



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol The Communities, Equality and Local Government Committee

**Dydd Mercher, 18 Ionawr 2012
Wednesday, 18 January 2012**

Cynnwys Contents

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

Bil Is-ddeddfau Llywodraeth Leol (Cymru)—Sesiwn Dystiolaeth Cyfnod 1: Cymdeithas
Llywodraeth Leol Cymru (CLILC)
Local Government Byelaws (Wales) Bill—Stage 1 Evidence Session: Welsh Local
Government Association (WLGA)

Cynnig Gweithdrefnol
Procedural Motion

ofnodir 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

Daniel Hurford	Pennaeth Polisi (Gwella a Llywodraethu), Cymdeithas Llywodraeth Leol Cymru Head of Policy (Improvement and Governance), Welsh Local Government Association
Rod Jones	Cynghorydd Cymdeithas Llywodraeth Leol Cymru, Dinas a Sir Abertawe Welsh Local Government Association Adviser, City and County of Swansea
Steve Thomas	Prif Weithredwr, Cymdeithas Llywodraeth Leol Cymru Chief Executive, Welsh Local Government Association

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

Bethan Davies	Clerc Clerk
Leanne Hatcher	Dirprwy Glerc Deputy Clerk
Rhys Iorwerth	Y Gwasanaeth Ymchwil The Research Service
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
Introduction, Apologies and Substitutions**

[1] **Ann Jones:** Good morning, everyone, and welcome to this meeting of the Communities, Equality and Local Government Committee. I remind Members to switch off their mobile phones, pagers or anything else that may affect the translation or broadcasting equipment. I also remind Members that we operate bilingually, so you are allowed to speak in Welsh or English. If Welsh is spoken, a translation is available on channel 1 of the headsets; channel 0 is for amplification of the floor language. We are not expecting a fire drill, so if there is an alarm, we will take directions from the ushers. For your information, the assembly point is by the Pierhead building; I will be one of the first ones out of the building, so you can follow me.

[2] For the information of Members and witnesses, we do not have to touch the microphones—they will come on when we speak. Do any Members wish to declare an interest that they have not already declared in the register? I see not.

9.30 a.m.

**Bil Is-ddeddfau Llywodraeth Leol (Cymru)—Sesiwn Dystiolaeth Cyfnod 1:
Cymdeithas Llywodraeth Leol Cymru (CLILC)
Local Government Byelaws (Wales) Bill—Stage 1 Evidence Session: Welsh Local
Government Association (WLGA)**

[3] **Ann Jones:** We move on to our first evidence session. We are taking evidence today from the Welsh Local Government Association. We will have One Voice Wales later in the meeting. I welcome the WLGA representatives. They are regular attendees at committee, and are very welcome. Will you introduce yourselves for the record? If you have an opening statement to make, Steve, that is fine.

[4] **Mr Thomas:** I am Steve Thomas, the chief executive of the WLGA. With me are Dan Hurford, head of improvement and governance, and Rod Jones, deputy monitoring officer for the City and County of Swansea Council.

[5] **Ann Jones:** Do you have an opening statement?

[6] **Mr Thomas:** First, a belated happy new year to you all. Secondly, I think that you will find that our evidence will be somewhat non-controversial. From our point of view, we very much welcome the introduction of the Local Government Byelaws (Wales) Bill, which is a nice example of localism. It will hopefully streamline the process that we have, which is slightly underused, if truth be told, and will give greater discretion to local authorities. So, from our point of view, this is a welcome step forward.

[7] **Ann Jones:** You think that the Bill will streamline the process for making bye-laws. Did you identify any risks involved in simplifying the process?

[8] **Mr Thomas:** In the great scheme of things, the making of bye-laws is not something that would be high on a risk register in any case. From our point of view, we like the fact that ministerial approval is removed from the process. Local authorities are eminently capable of making their own bye-laws. In broad terms, because of the infrequent nature of bye-law-making within local government, I do not think that the risks are that high.

[9] **Janet Finch-Saunders:** What is your opinion of the way in which the Bill attempts to consolidate existing legislation relating to bye-laws in Wales? Could this not have been

achieved in a more effective way through replacing the bye-law-making powers listed in Schedule 1 with a newer one for Wales?

[10] **Mr Hurford:** The Bill goes a long way towards consolidating the present legislative framework around bye-laws in Wales. I noted from the Minister's evidence last week that there is a range of historical, local and parochial bye-law legislation, and that it might take a disproportionate amount of time to do the research on bringing it in. However, the Minister still has powers to amend the bye-laws included in Schedule 1 anyway, so if there were more that came into people's awareness at a later date, they could be included.

[11] One point that is important to highlight is that, subsequent to our submitting our written evidence, the national parks, which are associate members of the WLGA, asked whether national parks legislation could be considered as part of this. I understand that you might be inviting them to give evidence at a later date. They are included only as legislating authorities in this Bill—they have powers to revoke or amend existing bye-laws, but not to create new ones. Also, the powers around explanatory notices do not apply to them; apparently it is dealt with in section 90 of the National Parks and Access to Countryside Act 1949. However, the national parks will be better placed to give you advice on that.

[12] **Janet Finch-Saunders:** Thank you for that information. Section 2 of the Bill restates the power of authorities to make bye-laws for 'good rule and government' and for the 'prevention and suppression of nuisances'. Is it sufficiently clear to you what those phrases mean? Will they mean much to residents in our communities?

[13] **Mr Jones:** The phrases are very well-established in law via the Local Government Act 1972, which derived from an Act of the 1930s. Use of these powers does not seem to have caused a problem over the years with regard to the wordings used. Speaking as a solicitor, if you introduce new words into a section, you will inevitably get clarifications and challenges; you will make some money for some solicitors in doing that. It does not seem to have posed a problem, so I think that the words seem to be adequate.

[14] **Janet Finch-Saunders:** Are the powers set out in section 2 sufficient to allow authorities to tackle nuisances in their areas effectively?

[15] **Mr Jones:** I would say so. Again, bye-laws have been passed previously that are specifically aimed at nuisances, and their use has not been challenged. It seems to have worked, historically.

[16] **Mr Hurford:** I would just add that bye-laws are a last resort in certain situations. Many nuisances are already covered under the Clean Neighbourhoods and Environment Act 2005 anyway. So, there are sufficient powers.

[17] **Janet Finch-Saunders:** A concern was raised in evidence taken last week—we have discussed the matter. You say in your evidence that it would be useful if the Bill could specify whether the proposed powers to make bye-laws should be functions of the executive or the full council. Can you explain this in more detail, please?

[18] **Mr Jones:** I am happy to try. That was, as you say, touched on in the WLGA's response. As you know, local authorities are in a position where something is either an executive power or a power for the council as a whole. In the forthcoming Bill, it would be useful to have it specified that the power to make the bye-laws is for the full council, because you would be creating a new criminal offence or new legislation. Then, it should be specific about what the executive can then do—the consultation process, perhaps, the enforcement process, and this sort of thing. That would clarify matters for the councils that will have to implement this, so that it is not open to challenge, and it would also clarify the issue for the

citizen to be able to take part.

[19] **Janet Finch-Saunders:** As a solicitor, how do you think we should look to amend that?

[20] **Mr Jones:** Do you mean the specific terms?

[21] **Mr Thomas:** He is going to charge you for this advice. [*Laughter.*]

[22] **Mr Jones:** Under the current regulations, everything is an executive power unless it is specified as something for the council. So, within the Bill, if you were to specify what should be a council power—for example, that the final making of a bye-law must be done by the council—that would probably do the job insofar as anything else would fall to the executive to do within the council structure, but you would probably need advice on the exact wording.

[23] **Peter Black:** Presumably, over the past 11 years, some councils have made bye-laws. Is it not clear from the Local Government Act 2000 whether this is a function of the council or a function of the executive?

[24] **Mr Jones:** As we are introducing new legislation here, it was felt, certainly from the access consultation undertaken by the WLGA, that it would be useful to specify it.

[25] **Peter Black:** Even though it may already have been specified in a previous Act that still applies.

[26] **Mr Jones:** You have the regulations from 2007, and they are relatively complex—they are very complex, in fact. So, the feeling on this is that it might be good practice to specify these things as legislation is introduced in the Assembly.

[27] **Mike Hedges:** It is very important that that is specified. Do you not think that it would be neater, and that it would engage the public better, if it were to go through full council at each stage, so that it would get the oxygen of publicity in the local area through the media, so that everybody would know about it? Speaking as somebody who is very much in favour of this Bill, my fear is that the council might decide in a meeting to agree something vague, to deal with something like noise nuisance, after which it would come before the executive, and before you know it there is to be no music after 11 p.m., and then, on New Year's Eve, people get a knock at the door to be told that they are breaking a bye-law. It is important that, at each stage, you get the option of having the publicity that bringing it to a full council brings—much more so than taking the decision under the executive function.

[28] **Mr Jones:** From the point of view of engagement, and so on, section 6 of the Bill says that before making a bye-law, you must publish it on the website with a statement saying why you think it is a good idea, if you like, and why it is needed. Some of those stages could be for the council, could they not, because you would perhaps have to take a report to council stating that everyone agrees that it is a good idea? At a stage further down the line, that bye-law could be confirmed finally by council. It would be a bit cumbersome for every possible stage to go to council; is it just the key stages that you would want reported in full.

[29] **Mike Hedges:** My answer to that would be: I did, and it was not. Prior to 2000-01, it all had to go through council and it worked. Two bye-laws were brought in, but one was overtaken by primary legislation at a later stage. However, it had the oxygen of publicity because it went through council. It only went to council three or four times; it was not as if it had to be taken many times. The stages were: the general principle; the progress; and the final wording. It might also require an amendment to be made to the final wording.

[30] **Mr Jones:** To have the final wording approved or if it needed to be amended, it would have to go back. I do not think that that would be an issue. However, enforcement and so forth would be an executive matter.

[31] **Mr Hurford:** The proposals in the Local Government Byelaws (Wales) Bill strengthen the statutory pre-consultation arrangements in comparison with the current situation. Given that bye-laws are inherently local and may involve just one street or a park, it is important that authorities do that preparatory work with the residents, businesses and others that may be affected initially. However, your point is well made regarding the need to ensure ongoing engagement, particularly with the local members who might be involved in a particular area.

[32] **Ann Jones:** Mike, do you want to take the next set of questions?

[33] **Mike Hedges:** How appropriate is it that Ministers have powers to revoke certain bye-laws when they think they have become obsolete, as opposed to that power being given to local authorities?

[34] **Mr Hurford:** We would regard it as being appropriate. The explanatory memorandum states that the Minister would have those powers where the legislating authority is currently unclear, for whatever reason, such as where there are disputes about land or a change to boundaries, or where previous legislating authorities are no longer in existence. So, it is probably appropriate that that power resides with the Minister. One thing that we suggested in our response was that the powers or provisions relating to consultation should also apply to the Minister and to legislating authorities so that if there was some confusion regarding who was responsible, at least those authorities in that area, and community councils in that area, would be consulted.

[35] **Mike Hedges:** My second question has been answered.

[36] **Ann Jones:** Yes, it has. Mark, will you take the next set?

[37] **Mark Isherwood:** The rationale behind the powers for Welsh Ministers to revoke bye-laws that they consider to be obsolete is not, as you recognised, included on the face of the Bill, although this is referred to in the explanatory memorandum. Why, therefore, do you suggest in your evidence that it should be included on the face of the Bill?

[38] **Mr Hurford:** For the sake of clarity, really, because the Bill clearly provides much more local flexibility and discretion to authorities but there is no context for the power for Ministers to revoke bye-laws. So, it would be clearer if it could state that, where the role of legislating authorities is unclear or challenged, the Minister has a role. It is just for the purpose of clarity.

[39] **Mark Isherwood:** Thank you very much. What are your views on the claim in the explanatory memorandum that ministerial confirmation adds little value to the process of making most bye-laws?

9.45 a.m.

[40] **Mr Thomas:** The Minister has confirmed that. Bye-laws are a very localised approach, and there are very competent and professional people within local authorities who are guided by politicians who are eminently capable of making bye-laws without ministerial confirmation. I see no problems with that; I think that that is a very localised approach to moving forward. The Minister confirmed that in his evidence to the committee.

[41] **Rhodri Glyn Thomas:** Ar sail yr hyn yr ydych newydd ei ddweud ynglŷn â'r ffaith nad yw cadarnhad y Gweinidog yn ychwanegu at y broses, i ba raddau mae cadarnhad y Gweinidog yn atal y broses? A yw'n cael effaith andwyol ar allu cynghorau tref a chymuned i greu is-ddeddfau?

Rhodri Glyn Thomas: On the basis of what you have just said that ministerial confirmation does not add to the process, to what extent does ministerial confirmation hinder the process? Does it have an adverse effect on the ability of town and community councils to make bye-laws?

[42] **Mr Thomas:** I do not have empirical evidence to prove that, but, inevitably, when you refer something to higher authorities, things slow up. There is an iron law about that in public policy, is there not? From our point of view, is this something that a Minister should be involved in? This is primarily a local matter, so let the local authority sort it out. I see that the Minister feels that way as well. This Bill takes the ministerial confirmation out of the process, which is one of its more attractive features.

[43] **Rhodri Glyn Thomas:** I think that we had a referendum about that, although it did not make much difference really, did it?

[44] **Ann Jones:** I think that that was a comment rather than a question, so we will move on.

[45] **Mark Isherwood:** Are authorities discouraged from making bye-laws by the current need for ministerial confirmation? If so, is that widespread? Do you have any instances that indicate that that is the case?

[46] **Mr Hurford:** As Steve suggested, I do not think that there is empirical evidence to suggest that it is a major deterrent. There is no evidence to suggest that the Minister has not confirmed any bye-laws that have been put to him; the Minister's office will be able to confirm that. However, it slows the process and causes additional costs in administrative arrangements.

[47] As you will know from the explanatory memorandum, the number of bye-laws passed each year in Wales is not significant—it is an average of four to five bye-laws. It is often a power of last resort in many circumstances, and it is what leads to their rarity, rather than the ministerial confirmation aspect. However, it is a significant symbolic move, as well as being a streamlining move to allow authorities to do it themselves.

[48] **Bethan Jenkins:** O dan adran 6, a ydych o'r farn fod digon o gamau i atal awdurdodau rhag creu is-ddeddfau a allai fod yn fwy dadleuol yn sgîl y ffaith na fydd gofyn i'r Gweinidog roi sêl bendith ar is-ddeddfau?

Bethan Jenkins: Under section 6, do you believe that there is sufficient provision to restrict authorities from making more controversial bye-laws as a result of the fact that ministerial confirmation will not be required?

[49] **Mr Thomas:** The Minister said in his evidence that he will issue model bye-laws. That will provide a standardised set of guidance. The other thing is that if local authorities do not follow the process properly, it can be challenged in law. So, there is a legal safeguard in the background.

[50] **Mike Hedges:** Do you think that the Minister could keep a backstop position where he could call in a bye-law if he wanted to, a bit like the situation with planning applications? You have two things in planning: people can appeal—although I do not think that that should be in existence for bye-laws; and the Minister can also call in a planning application, as happened with the Stradey Park development. It happens very infrequently in planning, but

should such a power exist if a proposed bye-law had a degree of contention?

[51] **Mr Jones:** I suppose that you could have such a system. When the authority is going through the process, it could be further referred to the Minister. There is a time frame in planning within which a Minister can comment on or call in an application. If that time limit passes, that is fine. From our point of view, I do not think that we would have any problem with that, but I imagine that, from a Minister's point of view, he might wonder whether that meant that he would have to scrutinise it anyway and you are back to a situation of taking out the confirmation, as it were.

[52] **Mike Hedges:** It does not happen in planning; he does not scrutinise every planning application—

[53] **Ann Jones:** This is not a planning issue, Mike; this is about bye-laws.

[54] **Mike Hedges:** I know, but there is a process that exists in planning whereby the Minister can decide that something is of such importance that he can call it in, and what I am asking is whether such a backstop should exist here. It would not mean the Minister having to see everything; it would just mean that eventually, at some stage, if something did come up, he could call it in and that would give him a backstop position.

[55] **Mr Thomas:** I suppose that it is a question of scale. Some of the planning call-ins are on big planning developments. These are small localised laws that can apply in very localised settings. Does the ministerial power have much validity in that respect? I suppose that Ministers like these backstops, but, at the end of day, the courts can be used as a legal challenge here, and should someone feel suitably aggrieved, that is a process that they can go through.

[56] **Mr Jones:** I think that model bye-laws would help. If there is a set of model bye-laws and an authority simply decides that it wants to adopt the model, then there should not be any controversy for the Minister.

[57] **Ann Jones:** We have to make some progress, or we will not get to ask all the questions before the end of the session.

[58] **Bethan Jenkins:** Mae gennyf gwestiwn ar ymgynghori o dan adran 6. Beth yw eich barn ynglŷn â'r ffaith mai dim ond ymgynghori ar y mater a ddisgrifir yn y datganiad ysgrifenedig gwreiddiol sy'n ofynnol i awdurdodau ac nid ymgynghori ar ôl i'r is-ddeddf ei hun gael ei ddrafftio?
Bethan Jenkins: I have a question on consultation under section 6. What is your view on the fact that authorities are only required to consult on the issues described in the initial written statement and not to consult after the bye-law itself has been drafted?

[59] **Mr Hurford:** I think that it relates to some of the earlier discussions about how engaged the council should be and the consultation processes around that. In practice, bye-laws are generated because of local concerns, usually from local residents about nuisances in a particular area, for example. If the pre-consultation and the statutory arrangements here make it more robust, and this will be underpinned by statutory guidance as well, and if the consultation is done as effectively as it should be at the beginning, and the issues are clarified to residents and businesses and local interested parties, then it should be sufficient. Whether or not the consultation arrangements around timescales for the laying and tabling of bye-laws are sufficient in terms of engagement with community councils may need to be explored. I think that there is a month-long period when it needs to be tabled. However, I think that the issue at hand is the most important aspect of the consultation process.

[60] **Bethan Jenkins:** Do you also think that

[61] ‘persons who the authority thinks are likely to be interested in, or affected by, the issue’

[62] is strong enough? Does that cover those who need to be consulted?

[63] **Mr Hurford:** Usually, yes. As mentioned earlier, bye-laws tend to be very local, for a local geographical area, and if authorities undertake the consultation thoroughly with the relevant parties who are likely to be involved or interested, then that should be sufficient. It may well be that, as a result of that consultation, it is deemed that a bye-law is not appropriate, or that fixed penalty notices as a result of the bye-law would not be the most appropriate form of enforcement. So, the consultation on the issue at hand, which may be increased patrols from police officers or neighbourhood wardens and so on, might be more appropriate than bringing in a bye-law. So, it is the issue at hand that is the key area to consult and engage on.

[64] **Gwyn R. Price:** Happy new year to you all. Section 6 states that a month before making a bye-law an authority must publish a notice in the local newspaper and a draft of the bye-law must be available on its website and in its principal office. Are those provisions and timescales appropriate?

[65] **Mr Jones:** Yes. A month seems to be appropriate. I cannot add a lot more; I would have thought that it is a reasonable time.

[66] **Gwyn R. Price:** Going on from there, do you think that is appropriate that the definition of a local newspaper under section 6 should include the authority’s own newspaper?

[67] **Mr Jones:** As long as it is widely published. In Swansea, our local newspaper has a very wide circulation, and, quite frankly, from the authority’s point of view, it is considerably less expensive to put it in there than in the *South Wales Evening Post*. [*Laughter.*] Obviously, the figures add up. That is a commercial point in that sense. I do not know how many authorities have their own papers, but if it is hitting the people whom you want it to hit, why should it not be in there?

[68] **Gwyn R. Price:** I think that you are right. What is your view on the type of bye-laws to which the new procedure under section 6 will apply, such as the list part of section 1?

[69] **Mr Jones:** Do you mean Schedule 1?

[70] **Gwyn R. Price:** Yes, Schedule 1, sorry.

[71] **Mr Jones:** The list in Part 1 of Schedule 1 seems fairly comprehensive, although it does not include everything, perhaps unsurprisingly. However, the Minister will have the power to change and amend that list. For example, in Swansea, we have some bye-laws under the Swansea City Council (Tawe Barrage) Act 1986. I think that the Cardiff one is in Part 1 of Schedule 1, but, as far as I could see, the Swansea one is not. That is something that can be corrected, hopefully by a written submission. Clearly, it creates a two-stage system, because those in Part 1, Schedule 1 do not require confirmation while everything else does. However, clearly, the Minister has a policy on that.

[72] **Mr Thomas:** We recently had a request from an authority to investigate the use of bye-laws with regard to the banning of Chinese lanterns.

[73] **Ann Jones:** Just before you go on, Gwyn, I think that Peter has a point on that.

[74] **Peter Black:** On the issue of Part 1, Schedule 1, you just referred to the Swansea barrage bye-laws, but are there any other glaring omissions from that Schedule that you might want us to consider including?

[75] **Mr Jones:** I have a list of the powers under which some of the Swansea bye-laws were made. Most that I could identify, apart from that one, are in Part 1 of Schedule 1. Of course, if you are using the good rule and government power, which not every legislating authority can, but which a council such as Swansea can, many bye-laws would come under that anyway. There are some archaic ones; in some cases, the powers go back a very long way. Most of them seem to be covered, but that is something that needs to be gone right through again. There is also a list of all bye-law-making powers somewhere in the local government encyclopaedia, which could be used. It is a written comparison, if you like.

[76] **Peter Black:** I thought that they would have included the horse-drawn omnibus.
[*Laughter.*]

[77] **Mr Jones:** I think that some town police clauses stuff is in there, is it not?
[*Laughter.*]

[78] **Gwyn R. Price:** Do you agree that ministerial confirmation should still be necessary for certain bye-laws? What are your views on the type of bye-laws to which the procedure will still apply?

[79] **Mr Hurford:** Largely, they cover issues of small strategic significance rather than the local nuisance-type issues that we have already touched on. For example, these are issues to do with the employment of children and young people and sites of special scientific interest. So, it is probably appropriate, and the Minister has made it clear that he and the Welsh Government would have a policy interest in those matters to ensure consistency and because they relate to more strategic issues, such as, as I say, local sites of scientific interest or the employment of children. So, it is probably appropriate that the Welsh Government has some role in that.

[80] **Gwyn R. Price:** Yes, as you say, it is appropriate in certain circumstances, for these to go back to the Minister.

[81] **Kenneth Skates:** Staying with section 7, how appropriate is it that there is not a duty on legislating authorities to consult locally on bye-laws that require ministerial confirmation?

[82] **Mr Hurford:** Effectively, that would ensure the status quo in terms of the bye-law process. Obviously, the confirmation process is the current approach, and authorities consult on the issues, but, as I said, it is not a statutory requirement and it is not, as we would expect, as detailed as this new process. The ministerial confirmation process is broadly as the status quo.

10.00 a.m.

[83] **Mr Jones:** We have a working list in Swansea if we go for a bye-law, which has about 26 stages, believe it or not, although, obviously, some of them are internal stages. As I understand the process prior to the Bill, while it is not compulsory, Welsh Ministers expect to see that you have consulted, and, in fact, it is built into our process that we would consult. I imagine that section 7 is preserving that process. Of course, there is the ability for guidance to be given, which I assume could well cover that.

[84] **Kenneth Skates:** Moving on to sections 10 to 14, what impact do you envisage that the fixed penalty regime will have on the way that bye-laws are made and enforced by local authorities?

[85] **Mr Thomas:** All fixed penalties should help with enforcement. The problem is that the track record of enforcement around bye-laws is varied at best. Before we came into the committee, we discussed a bye-law in Swansea to prohibit skateboarding. I do not think that the use of fixed penalty notices has had any impact whatsoever in that respect. It gives a legal sanction and a threat, but the enforcement is the key issue behind that.

[86] **Kenneth Skates:** Are you content with the types of bye-laws that may be subject to fixed penalty notices?

[87] **Mr Hurford:** Yes, they seem adequate. Our response clarifies that we welcome this as an additional option. It will not necessarily be one that is used with every bye-law, and, even if fixed penalty notices can be issued, it is not always a guarantee. The approach is usually around engagement and encouragement rather than enforcement. So, it is a useful option, and I think that the range of bye-laws that could be covered, should authorities wish, is appropriate.

[88] **Rhodri Glyn Thomas:** Uchafswm y ddirwy a osodwyd yw £500. O dan adran 13, yr uchafswm ar gyfer dirwy benodedig yw £75. Pam bod £500 wedi'i osod fel swm ar gyfer torri is-ddeddfau? A yw'n ffigur rhesymol?

Rhodri Glyn Thomas: The maximum fine set is £500. Under section 13, the maximum fixed penalty fine is £75. Why has £500 been set for breaching bye-laws? Is that a reasonable figure?

[89] **Mr Jones:** It is line with the legislation, which is the Local Government Act 1972 and bye-laws. It is the same level, which is level 2, and I imagine that it has been taken from that Act. I think that £75, from the last time I checked, is actually a bit more than the figure in the 1972 Act, so they seem to be reasonable figures. With regard to enforcement, I am sure that officers in all councils do not wish to prosecute or give a fixed penalty, but to try to encourage, persuade and ask nicely, if you like. That is what happens with regard to most bye-laws; there are very few actual prosecutions. The ability to do something is there. It is not really meant to be punitive, it is meant to allow that you can control a certain activity. As I said, it is line with the current legislation that we operate, and I would not have thought that it is inappropriate.

[90] **Rhodri Glyn Thomas:** Mae £500 yn swm sylweddol o arian, ac fe all arwain at sefyllfaoedd lle caiff eiddo ac ati eu fforffedu. Rwyf wedi cael trafferthion yn fy etholaeth gyda sefyllfaoedd lle mae pobl yn mynd mewn i geisio sicrhau taliad. Ni fyddwn am weld cynghorau cymuned yn dilyn y math hwnnw o arfer. Pa ffordd arall y maent am gael eu £500 os nad ydynt yn mynd at gwmnïau sy'n gorfodi pobl i dalu? A ydych yn credu bod honno'n sefyllfa dderbyniol?

Rhodri Glyn Thomas: Five hundred pounds is a substantial amount of money, and it could lead to situations where properties and so on are forfeited. I have had problems in my constituency with situations where people go in to try to secure payment. I would not want to see community councils following that sort of practice. In what other way will they get their £500 without going to companies that force people to pay? Do you think that that is an acceptable situation?

[91] **Mr Thomas:** We have done some research on the seize powers that exist in England now under the Police Reform and Social Responsibility Act 2011. What would we do in Wales? We would need to use those powers very carefully, would we not? We would not want a heavy-handed approach to the enforcement of bye-laws. As Rod says, bye-laws are

generally not intended to be punitive—they are there to act as a deterrent, are they not? From our point of view, we would not want to see a situation where people's property was seized on the back of this; that would only be used in the most extreme circumstances. It would require a degree of legislative competence to do that, in any case.

[92] **Rhodri Glyn Thomas:** Felly, os yw sefyllfa o'r fath yn codi, a ydych yn dadlau bod angen caniatâd gweinidogaethol cyn gweithredu yn y ffordd honno? **Rhodri Glyn Thomas:** Therefore, if such a situation arose, do you argue the need for ministerial agreement before acting in that way?

[93] **Mr Thomas:** This could be one for Mike's backstop power, which was suggested earlier. It is a tricky point. Such powers should be used sparingly and carefully.

[94] **Mr Jones:** If we are talking about the fines for breach of a bye-law, that is a magistrates' court matter. If you prosecuted successfully and someone was fined, the council would not send anyone to get that money, because that would be a matter for the magistrates' court in the way that fines are currently collected. If someone pays a fixed penalty, then that comes to the council, but you would not be sending firms in to get that money.

[95] **Rhodri Glyn Thomas:** Mae'n rhaid ichi dderbyn bod £500 yn swm sylweddol ac y byddai canran gweddol uchel o'r boblogaeth yn ei chael yn anodd iawn canfod £500 i dalu dirwy—mae £75 yn fater hollol wahanol. Fodd bynnag, gallai sefyllfa o'r fath godi'n eithaf aml, lle mae is-ddeddf yn cael ei thorri, dirwy yn cael ei gosod a phobl mewn sefyllfa lle nad ydynt yn gallu talu ac yn gorfod gweithredu mewn rhyw ffordd neu'i gilydd i ddod o hyd i'r arian hwnnw. Pa broses yr ydych yn ei hargymell er mwyn gweithredu hynny? Nid oes pwynt gosod dirwy os nad ydych yn mynd i'w gweithredu. **Rhodri Glyn Thomas:** You have to accept that £500 is a substantial amount of money and that a fairly high percentage of the population would find it very difficult to find £500 to pay a fine—£75 is a completely different matter. However, such a situation could arise quite often, where a bye-law is breached, a fine is set and people are not in a position to pay and have to act in some way or other to find that money. What process do you recommend to enforce that? There is no point in imposing a fine if you are not going to enforce it.

[96] **Mr Jones:** Yes, but as I say, that process exists through the magistrates' courts. If you were prosecuted under a bye-law and a fine was obtained, the council itself would not enforce that fine; that is the magistrates' court's job. That will not change—that will remain as it is now in general law.

[97] **Mike Hedges:** Is it not a backstop to deal with serial offenders? If someone is fined £20 by a magistrates' court, they may be quite happy to pay £20 a week if they breach it, but when the magistrates' court keeps increasing that sum and it gets to £500 a week, it might encourage them to stop.

[98] **Mr Jones:** Yes. There is reference here to a continuing offence but, again, that is part of the law as it is now. It would not be any different in terms of enforcement.

[99] **Rhodri Glyn Thomas:** O fewn y Bil hwn, mae gallu gan y Gweinidog i gyfyngu ar y costau hyn. A yw hynny'n briodol? Os felly, a ddylai fod ar wyneb y Bil? **Rhodri Glyn Thomas:** As part of this Bill, the Minister is able to limit these costs. Is that appropriate? If so, should it be on the face of the Bill?

[100] **Mr Hurford:** Yes, if the Minister has powers to restrict these costs, that should be on the face of the Bill. Which part of the memorandum would that cover? If you could send us that question after the committee—

[101] **Rhodri Glyn Thomas:** The question that I am asking is: is it appropriate for the Minister to have the power to regulate the fixed penalties and, if so, should that be on the face of the Bill?

[102] **Ann Jones:** I am reliably informed that that is outlined in section 13.

[103] **Mr Hurford:** As currently stated, section 13 says that fixed penalties amount to £75 and that the Minister may make regulations. If £75 is widely regarded, following implementation, as being too high, because people are not paying it, or too low in certain circumstances, because it is not acting as a deterrent, it is appropriate for the Minister to have that flexibility under this legislation to make regulations to change that amount.

[104] **Rhodri Glyn Thomas:** Should it be on the face of the Bill?

[105] **Mr Hurford:** Possibly not, because through regulations, Ministers have more flexibility to respond to developing bye-law legislation and practice. So, the fact that it is in regulations gives flexibility to respond to needs as time goes on.

[106] **Joyce Watson:** Picking up on the idea of fines, do you think that, in section 14, it is proportionate to allow a fine of £1,000 for not providing correct personal details, when the fine for the substantive offence is set at a maximum of £500?

[107] **Mr Thomas:** The intention behind this piece of legislation is to deal with people who obstruct officers in the course of their duties. The fine will be a matter for the court. It seems inconsistent, but, at the same time, there are circumstances, when you get to that level of obstruction, under which the threat of such a fine helps the system and facilitates the process.

[108] **Mr Jones:** It is in line with the content of local government legislation in England. It is on level 3, which, as you say, is £1,000.

[109] **Joyce Watson:** That is fine. Moving on to sections 15 to 18, I will talk about fixed penalty receipts. What is your view on section 15, which states that authorities must have regard to using receipts from fixed penalty notices to combat the nuisance that the bye-law has been created to deal with? Have you carried out any work on how authorities can use powers to issue fixed penalty notices, and how the receipts of those are collected and used?

[110] **Mr Hurford:** We have not done any work on the collection or use of the receipts of fixed penalty notices. As the explanatory memorandum states, in 2010-11, about £116,000 was raised nationally. Therefore, the average across Wales is £5,000 per authority. So, it is not significant, currently. On using the receipts for the subject of the bye-law, it is likely that fixed penalty notices will be used to pay for the administration of dealing with the bye-law, the issuing of fixed penalty notices, officers' time and so on. So, in all likelihood, because they are rarely used, any revenue raised in that process will be used to cover the cost of managing the bye-law.

[111] **Bethan Jenkins:** Do you have any evidence that that money has been used in the past for administrating the bye-law? It seems that that could lead to people putting bye-laws through purely for their financial benefits. I do not want to be that cynical, but it could happen.

[112] **Mr Hurford:** We are talking about the figures that the Welsh Government has noted in the explanatory memorandum, noting that the average is £5,000 per authority—although it will vary across Wales. It is not a huge revenue spinner. If you balance that against the estimated cost for passing a bye-law, the administration and the level of engagement and

consultation, it is not likely to be used primarily as source of revenue.

[113] **Janet Finch-Saunders:** My point is more about the issue of people not paying the fine. We have a history of fixed penalty notices not being pursued. It is not a good example to set. How do you mitigate that? There will be more fixed penalties, so you will end up with more people defaulting, will you not?

[114] **Mr Jones:** The issue is about reinforcement. The Bill says that, when you make a bye-law, you must consider whether it is desirable to include fixed penalty procedures. That would be part of the process. There is an offence of giving a wrong name and address or refusing to give a name and address, but how often will that happen? If you are trying to enforce a bye-law, but someone gives you a rude answer or you are given a false address, bearing in mind that officers of a local authority cannot arrest people—

10.15 a.m.

[115] **Janet Finch-Saunders:** I was thinking more about non-payment.

[116] **Mr Jones:** The scheme would be there. It is £75 or so, if you pay within 14 days, is it not? If you do not pay, there is the possibility of prosecution and it would go back to the magistrates' court. That is how it would work.

[117] **Rhodri Glyn Thomas:** Having listened to your evidence, I wonder why we are going through this process. You have been telling us that bye-laws will not be used, or that certain situations arise rarely. We are spending a lot of time on this; why are we doing it?

[118] **Mr Jones:** I have been informed that the experience in Swansea is that the bye-laws are used once they are in place, but they are not used to prosecute people; they are used to enforce in the sense that people have been told that they have breached a certain bye-law and they are asked to stop doing so or move on, and, by and large, they do. That is the advantage and the benefit of it. This is not about taking people to court; that is something that you do not want to do. You want them to obey the bye-law. We have very few prosecutions because that is not the purpose of it. The sanction is there as the last resort, is it not? That is certainly the information that I have received from the officers in Swansea who enforce these things on the street.

[119] **Joyce Watson:** My final question is on section 18. What is your view on section 18, which allows Ministers to issue guidance to authorities on various issues related to bye-laws? Should the guidance be limited to the matters listed in section 18?

[120] **Mr Hurford:** The matters seem appropriate. When the Welsh Government consulted on the policy in 2010, authorities generally welcomed the idea that there would be statutory guidance, particularly around the issue of model bye-laws, which are currently available, certainly in the English context. The Minister mentioned last week in evidence that model bye-laws would be used. So, we think that it is appropriate.

[121] Once again, on the use of fixed penalties, given the potential concern about how they might or might not be used, it would probably be useful to have guidance on that. Guidance has already been issued by a number of departments. In England, for example, the Department for Environment, Food and Rural Affairs has issued guidance under the Clean Neighbourhoods and Environment Act 2005, which is very useful in outlining how and when fixed penalty notices should be issued. So, it is probably good that that has been included under section 18.

[122] **Peter Black:** I would like to stick to the issue of guidance. As you will know from

the explanatory memorandum, much of the ministerial guidance is subject to the affirmative procedure and has to be affirmed by the Assembly. I think that the vast majority are subject to the negative procedure, which means that you have to call them in if you want to consider them. Does the Bill contain sufficient scrutiny arrangements in respect of the statutory instruments that can be made under it? When this guidance is passed, will Assembly Members be able to look at them properly?

[123] **Mr Hurford:** That is probably a matter for the Assembly and the committee to consider. In terms of statutory consultation on statutory guidance, authorities and all partners are engaged in that process. Perhaps, given some of the potential controversy around fixed penalty notices, the Assembly might want to consider the statutory guidance formally. However, from the authority's point of view, we have a 12-week statutory consultation period on any guidance resulting from legislation. So, local authorities, community councils, national parks and so on are content with that.

[124] **Peter Black:** So, you have no fears of a rogue Minister running amok without Assembly Members keeping them under control.

[125] **Mr Thomas:** They are running amok in other areas, so we are not worried about bye-laws. [*Laughter.*]

[126] **Ann Jones:** Now, now; we should stick to discussing the legislation.

[127] **Peter Black:** What are your views about the claim by the Welsh Government that the number of bye-laws introduced each year is not expected to change, despite the fact that the new system for introducing those bye-laws is expected to be less onerous?

[128] **Mr Thomas:** I do not think that we will see an exponential explosion in the number of bye-laws because of this. The point of this Bill, and this discussion, is to clarify and simplify the current system, is it not? From our point of view, bye-laws will be used. They are not a frequent tool used by local government, but, at the same time, they will be used. This Bill simplifies matters and provides that necessary clarification. I think that that is a good thing.

[129] **Ann Jones:** How accurate are the figures in the explanatory memorandum as to the likely financial costs and savings to local authorities as a result of the changes made by the Bill? Bearing in mind the cynical view—and I share Bethan's view on that—would local authorities see this as a good money-spinner?

[130] **Mr Thomas:** I suspect that the Welsh Government estimate of about £7,000 to £9,000 per bye-law is absolutely right. This is not a road-to-riches approach; I think that there are better ways of generating income for local authorities.

[131] **Ann Jones:** It depends which local authority you are thinking of when you say road to riches.

[132] **Mr Thomas:** I could not possibly comment.

[133] **Ann Jones:** No. Do Members have any more questions? Do the WLGA representatives want to add anything that they think that we should have raised, and we have not? I see that you do not. I thank all three of you for coming to give evidence today. As usual, you will receive a copy of the transcript to check for accuracy. Thank you for your time today.

[134] We have had a message to say that our next witness from One Voice Wales is,

unfortunately, unable to be with us. She is unwell.

10.21 a.m.

Cynnig Gweithdrefnol
Procedural Motion

[135] **Ann Jones:** We are going to move into private session now. I move that

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

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

Derbyniwyd y cynnig.
Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 10.21 a.m.
The public part of the meeting ended at 10.21 a.m.