



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

**Y Pwyllgor Busnes
The Business Committee**

**Dydd Mawrth, 16 Tachwedd 2010
Tuesday, 16 November 2010**

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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
Jocelyn Davies	Plaid Cymru The Party of Wales
Dafydd Elis-Thomas (Y Llywydd/The Presiding Officer)	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Jane Hutt	Llafur (Y Gweinidog dros Fusnes a Chyllideb) Labour (The Minister for Business and Budget)
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Aled Eurig	Cynghorydd y Pwyllgor Committee Adviser
Marion Stapleton	Pennaeth yr Is-adran Busnes y Cynulliad a Rheoli Deddfwriaeth, Llywodraeth Cynulliad Cymru Head of the Assembly Business and Legislation Management Division, Welsh Assembly Government

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

Adrian Crompton	Cyfarwyddwr Busnes y Cynulliad Director of Assembly Business
Anna Daniel	Clerc Clerk
Sulafa Halstead	Pennaeth Pwyllgorau'r Cynulliad Head of Assembly Committees
Llinos Madeley	Dirprwy Glerc Deputy Clerk
Siân Wilkins	Pennaeth Deddfwriaeth a Gwasanaethau'r Siambr Head of Legislation and Chamber Services

Dechreuodd y cyfarfod am 9.02 a.m.

The meeting began at 9.02 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Y Llywydd:** Croeso i gyfarfod cyhoeddus y Pwyllgor Busnes i drafod Rheolau Sefydlog ymhellach. Os bydd larwm tân, bydd angen gadael yr ystafell drwy'r allanfeydd tân a dilyn cyfarwyddiadau'r tywyswyr a'r staff. Dylech ddiffodd ffonau symudol, galwyr a BlackBerrys. Mae'r clustffonau ar gael i glywed cyfieithiad ar y pryd ac er mwyn addasu'r sain, yn ôl arfer y Cynulliad Cenedlaethol o weithredu'n

The Presiding Officer: Welcome to the public meeting of the Business Committee to further discuss Standing Orders. In the case of a fire alarm, we will need to vacate the room by the fire exits and follow the instructions of the ushers and staff. Please switch off mobile phones, pagers and BlackBerrys. Headsets are available for interpretation and to amplify the sound, in accordance with the National Assembly's

ddwyieithog. Mae'r trosiad ar y pryd ar sianel 1 a'r darllediad gair am air i glywed y sain yn well ar sianel 0. Nid oes angen cyffwrdd â'r botymau ar y meicroffonau, dim ond aros am y golau coch cyn dechrau siarad.

practice of operating bilingually. The interpretation is on channel 1 and the verbatim broadcast to amplify the sound is on channel 0. There is no need to touch the buttons on the microphones, but ensure that the red light is on before you begin to speak.

9.03 a.m.

Cofnodion y Cyfarfod Blaenorol (9 Tachwedd 2010) Minutes of Previous Meeting (9 November 2010)

[2] **Y Llywydd:** A ydym yn fodlon bod y cofnodion drafft yn gywir? **The Presiding Officer:** Are we content that the draft minutes are accurate?

[3] **The Minister for Business and Budget (Jane Hutt):** On point 2.3, in relation to oral questions, we have agreed in principle to increase the current maximum time to 60 minutes for First Minister's questions and 45 minutes for Ministers' questions. It is important that that is a set time, in terms of a guillotine. I presume that that is what is assumed.

[4] **The Presiding Officer:** Were I the Presiding Officer interpreting that Standing Order, I would interpret it as you have just described. I cannot, of course, bind my successors, but that is our understanding of that form of words.

9.04 a.m.

Y Rheolau Sefydlog sy'n Ymwneud â Busnes Pwyllgorau: Ystyried Gweddill y Cynigion Standing Orders Relating to Committee Business: Consideration of Remaining Proposals

[5] **Y Llywydd:** Cafwyd cytundeb mewn egwyddor ar faes eithaf eang yn y cyfarfod diwethaf, ond mae rhai manylion i'w hystyried ymhellach. Byddwn yn dilyn trefn yr agenda. **The Presiding Officer:** We agreed in principle on a relatively wide cross-section at the last meeting, but there are some details to be considered further. We will follow the order set on the agenda.

Meysydd Cyfrifoldeb Pwyllgorau: Rheol Sefydlog Rhif 12.4 Remits of Committees: Standing Order No. 12.4

[6] **Y Llywydd:** A oes sylwadau ar ail eiriad arfaethedig Rheol Sefydlog Rhif 12.4(i) ar dudalen 1, atodiad A? **The Presiding Officer:** Are there any comments on the proposed rewording of Standing Order No. 12.4(i) on page 1, annex A?

[7] **Peter Black:** I am happy with the rewording of 12.4(i), but I assumed that we were doing the same with regard to 12.4(ii), namely that

[8] 'all matters relating to the legislative competence of the Assembly or executive competence of Welsh Ministers may be subject to the scrutiny of a committee'.

[9] I assumed that issues on secondary legislation would automatically be subject to the scrutiny of a committee, too. However, it still says 'may', which gives the indication that they might not be.

[10] **Mr Crompton:** The intention is to indicate that, in principle, they can all be scrutinised by an Assembly committee; there would be no gaps through which any legislative matter could fall. However, it would be for the Business Committee or other committees to decide which of those were subject to scrutiny. So, not every aspect of secondary powers exercised by Ministers would necessarily be scrutinised by committees, although, in principle, they could.

[11] **The Presiding Officer:** Your argument is that, whereas 12.4(i) states that the responsibility of the Government 'is' subject to the scrutiny of a committee, 12.4(ii) states that it 'may' be subject to scrutiny.

[12] **Peter Black:** Yes. Clearly, there are items of secondary legislation that would only be scrutinised if Members called Ministers in. I understand that distinction, but I think that this Standing Order should indicate that, if a piece of legislation requires scrutiny within the terms of the Standing Orders, it should be scrutinised.

[13] **Mr Crompton:** So, do you suggest that we change it to 'can be' or 'is able to be'?

[14] **Peter Black:** Change it to 'is subject to'. You could amend it further to say 'as allowed for by Standing Orders', with regard to those other elements of secondary legislation and how they are treated.

[15] **Jane Hutt:** Given that we have not yet come to consider Standing Orders in relation to legislation, should we perhaps consider those changes, particularly with regard to 12.4(i) and 12.4(ii) when we do? We need to consider those alongside the Standing Orders on legislation, which might also address Peter's point.

[16] **The Presiding Officer:** Are you proposing that we do not agree these today, but that we discuss them alongside further Standing Orders relating to legislation?

[17] **Mr Crompton:** I do not think that there is a big issue here, because no-one is disagreeing with the principle that we are trying to capture; it is just about the wording that we are using. So, that is not a problem.

[18] **Jane Hutt:** No, it is not. We would just need to cross-reference when we come on to those.

[19] **Peter Black:** Yes, so that we are sure that everything is scrutinised appropriately.

[20] **Jocelyn Davies:** Peter referred to subordinate legislation, which can be statutory instruments and a whole host of other things—even guidance, circulars and so on. We must, therefore, be careful that we do not stipulate that all that must go to a committee, because that could be an awful lot of stuff to scrutinise. So, perhaps we should return to this issue when we are quite clear about the implications of the words that we use.

[21] **Peter Black:** That is why I was suggesting that we refer to the Standing Orders, and I think that Jane's suggestion is sensible.

[22] **The Presiding Officer:** We will do that then. Thank you.

9.09 a.m.

**Y Cynigion ar Gyfer Meysydd Cyfrifoldeb Pwyllgorau a Bennir gan y Pwyllgor Busnes:
Trefniadau Pleidleisio—Rheol Sefydlog Rhif 11.7**

Proposals for Committee Remits Made by the Business Committee: Voting Arrangements—Standing Order No. 11.7

[23] **Y Llywydd:** Mae'r eitem hon yn ymwneud â phapur 1, paragraff 4. Cytunwyd mewn egwyddor yn ein cyfarfod diwethaf ar y meysydd hyn, sy'n ei gwneud yn ofynnol inni ddiwygio Rheol Sefydlog Rhif 11 ymhellach drwy gynnwys Rheol Sefydlog Rhif 11.7(ii)(a). A oes unrhyw sylwadau?

The Presiding Officer: This item relates to paper 1, paragraph 4. We agreed in principle at our last meeting on these matters, making it necessary for us to amend Standing Order No. 11 further by including Standing Order No. 11.7(ii)(a). Are there any comments?

[24] **Peter Black:** I have one point to make, Chair. We will be debating at a future meeting the timetable for the budget and whether the making of a timetable for the budget should be part of the Business Committee's remit. I understand that that is the intention, but should that be explicitly referred to in the Standing Orders, or is that already covered by what is there?

[25] **Mr Crompton:** That is covered by 11.7(v), so elsewhere in the Standing Orders—

[26] **Peter Black:** That is fine.

9.10 a.m.

[27] **The Presiding Officer:** That is the one that says

[28] 'undertake the functions assigned to the Committee in Standing Orders'.

[29] So, that would be included as the result of any further decisions that we may take on the finance responsibilities of committees.

[30] **Nick Ramsay:** Is there any timetabling involved in that, or is that always left to the Business Committee and the Government? I am referring to Peter's point about the budget.

[31] **Mr Crompton:** Standing Order No. 11.7 sets out what the remit of the Business Committee will be. Part of its remit encapsulates anything else that the Standing Orders assign to it. The wording of the finance function Standing Order that you will agree in a few weeks' time will define the role of the Business Committee. If there is a timetabling role within that, the answer is 'yes'.

[32] **Nick Ramsay:** That is fine.

[33] **The Presiding Officer:** So, we are agreed on that.

**Cadeiryddion Pwyllgorau: Rheolau Sefydlog Rhif 10.18-10.19
Chairs of Committees: Standing Order Nos. 10.18-10.19**

[34] **Y Llywydd:** Yn dilyn y drafodaeth yr wythnos diwethaf am y cynigion sydd yn ymwneud â chreu Cadeiryddion pwyllgorau, gofynnwyd am bapur pellach ac am opsiynau. Mae tri opsiwn gerbron. Y cwestiwn canolog yw: a yw Aelodau am atgyfnerthu ymhellach rôl grwpiau gwleidyddol wrth ddethol Cadeiryddion ynteu a ydych am adael hyn yn fwy agored i

The Presiding Officer: Following last week's discussion on the proposals relating to the creation of committee Chairs, we asked for a further paper and for options. Three options are before us. The crucial question is this: do Members want to reinforce further the role of political groups in the selection of Chairs or do you want to leave this open to future Assemblies in the Standing Orders,

Gynullïadau'r dyfodol yn y Rheolau including allowing committees to elect their Sefydlog, gan gynnwys bod pwyllgorau'n own Chairs? Are there any comments on gallu ethol eu Cadeiryddion eu hunain? A oes this? sylwadau, os gwelwch yn dda?

[35] **Jocelyn Davies:** I prefer option 3, because that reflects the current practice of trying to get a balance across the Assembly. It is very difficult for individual committees to do that, so I would go for option 3.

[36] **Jane Hutt:** Option 3 reflects our comments in the meeting on 2 November.

[37] **The Presiding Officer:** I will not extend the time of the meeting by deploying the argument for a more democratic way of doing it, and that we may be or may appear to be less democratic than even the House of Commons. I will stop there.

[38] Felly, yr ydym yn cytuno ar opsiwn So, we are agreed on option 3.
3.

Cworwm: Rheol Sefydlog Rhif 10.31
Quorum: Standing Order No. 10.31

[39] **Y Llywydd:** Cawsom drafodaeth yr **The Presiding Officer:** We had a discussion wythnos diwethaf ar gynigion yn ymwneud â last week on the proposals relating to chworwm. Mae opsiynau pellach ar dudalen quorum. There are further options on page 6 6 atodiad A. Eto, tri opsiwn sydd. Mae'r of annex A. Again, there are three options. swyddogion yn hoff iawn o gynnig tri Officials are very fond of providing three opsiwn. A oes unrhyw sylwadau? options. Are there any comments?

[40] **Peter Black:** My preference is option 3, where a time is specified—most probably the same one of 20 minutes—but giving the Chair discretion to curtail it before then.

[41] **Jocelyn Davies:** Yes, we would agree with that.

[42] **Nick Ramsay:** Yes, that makes sense.

[43] **Jane Hutt:** We would prefer option 2, given the feedback that I have received in discussion. However, it is not a big issue for us in Government.

[44] **Jocelyn Davies:** Peter's point was that it could be left at 20 minutes, but giving the Chair some discretion to vary that if you could return earlier.

[45] **Jane Hutt:** That is right.

[46] **Mr Crompton:** May I clarify that you said option 3, Peter? So, it would extend the period from 20 minutes.

[47] **Peter Black:** No, leave it at 20 minutes, but give the Chair discretion.

[48] **Jocelyn Davies:** Option 3 gives 30 and 40 minutes as examples.

[49] **Peter Black:** It is better to keep the maximum cut-off time at 20 minutes.

[50] **Jane Hutt:** It is a new option.

[51] **Peter Black:** Keep the maximum cut-off time of 20 minutes, but allow the Chair

discretion, where reasonable and appropriate, to adjourn before that time, if he or she is aware that the committee will not be quorate.

[52] **Jane Hutt:** It is a new option.

[53] **Nick Ramsay:** It is not really option 3, is it? [*Laughter.*]

[54] **The Presiding Officer:** It is option 3(a), in that case.

[55] **Jocelyn Davies:** Shall we return to this when you have had time to think about it?

[56] **Mr Crompton:** No, it is crystal clear. You want to leave it at 20 minutes but allow flexibility for the Chair within that. That is fine.

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

**Natur Agored Pwyllgorau—Cyhoeddi Dogfennau: Rheol Sefydlog Rhif 10.36A
Openness of Committees—Publication of Documents: Standing Order No. 10.36A**

[58] **Y Llywydd:** Cytunwyd mewn egwyddor yr wythnos diwethaf i fewnosod Rheol Sefydlog newydd i sicrhau bod cyfeiriad penodol at gyhoeddi dogfennau gan bwyllgorau i ategu statws cyfreithiol y cynnwys. Mae gennym, bellach, eiriad diwygiedig: 10.36A, atodiad A, ar dudalen 7. A oes unrhyw sylwadau?

The Presiding Officer: It was agreed in principle last week to insert a new Standing Order to secure specific reference to the publishing of documents by committees to support the legal status of the content. We now have a revised wording: 10.36A, annex A, on page 7. Are there any comments?

[59] **Jocelyn Davies:** I have no problems with this, but I have some reservations about there being privilege if it was not reasonable to publish in the beginning. So, I do not see why a committee should have the cover of privilege if the publication of a document was unreasonable.

[60] **The Presiding Officer:** The whole question of privilege for the Assembly and its committees is something that has had extensive legal study. That is why this wording is there.

[61] **Jocelyn Davies:** Yes; I am just saying that I can see a circumstance—although it would be very rare, I am sure—where a committee might decide to publish something even though the advice is not to do so. You might remember that I raised this point in the private session. I believe that you should have the cover of privilege only if the publication is reasonable. You could be advised by your legal advisers not to publish a document. I do not then see why the committee should have the cover of privilege if what it did was unreasonable.

[62] **The Presiding Officer:** Does it not bring the privilege cover of committees into line with that of the Assembly? Is that not what we are doing?

[63] **Peter Black:** As I understand it, the key part of this is that it is being published on behalf of the committee, which indicates that it is being published by the Commission on behalf of the committee, which means that the final arbiter is the Presiding Officer. If the material is questionable and the legal advice is to the contrary, and the committee then insisted, it would most probably fall to the Presiding Officer to rule on that.

[64] **The Presiding Officer:** I think that it would be the senior legal adviser of the Presiding Officer who would give the advice and I would have thought that the Presiding

Officer would accept that advice.

[65] **Jocelyn Davies:** That is just the caveat that I have in mind. This is fine in principle, but I do not see why any committee should have cover if it was not reasonable to go ahead with publication and that this was done against legal advice.

[66] **Peter Black:** If the legal advice is contrary to the intention of the committee, it would be taken out of the committee's hands. That is the point that I am making. It would then fall to the Commission to determine whether or not to resolve the dispute between the legal officer and the committee. That is my understanding.

[67] **Jocelyn Davies:** It is a very powerful privilege, is it not, to be able to publish anything and not suffer any legal consequences? So, all that I am saying is that it should be reasonable. My only concern is that this extends privilege, which is a very powerful tool.

[68] **The Presiding Officer:** Are we extending it?

[69] **Peter Black:** No, we are not.

[70] **The Presiding Officer:** I do not think that we are, because this privilege exists for the Assembly by law. That is the position. So, we are not extending it; we are specifying it as applying to a committee in terms of publications. So, we are not extending privilege. That is my understanding of this. Do you want further legal advice on this?

[71] **Jocelyn Davies:** No. As I have said, I just wanted to express the concern that I do not think that there should be privilege if it was unreasonable to publish.

[72] **The Presiding Officer:** Privilege is there because of the nature of the institution that has that privilege. That is the tradition of parliamentary privilege. You will remember that, when we talk about the use of privilege in Assembly debates, for example, one of the points that we make in our relevant codes of conduct is that it is not something to be abused and so on. The same thing applies here.

9.20 a.m.

[73] **Jocelyn Davies:** Yes, I know, but if an Assembly Member chose to say something, it would be a matter for the Assembly Member to decide. However, we are talking here of the corporate body in terms of it being the committee. I am just expressing that caveat. That is all. I am not saying that I want this changed; I would just prefer to have on the record that I think that this must be exercised with some test of being reasonable, so that it is not abused by the committee, which then would be the Assembly as a whole.

[74] **The Presiding Officer:** I think that we can all agree with that. Thank you.

[75] **Dyna ni, felly. Diolch yn fawr ichi.** So, that is it. Thank you. The next meeting Cynhelir y cyfarfod nesaf ar 23 Tachwedd 2010, pan fyddwn yn ystyried swyddi a phenodiadau yn y Cynulliad. Dyna ddiwedd trafodion y Pwyllgor Busnes am heddiw. will be held on 23 November 2010, when we will be considering Assembly offices and appointments. That brings us to the end of the Business Committee's proceedings for today.

*Daeth y cyfarfod i ben am 9.20 a.m.
The meeting ended at 9.20 a.m.*