



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

Y Pwyllgor Busnes **The Business Committee**

Dydd Llun, 14 Mai 2012
Monday, 14 May 2012

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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 |
| Rosemary Butler | Llafur (Y Llywydd a Chadeirydd y Pwyllgor) Labour (The Presiding Officer and Committee Chair) |
| Jocelyn Davies | Plaid Cymru The Party of Wales |
| William Graham | Ceidwadwyr Cymreig Welsh Conservatives |
| Jane Hutt | Llafur (Y Gweinidog Cyllid ac Arweinydd y Tŷ) Labour (The Minister for Finance and Leader of the House) |

Eraill yn bresennol
Others in attendance

| | |
|------------------|--|
| Marion Stapleton | Pennaeth Is-adran Busnes y Cynulliad a Rheoli Deddfwriaeth, Llywodraeth Cymru Head of the Assembly Business and Legislation Management Division, Welsh Government |
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Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

| | |
|-----------------|---|
| Sarah Beasley | Cynghorydd y Pwyllgor Committee Adviser |
| Adrian Crompton | Cyfarwyddwr Busnes y Cynulliad Director of Assembly Business |
| Karl Gomila | Dirprwy Glerc Deputy Clerk |

Aled Elwyn Jones

Clerc
Clerk*Dechreuodd y cyfarfod am 1.14 p.m.
The meeting began at 1.14 p.m.***Ymddiheuriadau a Chyhoeddiadau
Apologies and Announcements**

[1] **The Presiding Officer (Rosemary Butler):** Good afternoon, everyone. Welcome to this public meeting of the Business Committee. There are some reminders, before we start, of the practical arrangements. In the event of a fire alarm, we should leave the room by the marked fire exits and follow the instructions of the ushers and the staff. There is no test forecast for today. All mobile phones, pagers and BlackBerrys should be switched off as they interfere with the broadcasting equipment. As you know, the National Assembly for Wales operates through the media of both English and Welsh. The interpretation is available on channel 1 and the verbatim feed is on channel 0. Please do not touch the buttons on the microphones as that can disable the system. Please check that the red light on your microphone is on before you speak.

1.15 p.m.

**Diwygio Rheolau Sefydlog: Biliau Preifat
Amending Standing Orders: Private Bills**

[2] **The Presiding Officer:** We are here to discuss amending Standing Orders to deal with private Bills. To date, the Assembly has not had procedures for dealing with private Bills. However, the Government of Wales Act 2006 gives us the power to draw up Standing Orders for that purpose. The Standing Orders that we are discussing today are therefore completely new rather than amendments to existing Standing Orders. Although many of the proposed Standing Orders for private Bills are similar to, or indeed the same as, those for public Bills under Standing Order No. 26, there are significant differences between the two procedures.

[3] As we all know, private Bills differ from public Bills in that they are introduced by a private individual or body outside the legislature. They involve measures sought in the private interests of the promoter to which others may object. On the other hand, public Bills are introduced by the Government, individual Members or committees. The purpose of today's meeting is to agree in principle the proposed Standing Orders. In due course, the Business Committee will lay a report before the Assembly outlining our decisions and seeking the Assembly's approval for the new Standing Orders.

[4] This afternoon, we have with us Adrian Crompton, director of Assembly business, and Sarah Beasley, who is the clerk responsible for the detailed work on this legislation. If you have any queries, they will be only too happy to respond.

**Cyflwyno Biliau Preifat
The Introduction of Private Bills**

[5] **The Presiding Officer:** The papers for this afternoon have been put into bundles, which is very helpful. The first set of papers that we will discuss are pages 1 to 8 on the introduction of private Bills. Adrian, do you wish to comment?

[6] **Mr Crompton:** Thank you, PO. I wish to draw your attention to just a few points.

This first section is about the process for the submission by the promoter of the Bill and any accompanying documentation. As drafted, we envisage that the Bill would be formally laid by the Presiding Officer, and it could not be introduced without agreement. A couple of issues have come up in our previous discussions with you about the draft. One relates to fees, so we have inserted a proposed wording at Standing Order No. 6, which would give the Assembly Commission the scope to set fees to be charged of the promoter. It is very broadly drafted at the moment. You may wish to consider whether we should flesh out with a little more detail whether differential fees ought to be chargeable to different types of organisation, which is a feature that they have in Scotland, for example. That is all that I wish to say at this stage, thanks.

[7] **The Presiding Officer:** Do any Members have any questions on that?

[8] **Jocelyn Davies:** On the matter of varying fees, should that not be done according to how much it costs to run the process rather than the type of organisation submitting the Bill, so that the fee relates to the cost to the Commission?

[9] **Mr Crompton:** It could well be done in that way. Another feature in Scotland is that they provide for the charging of fees at different stages, I think. So, a Bill could be introduced and fall at a relatively early stage, but if it got to the more detailed stage of the consideration of the arguments around objections and so on, costs might be incurred at that point. So, we could flesh that wording out to make it clear that the Commission's fee rates could have that sort of subtlety about them.

[10] **Jocelyn Davies:** Out of curiosity, as you have mentioned Scotland, do you have any idea what the fees are normally? I am just wondering what sort of ballpark figure we are talking about. It is a matter of curiosity more than our needing to know.

[11] **Mr Crompton:** Off the top of my head, I think that we are talking about figures of around £5,000.

[12] **Jocelyn Davies:** Okay.

[13] **Peter Black:** Chair, the proposed Standing Order is drafted in quite an open-ended way at the moment, so do we really need to include in the Standing Order the fact that the Commission can charge different fees when the discretion has been given to the Commission to set the fees anyway?

[14] **Mr Crompton:** That is a good point. We are just considering the balance between putting too much detail in the Standing Order and being fair to promoters by making clear the sort of charges they might face.

[15] **The Presiding Officer:** With those points clarified, are Members content that we agree that particular part of the Standing Order? I see that you are, so we will move on to the next one.

Cyfnod Gwrthwynebu Objection Period

[16] **The Presiding Officer:** The objection period is dealt with in pages 9 to 12. Adrian, do you have any comment?

[17] **Mr Crompton:** Yes. The key point here is in relation to the 40-day working period during which time any potential objectors may lodge their objections, so the Standing Order sets out how they would go about doing that. In the Standing Order that you just approved, we

also included how the promoter must publicise the existence of the Bill and of that 40-day window for objectors, so we have broadened the wording of that away from simple reliance on publication in a printed newspaper to ensure that other channels of communication—the internet, or whatever—can be used for that purpose.

[18] **The Presiding Officer:** Are we all content with that? It seems an obvious thing to do. I see that Members are happy that we agree Standing Order Nos. 26A.15 to 26A.24.

Pwyllgorau Biliau Preifat Private Bill Committees

[19] **The Presiding Officer:** We now move on to private Bill committees. This is laid out on pages 12 to 16 of the annex.

[20] **Mr Crompton:** This is perhaps the most critical part of the whole process. The procedure at the committee stage is a quasi-judicial one, and so written into the Standing Orders are requirements about the restrictions that would apply to Assembly Members who had potential interests. The Standing Order would be slightly broader in coverage than the rest of our procedures. So, a Member who has a registrable interest would not be a member of a private Bill committee. However, Members will potentially have interests that might be relevant, or that might be perceived as being relevant, to a piece of legislation but that are not actually covered by the requirements of the Members' register of interests at the moment. This Standing Order envisages that Members of a Bill committee who had one of those broader interests would have to put that into the public domain so that everyone was aware of it.

[21] Also in this section, at your request, we have written in a requirement that the members of a private Bill committee could not participate unless they had undertaken formal training as prescribed by the Presiding Officer.

[22] **The Presiding Officer:** It was a particular request of the committee that that training should take place.

[23] **Jocelyn Davies:** Yes, because if a Member should make a mistake, or not be fully aware, there would be considerable costs involved if we had to start again or something, so I think that formal training is required for a committee of that sort.

[24] **The Presiding Officer:** I think that we set a precedent with the planning inquiry. Are we happy with that?

[25] **Jocelyn Davies:** Obviously, any Member who was unclear about any interest could take advice on whether they could sit on such a committee. That advice would be privately available to Members if they were in some doubt.

[26] **William Graham:** On Standing Order No. 26A.32, you said that it is quasi-judicial, but will it be as strong as the relevant recommendation of a licensing or planning committee? In other words, a Member could have given their opinions on an issue over a long period of time. Would that disqualify them?

[27] **Mr Crompton:** The expression of a view in advance might be covered by that second category of interest. If a Member were to be appointed to the committee, it would be their decision, but they might choose to make clear that they had taken a particular stance on an issue over a long period of time. It links to Jocelyn's question, I think—we would envisage the procedure for establishing the committee to be one that was channelled through the Business Committee, so the Business Committee would formally table the motion to

constitute the committee and establish its membership. Those are the sorts of questions that you would need to take into account at that stage, when you saw the names of the Members being put forward. The expression of a view would not automatically debar someone from taking part, but that Standing Order would require that they place on public record the fact that they will be listening to the evidence that they receive and taking any decisions impartially on that basis.

[28] **The Presiding Officer:** That is absolutely crucial. As Jocelyn says, people could be subjected to huge costs if we have to start again.

[29] **Jocelyn Davies:** I have another point for clarification, following on from that. The Standing Order states that, at the first meeting, Members have to say that they agree to act impartially. How will that happen? How will Standing Order No. 26A.32, which states that, at the first meeting, Members have to agree to act impartially, be followed?

[30] **Mr Crompton:** It is clearly not a formal requirement of the Standing Order as to how we go about it, but it would make sense to make that a relatively formal part of proceedings and for each Member to put on record that assertion, rather than the Chair simply saying that it is taken as read.

[31] **The Presiding Officer:** Therefore, it is a formal thing that a Chair might say and then individual Members in committee would agree. Therefore, are you happy to accept Standing Order Nos. 26A.25 to 26A.36? I see that you are.

Ystyriaeth Gychwynnol Initial Consideration

[32] **The Presiding Officer:** We now move on to the initial consideration of Standing Order Nos. 26A.37 to 26A.44, which are laid out on pages 16 to 18 in your bundle.

[33] **Mr Crompton:** I guess that the key point here is the first question that the private Bill committee will be considering, which will be the issue of whether the Bill before the Assembly should proceed under these Standing Orders. So, a key question will be whether a piece of legislation qualifies as a piece of private legislation. The factors that the committee will take into account, for instance, will be the extent of the impact of the legislation and the degree to which it touches on matters of public policy, which would typically be handled by public legislation introduced by the Government, Members or committees. That will be the first critical question that the committee will need to satisfy itself upon. At Stage 2, the committee will look at the explanatory memoranda and materials submitted by the promoters to satisfy itself that it is sufficiently detailed and of high enough quality for the Assembly to do the job of work that it has to do.

[34] **Jocelyn Davies:** Earlier on, the Standing Order says that the Presiding Officer will lay down conditions. Is some of this just second-guessing what the Presiding Officer would do in the first instance? I would not want to see you, Presiding Officer, in conflict with a committee, with you saying that something was appropriate, and the committee saying that it did not think that it was of good enough quality.

[35] **The Presiding Officer:** Can you explain that one?

[36] **Mr Crompton:** I will try to do so, Presiding Officer. There are two factors to it. At the preliminary stage, when the Presiding Officer rules, the primary focus will be on the content of any materials submitted, rather than on the quality or the extent of it. So, a degree of that can come into that stage. However, by Stage 2, we will have completed the objection period, so the committee will also be thinking about any objections that have been received,

and starting to form its view on the sort of issues that it needs to cover. So, it is conceivable that the committee might feel that more information is needed from the promoter in a particular area when that could not have been foreseen by the Presiding Officer at the introduction, because there would have been no sight of objections at that point.

[37] **Jocelyn Davies:** However, the objectors will only have what is in the public domain after the determination by the Presiding Officer, which could put the objectors in an unfair position if the content of that is of very poor quality. If there has been no judgment about the quality earlier on, that is what the objectors have to look at in forming their objections.

1.30 p.m.

[38] **Mr Crompton:** I am not saying that there would be no judgment about the quality. The Standing Order fleshes out, with a fair bit of detail, the sort of steps that a promoter would be expected to have taken before introduction. So, the expectation would be that there has been some effort at consultation prior to introduction. It would certainly not be the case that material available to objectors would be so spartan that they would not be able to make a sensible decision.

[39] **Jocelyn Davies:** I am glad to have that assurance.

[40] **The Presiding Officer:** So, there is a presumption that the Presiding Officer will agree that the Bill can go forward.

[41] **Mr Crompton:** The Bill cannot be introduced until you are satisfied that it is ready to be introduced.

[42] **The Presiding Officer:** Right, but I would have to have very good reasons not to move forward.

[43] **Mr Crompton:** Absolutely.

[44] **The Presiding Officer:** Are we all happy with those? Do we agree Standing Order Nos. 26A.37 to 26A.44? I see that we are agreed.

Ystyriaeth Fanwl y Pwyllgor Detailed Committee Consideration

[45] **The Presiding Officer:** We now move on to detailed committee consideration. Standing Order Nos. 26A.45 to 26A.70 are dealt with on pages 18 to 24. Do you have any points to make on this one?

[46] **Mr Crompton:** By this stage, the committee will have reported on whether the Bill should proceed as a piece of private legislation. If we get to this point, the Assembly will have agreed that it should. This is the point at which promoters and objectors will present their evidence in detail to the committee.

[47] **The Presiding Officer:** That is fairly straightforward. Are we all happy with that? Do we agree Standing Order Nos. 26A.45 to 26A.70? I see that we are agreed.

Ystyriaeth Fanwl gan y Cynulliad Detailed Assembly Consideration

[48] **The Presiding Officer:** Moving on to detailed Assembly consideration, we are looking at Standing Order Nos. 26A.71 to 26A.83, which are set out on pages 25 to 28.

[49] **Mr Crompton:** By this point, the committee will have amended the Bill, if it chooses to do so. As is the case with public Bills, there is a chance for the full Plenary of the Assembly to consider and amend the Bill. However, we have written into the procedure a restriction on the scope of the amendments that can be tabled at this stage. Any amendments tabled at this point would have to be in line with the recommendations made by the committee at the previous stage. Completely unexpected or unrelated amendments—amendments not related to the evidence presented at the committee stages—could not be introduced at this point.

[50] **William Graham:** So, you would decide whether they are appropriate. That is the safeguard really, is it not?

[51] **Mr Crompton:** Yes, it would be a formal decision about the admissibility of an amendment.

[52] **Jocelyn Davies:** The term ‘working day’ is used here. What that means is detailed in the Standing Orders, is it not? Bank holidays and so on do not count. You can end up in legal difficulties, and, as we know, a day can make a big difference. Am I right to say that the Standing Orders set that out, so that there is no doubt in anyone’s mind about whether a particular day counts as a working day?

[53] **The Presiding Officer:** Does a working day finish at 6 p.m. or midnight? We need that to be clarified.

[54] **Jocelyn Davies:** Of course, things could be received electronically. That is a good point.

[55] **The Presiding Officer:** We need to check that. There has been an issue recently, which has led to a huge challenge.

[56] **Mr Crompton:** ‘Yes’ is the answer to Jocelyn’s question—a working day is already defined in Standing Orders. We have a well-established precedent in terms of the operation of the Table Office with regard to the point at which something is admissible, with specific timings during the day.

[57] **The Presiding Officer:** This needs to be very clear, because it will be people from outside who will bring these forward. With that proviso, are we happy to agree Standing Order Nos. 26A.71 to 26A.83? I see that we are agreed.

Y Cyfnod Terfynol ac Ailystyried Biliau Preifat a Basiwyd Final Stage and Reconsideration of Private Bills Passed

[58] **The Presiding Officer:** Standing Order Nos. 26A.84 to 26A.94 are set out on pages 28 to 31.

[59] **Mr Crompton:** This is very straightforward. The Standing Orders here simply replicate the provisions that we have for public legislation.

[60] **The Presiding Officer:** I think that that is fairly self-explanatory. Are we happy to agree Standing Order Nos. 26A.84 to 26A.94? I see that we are agreed.

**Gwelliannau i Ffiliau Preifat
Amendments to Private Bills**

[61] **The Presiding Officer:** This item relates to Standing Order Nos. 26A.95 to 26A.104, and is laid out on pages 31 to 34.

[62] **Mr Crompton:** This is the feature that I outlined earlier, which has already been covered in Standing Orders—the restriction on amendments that could be tabled at the Plenary stage. This set of Standing Orders just replicates the provisions with regard to amendments that we have for public legislation.

[63] **The Presiding Officer:** Is everyone content? I see that you are.

**Newid Hyrwyddwr a Chydsyniad Ei Mawrhydi a Dug Cernyw
Change of Promoter and Her Majesty's and Duke of Cornwall's Consent**

[64] **The Presiding Officer:** The next item relates to Standing Order Nos. 26A.105 to 26A.112, set out on pages 34 to 36.

[65] **Mr Crompton:** I have little to say on this, Presiding Officer. They do what it says on the tin.

[66] **Peter Black:** I have a question in relation to the wording of Standing Order No. 26A.112. It says that

[67] ‘if a Private Bill contains provision, or is amended so as to include any provision, that would, if the Private Bill were a Bill for an Act of the United Kingdom Parliament, require the consent of Her Majesty, or the Duke of Cornwall’.

[68] Do not all Bills require the consent of Her Majesty at the end of the process?

[69] **The Presiding Officer:** It says ‘and the Duke of Cornwall’.

[70] **Peter Black:** No, it says ‘or the Duke of Cornwall’.

[71] **The Presiding Officer:** I have got ‘and’. Is it ‘and’ or ‘or’?

[72] **Jane Hutt:** This is ‘or’.

[73] **The Presiding Officer:** It is definitely ‘or’.

[74] **Mr Crompton:** They are slightly different things. Obviously, a Bill requires Royal Assent at the end of the process. This applies to all pieces of legislation made here or in other Parliaments of the UK. If a Bill impacts upon the private interests of the Crown, consent is required before the Bill can be made by the Assembly.

[75] **Peter Black:** So the difference is between consent and assent.

[76] **The Presiding Officer:** Well spotted, Peter. So, we are in agreement on Standing Order Nos. 26A.105 to 25A.112.

**Penderfyniadau Ariannol
Financial Resolutions**

[77] **The Presiding Officer:** We now move to the draft Standing Orders on financial

resolutions, Standing Order Nos. 26A.113 to 26A.119.

[78] **Mr Crompton:** These replicate the provisions around financial resolutions for legislation generally. The stage at which this would be required would be prior to any disposal of amendments by the public Bill committee. That would be the point in the process at which the Government would have to put forward a financial resolution.

[79] **The Presiding Officer:** Is everyone comfortable with that? I see that you are.

**Hysbysu ynghylch Cydsyniad Brenhinol i Ddeddfau Preifat y Cynulliad a Biliau Preifat
yn Methu, yn Cael eu Gwrthod neu'n Cael eu Tynnu'n ôl
Notification of Royal Assent to Private Acts of the Assembly and Fall, Rejection or
Withdrawal of Private Bills**

[80] **The Presiding Officer:** We now move on to the next item, on Standing Order Nos. 26A.120 to 26A.123, set out on page 40.

[81] **Mr Crompton:** I have nothing in particular to say on this.

[82] **The Presiding Officer:** It is fairly self-explanatory. Does anybody have any comments?

[83] **William Graham:** On Standing Order No. 26A.123, it says at the bottom there that

[84] ‘a Private Bill may be withdrawn at any time by the Promoter’.

[85] Is there anything about them paying all the costs to date? Do you have to ascertain that all the costs up to that time have been paid before they are able to withdraw?

[86] **Mr Crompton:** That would depend on the rules that the Commission will have set for the charging of fees.

[87] **William Graham:** Should it say that all such fees must be paid before the Bill can be withdrawn?

[88] **Mr Crompton:** That could be a feature that the Commission would write into the guidance that it sets.

[89] **William Graham:** How do we ensure that that happens?

[90] **Mr Crompton:** It would be a matter for the Commission to make that clear.

[91] **William Graham:** Do we tell the Commission formally, or what?

[92] **The Presiding Officer:** I am sure that it will be noted from here, and will be one of the issues that is picked up by the Commission—whether everything is paid in advance at each stage. This is the first time that we have done it. However, it is a very good point, and we will make sure that the Commission considers that.

[93] **Jocelyn Davies:** I think that we should make it clear that, in agreeing this Standing Order, that is our understanding—that that is what this means.

[94] **The Presiding Officer:** I would assume that people will pay up front before they get to the next stage, but as you say, they might withdraw at a different point. We will make sure that that is considered. Taking that on board, are you content? I see that you are.

**Newidiadau Canlyniadol i Reolau Sefydlog
Consequential Changes to Standing Orders**

[95] **The Presiding Officer:** The consequential changes to Standing Orders in respect of Standing Order No. 15.1 are laid out on pages 41 to 42. Are there any comments?

[96] **Mr Crompton:** There is just a minor change, which is to include the category of material that can formally be laid.

[97] **Peter Black:** Sorry; what?

[98] **Jocelyn Davies:** That can be laid.

[99] **The Presiding Officer:** Are you comfortable with that? Do you accept that, everyone? I see that you do.

[100] Therefore, we have covered all of the points. The secretariat will draft a report based on our decisions today, which we will consider at a future meeting. Obviously, it will go to the Commission for decision—whatever that may be, such as fees and charges—and it will then come back to us. What is the timescale on that?

[101] **Mr Crompton:** It will not take us too long, hopefully, because I do not think that you are seeking any significant changes to the wording. We will make sure that you are comfortable with the final wording of the draft Standing Order, and usual practice would be to then produce a short covering report, which would go to Plenary for formal approval and establishment of the Standing Order.

[102] **The Presiding Officer:** Therefore, it will certainly be done in this term.

[103] **Mr Crompton:** It will certainly be before the summer.

[104] **The Presiding Officer:** That is fine. Unless anyone has anything else to raise, that brings today's business to a close. Thank you very much. It was an interesting session.

*Daeth y cyfarfod i ben am 1.41 p.m.
The meeting ended at 1.41 p.m.*