



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

16/10/2017

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Yr Arglwydd / Lord Dafydd Elis-Thomas Bywgraffiad Biography	Annibynnol Independent
Nathan Gill Bywgraffiad Biography	Annibynnol Independent
Huw Irranca-Davies Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives

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

Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
Richard Johnson	Dirprwy Glerc Deputy Clerk
Lisa Salkeld	Cynghorydd Cyfreithiol Legal Adviser
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 14:30.

The meeting began at 14:30.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest

[1] **Huw Irranca-Davies:** Welcome to this afternoon's session of the

Constitutional and Legislative Affairs Committee, and could I begin with the normal housekeeping remarks? We're not expecting a fire alarm, but if we do have one, please follow the instructions from staff and ushers. We have no tests forecast for today. All mobile devices switched to silent mode and, of course, we have Welsh and English simultaneous translations here on channel 1. And finally, simply, apologies for absence, and we have one committee member with apologies for absence today: Dr Dai Lloyd. Otherwise, we have a full house.

14:31

**Offerynnau nad ydynt yn Cynnwys Materion i gyflwyno Adroddiad
arnynt o dan Reol Sefydlog 21.2 na 21.3
Instruments that Raise no Reporting Issues under Standing Order 21.2
or 21.3**

[2] **Huw Irranca-Davies:** So, if we can move to item 2 on our agenda today: instruments that raise no reporting issues under Standing Order 21.2 or 21.3. And under this item, we have papers referring to a statutory instrument with clear reports, which is the Education (Supply of Information about the School Workforce) (Wales) Regulations 2017, and we have the legal advice note as well that comes with that. We also have two others there of negative resolution instruments: the Marine Licensing (Delegation of Functions) (Wales) Order 2017 and the Education (Hazardous Equipment in Schools) (Removal of Restrictions on Use) (Wales) Regulations 2017.

[3] So, if I could ask Members, these are with no reporting issues under Standing Order 21.2 or 21.3, whether they have any comments or observations.

[4] **David Melding:** I thought we were going to turn one into a reporting thing, with a merits point. This one.

[5] **Huw Irranca-Davies:** Yes, indeed, relating to the correspondence—

[6] **David Melding:** Yes, and the committee notes the content of the letter, dated 6 October, et cetera.

[7] **Huw Irranca-Davies:** Yes. It might be helpful to ask Lisa to make some observations on this or comments.

[8] **Ms Salkeld:** Yes, certainly. The letter from Defend Digital Me came in after we prepared the draft clear report for the committee. My note just addresses the points that they'd made around human rights and compliance with data protection legislation. Obviously, prior to doing the report, and subsequently, when the letter came back in, we had a look at those issues again. There are no technical issues with the power to make the regulations. The issues that Defend Digital Me have raised are more for how Welsh Government implement the regulations later down the line. So, the letter's been forwarded to the Welsh Government for them to respond to Defend Digital Me directly. We've also suggested that committee may like to note the correspondence as a merits point, and if they wish to, there's suggested wording at point 3 of the legal advice note.

[9] **Huw Irranca-Davies:** Thank you, Lisa. David.

[10] **David Melding:** I'm very content with the advice we've received; it seemed very clear. But I think we should balance that with people who are trying to engage with us. In this case, perhaps it is a matter of implementation for the Welsh Government, but I think at least if we do note as a merits point that this correspondence has been entered into, and this issue raised with us, then it would encourage others to engage with our work without being too concerned about, 'Have they got every legal nicety done?', and, 'Is it appropriate?' If it is raised, and it's a significant matter, it talks about the use of data, even if, in this case, it does seem to be more about implementation and the very clear legal report we've had indicates that, so I would turn this into a merits point myself.

[11] **Huw Irranca-Davies:** There we are. Are Members content or—?

[12] **Nathan Gill:** Could I just ask one question? Under the Data Protection Act 1998, the schools passing on the information that they've collated, do they have a responsibility to ensure that who they're passing it onto then complies?

[13] **Ms Salkeld:** Both the school and the Welsh Ministers will have the obligation because they'll both be doing it separately under the data protection Act, but the school, under these regulations, can only supply the information to the local authority or the Welsh Ministers, and it has to be for the specific qualifying purpose, so they can't pass it on just to anybody.

[14] **Nathan Gill:** Okay. Thank you. Content.

[15] **Huw Irranca-Davies:** Very good. Well, if we're happy to proceed then with the comments that David has made, and are content with the advice note that you have in there, that we note it as a merits point and that form of wording we're content with, I think. Yes. Okay, so thank you very much, Lisa. Thank you very much for that.

14:35

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

[16] **Huw Irranca-Davies:** That brings us then to, if there are no comments on the other two negative resolution instruments, which I'm assuming there aren't, we can move to item 3. Item 3: instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3. The first one to draw the attention of Members to is the negative instrument, SL(5)130, the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2017. There's a batch of papers there, including the Order, the explanatory memorandum and the report in Members' papers.

[17] Just to note that this is the second Order that designates specified bodies in relation to Welsh Ministers for the purpose of including, within a budget motion, the resources expected to be used by those bodies. So, the point here is that—. One point that's identified for reporting under Standing Order 21.3 in respect of this instrument is that the Cabinet Secretary for Finance and Local Government had a choice of procedure under sections 126A(9) and 126A(10) and has chosen the negative resolution procedure, which, I'm advised, appears to be appropriate in respect of Standing Order 21.3(ii). But, do we have any comments from our legal team on this?

[18] **Mr Howells:** I think that we occasionally see the enabling powers giving an option if—

[19] **David Melding:** I was just going to ask about that. It's new to me that there was an option, but that does happen occasionally.

[20] **Mr Howells:** We see it occasionally, and here is one example.

[21] **David Melding:** Yes. I'm not sure it's something we would want to follow as good practice—giving the Minister the option. But I note that it's regarded as appropriate to use negative in this case, and I don't have any issues on that.

[22] **Lord Elis-Thomas:** This option is derived from legislation and Standing Orders, presumably, isn't it?

[23] **Mr Howells:** The enabling power in the primary legislation would've given the discretion.

[24] **Huw Irranca-Davies:** There we are. Good. Thank you very much. So, we note that and then that brings us to composite negative resolution instrument, SL(5)139, the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) (Amendment) Order 2017, for which we also have paper 6, the Order; paper 7, the explanatory memorandum; and paper 8, the report.

[25] This Order amends the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005—the principal Order in relation to both England and Wales—and it removes the obligation on the NHS Business Services Authority, the BSA, subject to and in accordance with directions of the Secretary of State to undertake certain of his counter fraud and security management functions in relation to the health service in England. So, the Order also removes provision in respect of certain counter fraud functions of Welsh Ministers that the BSA was required, under the principal Order, to carry out in relation to the health service in Wales, subject to and in accordance with such directions as might be given by Welsh Ministers.

[26] We've got one point identified for reporting under Standing Order 21.2 in respect of this composite instrument, in that it is not made in both English and Welsh, under Standing Order 21.2(ix). Do we have any comments from our legal experts here on this?

[27] **Mr Howells:** As you described, this makes provision for Secretary of State functions and Welsh Ministers' functions, and it's been made in one composite instrument and therefore laid before the UK Parliament and the Assembly, and as we see with these on a fairly regular basis, it's made in English only.

- [28] **Huw Irranca-Davies:** All okay, content on that?
- [29] **Lord Elis-Thomas:** Not really, but—
- [30] **David Melding:** Well, not happy—
- [31] **Huw Irranca-Davies:** But it's in line with our previous comments.
- [32] **Lord Elis-Thomas:** The UK Parliament cannot stand seeing things in Welsh, unless it's merely for Welsh legislation.
- [33] **Huw Irranca-Davies:** I think it adds to our—
- [34] **Mr Williams:** [*Inaudible.*]
- [35] **Huw Irranca-Davies:** Yes, thank you. Gareth informs me that, as is our course on this, our approach on this, we'll be writing seeking views on this to the relevant committees in Parliament. Thank you very much.

14:40

Offerynnau nad ydynt yn Codi Unrhyw Faterion Adrodd o dan Reol Sefydlog 21.2 neu 21.3 ond sydd â Goblygiadau o Ganlyniad i'r DU yn Gadael yr UE

Instruments that Raise No Reporting Issues under Standing Order 21.2 or 21.3 but have Implications as a Result of the UK Exiting the EU

- [36] **Huw Irranca-Davies:** That brings us, then, if we're content to note that, to item No. 4: instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU. We have an affirmative resolution instrument under this item, SL(5)137, the Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017, and under paper 9, the accompanying report. Now, as committee members know, this is not to do with whether the report is clear or not. It's because it relates in some way to EU law, and as a result, we undertook to report to the Assembly separately on these instruments, highlighting issues that may have implications arising from the UK exiting the EU for information only, and help with understanding of how such law may need to change in the future. But, Gareth, did you want to make any comments in respect of this particular instrument?

[37] **Mr Howells:** Just a little bit of background and context if it's helpful. So, this is another example of EU-related legislation, and under clause 2 of the European Union (Withdrawal) Bill, these regulations will continue to form part of domestic law after exit. These regulations are made to implement obligations under the EU waste framework directive, and as for EU directives, they will not en bloc form part of domestic law, but under clause 4 of the Bill, as for EU directives, they will form part of domestic law to the extent that they contain rights that the courts have recognised as being rights that individuals can directly rely on.

[38] **Huw Irranca-Davies:** Okay. Are there any queries or comments? If not, we're content to note that. Thank you.

14:42

Bil yr Undeb Ewropeaidd (Ymadael) 2017 European Union (Withdrawal) Bill 2017

[39] **Huw Irranca-Davies:** We move on to item No. 5. We have correspondence there related to the European Union (Withdrawal) Bill 2017, and we've grouped these together under item No. 5. We have a letter from the Chair of the External Affairs and Additional Legislation Committee, together with associated detail, and also the letter that the Chair of the External Affairs and Additional Legislation Committee has sent to Members of the UK Parliament as well. We have a couple of annex documents as well. Unless there's anything particular that Members want to raise at the moment, we can happily discuss that as necessary within private session. Okay, thank you very much.

Papurau i'w Nodi Papers to Note

[40] **Huw Irranca-Davies:** We move then to item No. 6: papers to note. We have a letter from the Secretary of State for Wales related to the 'A stronger voice for Wales' inquiry. Again, we can come back to this in private session, but if you recall, the Secretary of State undertook to write to us to let us know which committees and sub-committees he appeared on himself, and he has sent us a letter now detailing that. Are you happy to note that letter? Thank you.

14:43

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

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

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o weddill y exclude the public from the
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in
17.42(vi).*

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[41] **Huw Irranca-Davies:** Item No. 7 is a motion under Standing Order 17.42 to resolve to meet in private. Are Members content that we meet in private?

[42] **David Melding:** Agreed.

[43] **Huw Irranca-Davies:** Thank you. And we'll move to private session, please.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 14:43.

The public part of the meeting ended at 14:43.