



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

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

Dydd Llun, 17 Rhagfyr 2012
Monday, 17 December 2012

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol **Committee members in attendance**

Mick Antoniw	Llafur Labour
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
David Melding	Ceidwadwyr Cymreig (y Dirprwy Lywydd a Chadeirydd y Pwyllgor Welsh Conservatives (the Deputy Presiding Officer and Committee Chair)
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

[4] There are both technical and merits reporting points, as you can see from the report. First, on the technical reporting points, the regulations have not been made bilingually. The Government has already given an explanation as to why that was not possible. It says:

[5] ‘Because of the length and technical complexity of the regulations, the timeframes within which they have been compiled and the fact that they draw on council tax benefit regulations for which there is no existing translation, it has not been possible to arrange for the Regulations to be provided in Welsh.’

[6] The remaining technical points are the same in both the default and prescribed requirements regulations. The Schedules are almost identical, because they are drawn from the existing council tax benefit system documents. The first technical points relate to references to the Jobseeker’s Allowance Regulations 1996. These are incorrect. They are reporting points. The sub-paragraph references are incorrect, but the main reference is correct. They should not lead to any legal uncertainty, but they are reporting points nonetheless.

[7] There is also a reporting point in relation to the Schedules of both instruments. There is a reference to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002. This is in relation to a particular part of the Schedule that refers to a benefit to certain classes of persons. The reference to those regulations is incorrect, as they have been revoked by a set of 2012 regulations. When we asked Government lawyers about this, they were unable to give us an answer. They told us that they were unable to find any replacement regulations. It takes into account, I think, a reduction of some £17.10 for certain individuals, but we could not find a correct reference for this.

[8] In the merits reports, we have reported on the issue of timing. The prescribed requirements regulations require local authorities to implement their schemes before 31 January 2013. We are not in a position to judge whether local authorities have begun making preparations, but we simply point out that the preparation work to implement these schemes is quite a task, as demonstrated and highlighted by some of the issues that councils will have to go through, such as changing their software, training staff and so on. In the next merits reporting point, we have pointed out the inclusion of the sunset clause. Both sets of regulations were re-laid on 12 December to include the amendments with the sunset clause. Therefore, the prescribed requirements regulations are applicable only for the 2013-14 financial year, and the Welsh Government will be under an obligation to bring draft regulations forward on or before 1 January 2014. So, hopefully, you will have a greater opportunity to scrutinise the regulations next year. The same applies to the default regulations, which apply only as far as the prescribed requirements regulations are in force.

[9] The third and final merits reporting point is simply a policy point. As you know, I am sure, the council tax reduction schemes will lead to claimants receiving less benefit and less of a contribution towards their council tax, and will lead to some people paying council tax for the very first time. Those were the points.

[10] **David Melding:** As well as the legal advisers’ report, Members also have before them the correspondence that has been exchanged on these regulations, along with a note provided by the Government on how the regulations have been amended—basically, to incorporate a sunset clause in CLA198. The matter is now open for discussion.

[11] **Suzy Davies:** I want to know more about the issue of the Welsh language. I take the point that everything came through so quickly that they would struggle—anyone would struggle to produce that amount of work correctly in Welsh—but have we had any indication of whether there are any plans to produce these bilingually? I think that there was a comment in the memorandum that this ‘may’ happen. Will it happen or not? Have we had any guidance

on that?

[12] **Mr Davies:** I have not had any indication that a Welsh version will be brought forward. I am not sure. I have not been told.

[13] **Suzy Davies:** I do not think that any one of us has been told. It would be nice to find out.

[14] **David Melding:** We could make that point in correspondence. The Government will have the best part of a year to bring forward the regulations next year, which will then be subject to full scrutiny—politically, as well as our technical scrutiny. We can then urge the Government to provide the definitive regulations, if I can use that description, bilingually, if we think that that is appropriate.

[15] **Simon Thomas:** Mae gennyf gwestiynau. Yn gyntaf, ar bwynt Suzy, roeddwn yn gweld yn eich gohebiaeth â'r Gweinidog ei fod wedi dweud y byddai'n rhaid dechrau ym mis Mai er mwyn cael rheoliadau dwyieithog. Mae'r ffaith bod cymal machlud yn bodoli yn awr yn caniatáu i hynny ddigwydd. Efallai fod modd i ni, fel pwyllgor, wneud y pwynt hwnnw—bod modd i hynny ddigwydd yn awr oherwydd bod mwy o amser ar gael.

Simon Thomas: I have a few questions. First, on Suzy's point, I saw in the correspondence between you and the Minister that he said that work would have to start in May in order to produce bilingual regulations. The fact that there is now a sunset clause allows that to happen. Perhaps we, as a committee, could point that out—that this is now possible, given that there is more time available.

[16] Ar y rheoliadau *prescribed requirements* yn unig rwyf wedi edrych, gan fod y gweddill yn debyg iawn. Yn yr ail gymal, mae rhestr hirfaith o ddehongliadau, ac yn eu plith mae cyfeiriad at nifer o sefydliadau nad ydynt ond yn bodoli yn yr Alban a Gogledd Iwerddon. Felly, fel y dywedais, mae diffiniad o'r sefydliadau gwahanol sy'n ymwneud â'r Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, er enghraifft—pethau nad ydynt yn gymwys i Gymru o gwbl. Fy nghwestiwn cyntaf yw pam mae cyfeiriadau atynt yn y dehongliad hwn? Ai oherwydd eu bod ond yn darllen dros y rheoliadau sydd eisoes yn bodoli am y dreth gyngor?

I have only looked at the prescribed requirements regulations, because the others are very similar. In the second clause, there is a lengthy list of interpretations, which includes reference to a number of institutions that exist only in Scotland and Northern Ireland. Therefore, as I said, there is a definition of various organisations that relate to the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, for example—things that do not apply to Wales in any way. My first question is why are there references to them in this definition? Is it because they are only reading across from the regulations that are already in existence for council tax?

[17] **David Melding:** Shall we deal with your first question now, before going back to Suzy, in case she has any additional points on the bilingual issue?

[18] **Suzy Davies:** No, it is fine.

[19] **David Melding:** All right, so we can stay with Simon. These are fairly detailed questions, so we will take them one at a time, I think.

[20] **Mr Davies:** Rwyf wedi codi'r pwynt hwn gyda'r gyfreithwraig a wnaeth ysgrifennu'r rheoliadau hyn, oherwydd

Mr Davies: I have raised this point with the drafting lawyer, because I also considered it rather odd to have so many references to

roeddwn i hefyd yn ei ystyried yn beth od fod cynifer o gyfeiriadau at bethau o'r Alban a rheoliadau Gogledd Iwerddon. Y rheswm a roddwyd ganddi hi oedd mai system Brydeinig yw hon, a rheoliadau i Gymru yn unig yw'r rhain, ond efallai eu bod yn cymryd i ystyriaeth y bobl sy'n symud, er enghraifft, o Gymru i'r Alban neu o Gymru i Ogledd Iwerddon, a rhaid, felly, edrych ar yr hyn sydd mewn grym yn y gwledydd hynny hefyd. Dyna pam mae'r *cross-references* i'r Alban a Gogledd Iwerddon. Roedd yn edrych yn od, ond mae'n rhan o'r un system.

[21] **Simon Thomas:** Diolch. Rwy'n falch eich bod wedi gofyn yr un cwestiwn â mi. Mae hynny'n beth da.

[22] Mae fy ail gwestiwn yn ymwneud ag adran 5, priodas aml-bartner—ac nid yn aml iawn y gwelwch gyfeiriad at *polygamy* mewn deddfwriaeth Gymreig. Nid oeddwn yn deall adran 5 ar ei phen ei hun, ond, wrth ddarllen y memorandwm esboniadol, ymddengys i mi mai'r hyn yr oedd yn ceisio'i wneud oedd sicrhau, os oeddech yn digwydd byw gyda mwy nag un partner, fod incwm yr holl bartneriaid, fel petai, yn cael ei gymryd fel yr incwm cyn ichi weithio mas budd-dal y dreth gyngor. A wyf wedi darllen hynny'n gywir?

[23] **Mr Davies:** Rydych wedi'i ddeall yn iawn. Fel yna y dylid ei ddarllen.

[24] **Simon Thomas:** Felly, mae rhyw fath o dreth ar briodasau aml-bartner o ran hynny. Diolch am hynny. Dyna'r unig gwestiynau oedd gennyf, ond hoffwn i'r pwynt am ddwyieithrwydd gael ei danlinellu, gan fod mwy o amser bellach, gyda'r cymal machlud, i ymgynghori yn ehangach wrth baratoi fersiwn newydd o'r rheoliadau hyn.

[25] **David Melding:** Are we all in agreement that we should emphasise the need to prepare regulations bilingually? There will now be time and, even though they are long at 200 pages, it is an important area of public policy, so we feel that they should be bilingual. Are there any other points on the reports before us?

[26] **Eluned Parrott:** I have two questions based on the scrutiny report that you have given us, one of which is to do with your fourth technical point, which essentially references a repealed regulation and its impact. Are there any unforeseen consequences likely, or are there any foreseen consequences that will not come to pass as a result of this mistake?

[27] **Mr Davies:** When we picked this issue up with the drafting lawyer, she explained that there were some other regulations there also for historical reference, because benefits

things in Scotland and to Northern Ireland regulations. The reason that was given to me by her is that this is a British system, and these are Wales-only regulations, but perhaps they take into consideration people who migrate, for example, from Wales to Scotland or from Wales to Northern Ireland and, therefore, you need to consider what is in force in those countries as well. That is why there are those cross-references to Scotland and Northern Ireland. It does appear odd, but it is all a part of the same system.

Simon Thomas: Thank you. I am glad that you asked the same question as I did. That is a good thing.

My second question relates to section 5, polygamous marriages—and it is not often that you see references to polygamy in Welsh legislation. I did not understand section 5 in isolation, but, from reading the explanatory memorandum, it appeared to me that what it was endeavouring to do was give an assurance that, if you happen to live with more than one partner, the income of all partners, as it were, is taken into account as the income before you work out the council tax benefit. Have I read that correctly?

Mr Davies: You have understood that correctly. That is how it should be read.

Simon Thomas: So, there is some kind of tax on polygamous marriages in that regard. Thank you for that. Those were my only questions, but I would like to see the point about bilingualism being emphasised, given that we have more time now, with the sunset clause, to consult further in preparing a new version of these regulations.

claimed under pension schemes, for example, are set up by certain regulations that are later revoked. However, those pension schemes are still running, so reference still needs to be made to these historical regulations. However, in this instance, it was agreed that they had simply been revoked and, therefore, when coming to calculate the benefit, which, in this instance, was £17.10 for certain classes of persons, I am not sure what the legal effect would be. If that piece of legislation is no longer in force, one cannot rely on it. Therefore, we have waited for the Government's response, but we think that it is erroneous. It is not good law and it is defective in its drafting. That is why we have pointed it out.

2.45 p.m.

[28] **Eluned Parrott:** Okay, thank you. One other question that I wanted to ask was about the timescale for the sunset clause, to require the Welsh Government on or before 1 January 2013 to publish draft regulations. Is that a sufficient time period, given that the financial year will start in April and we will potentially find ourselves in the same situation again, in that we will have a very short period of time in which to review regulations that may have been altered considerably?

[29] **Mr Davies:** I take that point. I am not in a position to give you an answer on that, but I share your concern that, if it is to go up to 1 January, we will be in similar circumstances next year as we are this year.

[30] **Eluned Parrott:** Worse, in fact, because it is even later.

[31] **Mr Davies:** Yes.

[32] **David Melding:** That will be a relevant point for the Plenary debate, I am sure.

[33] **Suzy Davies:** Quite a lot has been made, even in the explanatory memorandum, that there is not a huge amount of difference between these regulations as currently drafted and the old law that they replace. It would have been quite useful for us all to have a list of—I cannot remember what they are called now—differentials, of the differences between these regulations and the old regulations.

[34] **Mr Davies:** Do you mean a table of derivations?

[35] **Suzy Davies:** 'Derivations'. That is the word that I am after. You have been through it, so would you have found that useful?

[36] **Mr Davies:** Very useful, especially in the time that we had to look at them. We have been able to look at everything once, but that is it. We have not been able to revisit or review anything.

[37] **David Melding:** We could make that point as well when we make the point about the need to have one set of bilingual regs in effect for next year, namely that there should be a table of derivations. In future, that would be good practice, especially for long regulations that are amending only certain aspects of something that was formerly a UK or an England-and-Wales instrument.

[38] **Suzy Davies:** That was my point, really. We certainly need one for next year, because there are bound to be some changes, large or small. How useful would that be, so that we did not have to read the whole thing again?

[39] **Simon Thomas:** Byddai'n bleser. **Simon Thomas:** It would be a pleasure.

[40] **Suzy Davies:** Weird. [*Laughter.*] That was all.

[41] **David Melding:** That is very helpful. Is there anything further?

[42] **Simon Thomas:** I think that the rest is for Plenary.

[43] **David Melding:** Yes, okay. Are we happy to formally accept the report on CLA198, the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012? I see that we are. Are we also happy to accept the report on CLA197, the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012? I see that we are. These reports will now be laid in the Table Office to inform the debate that will be held in Plenary on Wednesday. On behalf of committee members, I thank the legal advisers.

[44] **Simon Thomas:** Chair, may I just check that, in making those reports, we have taken on board the amendment that we believe that there is now sufficient time to prepare these bilingually?

[45] **David Melding:** I will make that comment in my speech on Wednesday, I think, but we will also send a letter to the Minister making this point about the table of derivations and that the regulations should now be prepared bilingually. I thank the legal advisers for their work. It has been a very stressful time for them. The one thing about our being in recess is that it has allowed them to concentrate their effort on just these regulations but, even so, there has been some strain, and this is a very important area of public policy. I think that we have all felt under some strain because, naturally, of the obligations that we have to the beneficiaries of these schemes. However, it is appropriate for me to put on record formally that this has been an irregular procedure. It has been applied to a very important area of public policy, and the Government has to be aware of the difficulties that we have faced in conducting our technical and merits scrutiny in this case. I thank you for your patience on this issue and also for your commitment and attendance here this afternoon. That concludes today's meeting.

Daeth y cyfarfod i ben am 2.49 p.m.

The meeting ended at 2.49 p.m.