, the Leader of the House, Jane Hutt, asked to meet me with her officials. I had every indication from them that the Government would welcome our report addressing this issue and our possibly coming up with a recommendation. As Gwyn indicated, one obvious recommendation is that Standing Orders Nos. 29 and 30 should relate to this area as well, particularly if we end up unifying those Standing Orders in a single one dealing with all these matters. Rather than achieve a technical solution, I would welcome Members' views. Obviously, as the report has not yet been completed in draft we have not yet received the draft for consideration. In the evidence sessions we have had this was obviously not raised with us, but it clearly relates to our report. Therefore, we need to include it in the report. Otherwise, it would be very clumsy if we were to try to come back to this issue after publishing the report. Are Members content with that? I see that you are.

[29] I might give you a bit more detail when we are in private session to talk about what we might include in the draft report. If there are no other comments on that, we will move on.

2.45 p.m.

Gohebiaeth y Pwyllgor Committee Correspondence

[30] **David Melding:** We have received a response from Gwenda Thomas on the Carers Strategies (Wales) Regulations 2011. You have seen the letter, and it is a very good outcome. It seems to me that the Deputy Minister has fully accepted the points that we made and is moving to meet the issues that we raised. Are Members content with that? I see that you are.

2.45 p.m.

Bil Is-ddeddfau Llywodraeth Leol (Cymru) Local Government Byelaws (Wales) Bill

[31] **David Melding:** With your consent, I will postpone this item probably until 6 February. Unavoidable circumstances have occurred over the past couple of days that require this item to be postponed, so I am grateful for your co-operation in so doing. However, we will return to this matter in a speedy way, so that we can report in a timely fashion to the Communities, Equality and Local Government Committee on the issues relating to subordinate legislation in the Local Government Byelaws (Wales) Bill.

2.46 p.m.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[32] **David Melding:** I do not believe that there is enough business to warrant a meeting next week, so I would rather defer all of the business that is pending until 6 February and deal with it then. Do Members agree not to meet next week? Is that okay? I see that it is. We will have a slightly longer meeting on 6 February. There is a paper to note on our meeting on 16 January.

Cynnig Gweithdrefnol Procedural Motion

[33] **David Melding:** I move that.

the committee resolves to exclude the public from the remainder of the meeting in accordance

with Standing Order No. 17.42(vi).

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

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 2.47 p.m.
The public part of the meeting ended at 2.47 p.m.*