



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

Y Pwyllgor Amgylchedd a Chynaliadwyedd **The Environment and Sustainability Committee**

Dydd Iau, 14 Tachwedd 2013
Thursday, 14 November 2013

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

These 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
Paul Davies	Ceidwadwyr Cymreig (yn dirprwyo ar ran Russell George) Welsh Conservatives (substituting for Russell George)
Yr Arglwydd/Lord Elis-Thomas	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Llyr Gruffydd	Plaid Cymru The Party of Wales
Julie James	Llafur Labour
Julie Morgan	Llafur Labour
Eluned Parrott	Democratiaid Rhyddfrydol Cymru (yn dirprwyo ar ran William Powell) Welsh Liberal Democrats (substituting for William Powell)
Gwyn R. Price	Llafur (yn dirprwyo ar ran Vaughan Gething) Labour (substituting for Vaughan Gething)
Antoinette Sandbach	Ceidwadwyr Cymreig Welsh Conservatives
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Alun Davies	Aelod Cynulliad, Llafur (Y Gweinidog Cyfoeth Naturiol a Bwyd) Assembly Member, Labour (Minister for Natural Resources and Food)
Gary Haggaty	Dirprwy Gyfarwyddwr, Yr Is-adran Amaeth a Materion Gwledig Deputy Director, Agriculture and Rural Affairs Division
Julia Hill	Gwasanaethau Cyfreithiol, Tîm Amaeth a Materion Gwledig Legal Services, Rural Affairs and Agriculture Team

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

Alun Davidson	Clerc Clerc
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Catherine Hunt	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 10:03
The meeting began at 10:03

Cyflwyniad, Ymddiheuriadau a Dirprwyon **Introduction, Apologies and Substitutions**

[1] **Yr Arglwydd Elis-Thomas:** Croeso i'r cyfarfod deddfu ffurfiol cyntaf yng ngwaith y pwyllgor hwn. Mae'n dda gennyf weld y Gweinidog a'i gynghorwyr yn bresennol ac yn barod i'r gwaith. Mae'r cyfarfod, gan ddilyn trefn ieithoedd swyddogol y Cynulliad Cenedlaethol, yn ddwyieithog ac mae'r cyfraniadau i'w clywed ar y sianeli arferol i bobl sy'n gwranddo. Bydd y cyfarfod yn cael ei ddarlledu a bydd trawsgrifiad yn cael ei gyhoeddi.

Lord Elis-Thomas: Welcome to the first formal legislative meeting in the work of this committee. I am pleased to see the Minister and his advisers present and ready for the work at hand. The meeting, in line with the National Assembly's official languages, will be bilingual and the contributions can be heard on the usual channels for those listening. The meeting will be broadcast and a transcript will be published.

[2] Rydym wedi derbyn ymddiheuriadau o gyfeiriad Powys. Mae William Powell yn ymddiheuro ac rydym yn croesawu Eluned Parrott, sy'n dirprwyo. Hefyd, mae Paul Davies yn dirprwyo ar gyfer Russell George, sydd, er ei fod o Bowys, heddiw ar dir mawr Ewrop yn chwarae ei ran yn yr Undeb Ewropeaidd. Mae Gwyn Price hefyd yn dirprwyo fel Aelod Cynulliad Llafur, oherwydd ei bod yn ofynnol bod gennym niferoedd llawn a chynrychiolaeth gyfatebol i aelodaeth pleidiau yn y Cynulliad wrth deddfu.

We have received apologies from Powys. William Powell has sent his apologies and we welcome Eluned Parrott, who is deputising on his behalf. Paul Davies is also substituting on behalf of Russell George, who, although he is from Powys, is today on the European mainland playing his part in the European Union. Gwyn Price is also substituting as a Labour Assembly Member, because we are required to have a full complement of members and equal representation for Assembly parties when legislating.

10:04

Y Bil Rheoli Ceffylau (Cymru)—Cyfnod 2: Trafod y Gwelliannau **Control of Horses (Wales) Bill—Stage 2: Consideration of Amendments**

Grŵp 1: Hysbysiadau ynghylch Ymafael etc. (Gwelliannau 11, 1, 12, 13, 14, 15, 16, 7) **Group 1: Notices about Seizure etc. (Amendments 11, 1, 12, 13, 14, 15, 16, 7)**

[3] **Yr Arglwydd Elis-Thomas:** Fe awn ymlaen, felly, at y grŵp cyntaf o welliannau, grŵp 1—hysbysiadau ynghylch ymafael. Prif welliant y grŵp yw gwelliant 11 yn enw'r Gweinidog.

Lord Elis-Thomas: We will proceed, therefore, to the first group of amendments, group 1—notices about seizure. The lead amendment in the group is amendment 11 in the name of the Minister.

[4] Cynigiaf welliant 11 yn enw'r I move amendment 11 in the name of the Gweinidog, a galwaf arno i siarad am y Minister, and invite him to speak to that gweliannau eraill yn y amendment and the other amendments in the grŵp.

[5] **Alun Davies:** I would like to start my contribution this morning by thanking Members from all sides of the table for their help, co-operation, collaboration and support in the way that we have approached this piece of legislation. I have said before that I style myself more the midwife than the parent in terms of this legislation. This legislation is of course the result of a significant piece of consultation that is taking place with different communities in Wales with reference to fly-grazing, and the amendments that we are placing in front of the committee this morning reflect both the conversations that we have had with committees in this place and also the wider conversations that have taken place since this Bill was published. I am grateful to everybody who has taken part in those conversations.

[6] The first group of amendments amends section 3, about notices about seizure. First of all, I recognise the concerns that were raised by the Constitutional and Legislative Affairs Committee, when I appeared before it on 21 October, regarding the clarity of requirements on local authorities in section 3 with regard to the issuing of notices. I also took great note of the conversation that we had in this committee and the debate that took place in the Chamber. As a consequence of those discussions, we have brought forward amendment 11, which I hope clarifies the situation, and clarifies who would be issued with a notice and the times at which those notices are issued. I have asked my officials to look again at this section because I believe that we need to be absolutely clear that the policy intention on who should be given a notice of seizure of a horse within 24 hours is clear on the face of the legislation. I believe that Government amendment 11 does this. The amendment proposes a change to section 3(3) to ensure that it is clear that a constable is always issued with a notice. If there is a person who appears to be the owner of the horse, they will also be issued with a notice within 24 hours of the horse being seized.

[7] Amendment 1 would effectively remove the requirement that both a constable and the owner, if known, are put on notice that the local authority has seized the horse. I believe that it is important that if the owner is known, they are informed that their horse has been seized. The requirement that both the constable and the owner are given notice by the local authority increases the probability that an owner can be located, and the inclusion of both notices is a proportionate additional safeguard that reflects the gravity of the steps that may result from seizure and the impounding of a horse.

[8] Government amendments 12, 13, 15 and 16 are of course consequential to amendment 11. Chair, we regard amendment 14 as being a technical amendment. It will make the notices given under section 3 clearer as to when the powers under section 5 concerning the disposal of the horse become available to the local authority.

[9] I move on to amendment 7 in the name of Llyr Huws Gruffydd. I understand the intention behind the amendment, and I hope that Llyr will agree that the Government amendments in this group address his concerns. I recognise that his concerns were also raised and echoed by the Constitutional and Legislative Affairs Committee, and those concerns are real concerns—I do not in any way wish to disregard those concerns in my contribution this morning. I hope that the Government amendments proposed make it clear that the local authority must, within 24 hours, serve a notice of seizing a horse and give notice to both the constable and the owner, if known. I therefore believe that the Government amendments effectively address the concerns around who should be issued with a notice, and when those notices should be issued. I will leave my opening remarks at that point, Chair.

[10] **Yr Arglwydd Elis-Thomas:** Diolch yn fawr. Antoinette Sandbach sydd nesaf. **Lord Elis-Thomas:** Thank you very much. Antoinette Sandbach is next.

[11] **Antoinette Sandbach:** I am very grateful to the Government for tabling amendment 11. My amendment 1 is a probing amendment, and was designed to get the Government to look at how that section was operating. Therefore, it was designed to generate the type of amendment that has been generated; I would, otherwise, have withdrawn my amendment. I accept that the Government's intention makes it clear, where it had not previously been clear, that if the owner cannot be established, the constable can be served with the notice. We accept that the key word is 'if' the owner can be established.

[12] I would like to say, however, that I think that amendment 7 in the name of Llyr Huws Gruffydd makes that clear on the face of the Bill. Therefore, it improves the legislation. It makes it clear and it does not detract from the Government's amendments in any way. It makes explicit on the face of the Bill that which is implicit in section 11. Therefore, I also ask the committee to consider supporting that amendment, because I think that it makes the Bill clear and it avoids any doubt. It clarifies rather than adds, if I can put it that way.

[13] **Llyr Gruffydd:** Diolch i'r Gweinidog am y gwelliannau sydd wedi dod gerbron. Rwy'n teimlo eu bod yn mynd peth o'r ffordd i ymateb i'r gofid a oedd wedi cael ei fynegi, ond rwy'n dal i deimlo bod angen bod yn fwy *explicit*. Byddai gwelliant 7, yn fy marn i, yn rhoi eglurder llwyr ar y mater, ac yn dweud y tu hwnt i unrhyw amheuaeth fod hysbysiad i gwnstabl mewn amgylchiadau pan nad yw'n bosibl adnabod y person sy'n gyfrifol am y ceffyl yn ddigonol. Rwy'n teimlo y byddai hynny'n help i osgoi sefyllfaoedd o anghydweld yn nes ymlaen. Felly, wrth gydnabod ymdrech y Llywodraeth i fynd gam ymhellach, rwy'n gofyn i'r pwyllgor gefnogi gwelliant 7. **Llyr Gruffydd:** I thank the Minister for the amendments that he has brought forward. I feel that they go part of the way to responding to the concern that was expressed, but I still feel that we need to be more explicit. Amendment 7, in my opinion, would provide complete clarification on the matter, and would state beyond any doubt that a notice to a constable where it is not possible to identify the person responsible for the horse is sufficient. I feel that that would assist in avoiding situations of disagreement down the line. Therefore, although I acknowledge what the Government has done in taking that further step, I ask the committee to support amendment 7.

[14] **Yr Arglwydd Elis-Thomas:** Galwaf ar y Gweinidog i ymateb. **Lord Elis-Thomas:** I call on the Minister to reply.

[15] **Alun Davies:** I am grateful to the Members for their comments. On amendment 7, I do not think that there is a great philosophical difference between us. I am concerned to ensure clarity in this piece of legislation. We have looked hard at amendment 7, and we have debated and discussed whether we would like to accept it. The reason we have decided not to accept it is to reinforce the point that I tried to make in my opening remarks about clarity. The serving of a notice at or near where the horse is seized is sufficient to trigger the seven-day process. If the owner is served with a notice during that seven-day period, then clearly the clock starts moving again, so you could go on beyond that seven-day notice. That is only fair and right in terms of the rights of owners of any horses that may be seized by a local authority.

[16] However, the point at which the notice is served is the point at which the clock starts ticking. We believe that that is sufficient, because the code of practice, made under the Animal Welfare Act 2006, provides practical guidance in respect of any provision made under the Act. Section 1.25 of the code of practice, and I will read it to the committee so that the committee is clear on this, states that

[17] 'Horses at grass should be inspected at least once a day, preferably more often.

Stabled or group-housed horses should be inspected at least twice a day.’

[18] So, if an owner is responsible for a horse at grass in a field, for argument’s sake, that owner has a statutory responsibility to inspect that horse once a day. So, the notice there should be sufficient. We have added additional safeguards to that in terms of trying to find the owner and the constable on top of that. We believe that the Animal Welfare Act, the codes of conduct that fall under that, and the notice are sufficient, and provide clarity on the point of the notice being served. Otherwise, you could be in a situation of a notice being served at the field or near the place where the horse has been seized, but the notice on the constable could be served up to 24 hours later. You then have two points at which the clock starts ticking. We wish to ensure that there is a single point at which the clock starts ticking, and that point is when the notice is served at or near the place where the horse is seized.

[19] For that reason of absolute clarity, we have decided that this amendment, although we accept the intention behind it, will probably not add to the clarity of the legislation.

10:15

[20] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** Minister, would you like Weinidog, a hoffech chi symud i bleidlais ar welliant 11? to move to a vote on amendment 11?

[21] **Alun Davies:** Hoffwn. **Alun Davies:** Yes.

[22] **Yr Arglwydd Elis-Thomas:** Y cwestiwn yw y dylid derbyn gwelliant 11. A oes unrhyw wrthwynebiad? Nid oes gwrthwynebiad, felly mae gwelliant 11 wedi’i dderbyn. **Lord Elis-Thomas:** The question is that amendment 11 be agreed to. Are there any objections? There are no objections, therefore amendment 11 is agreed.

*Derbyniwyd gwelliant 11 yn unol â Rheol Sefydlog 17.34.
Amendment 11 agreed in accordance with Standing Order 17.34.*

*Methodd gwelliant 1.
Amendment 1 fell.*

[23] **Yr Arglwydd Elis-Thomas:** Yn unol â’r rhestr o welliannau wedi’u didoli, symudwn at welliant 12. **Lord Elis-Thomas:** In line with the marshalled list, we now move to amendment 12.

[24] Cynigiau welliant 12 yn enw’r Gweinidog. Y cwestiwn yw y dylid derbyn gwelliant 12 yn enw’r Gweinidog. A oes unrhyw wrthwynebiad? Nid oes gwrthwynebiad, felly mae gwelliant 12 wedi’i dderbyn. I move amendment 12 in the name of the Minister. The question is that amendment 12 in the name of the Minister be agreed to. Are there any objections? There are no objections, therefore amendment 12 is agreed.

*Derbyniwyd gwelliant 12 yn unol â Rheol Sefydlog 17.34.
Amendment 12 agreed in accordance with Standing Order 17.34.*

[25] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** I move amendment 13 in Cynigiau welliant 13 yn enw’r Gweinidog. Y cwestiwn yw y dylid derbyn gwelliant 13. A oes unrhyw wrthwynebiad? Nid oes objections? There are no objections, therefore

gwrthwynebiad, felly mae gwelliant 13 wedi'i dderbyn. amendment 13 is agreed.

*Derbyniwyd gwelliant 13 yn unol â Rheol Sefydlog 17.34.
Amendment 13 agreed in accordance with Standing Order 17.34.*

[26] **Yr Arglwydd Elis-Thomas:** Cynigiad welliant 14 yn enw'r Gweinidog. Y cwestiwn yw y dylid derbyn gwelliant 14. A oes unrhyw wrthwynebiad? Nid oes gwrthwynebiad, felly mae gwelliant 14 wedi'i dderbyn. **Lord Elis-Thomas:** I move amendment 14 in the name of the Minister. The question is that amendment 14 be agreed to. Are there any objections? There are no objections, therefore amendment 14 is agreed.

*Derbyniwyd gwelliant 14 yn unol â Rheol Sefydlog 17.34.
Amendment 14 agreed in accordance with Standing Order 17.34.*

[27] **Yr Arglwydd Elis-Thomas:** Cynigiad welliant 15 yn enw'r Gweinidog. Y cwestiwn yw y dylid derbyn gwelliant 15. A oes unrhyw wrthwynebiad? Nid oes gwrthwynebiad, felly mae gwelliant 15 wedi'i dderbyn. **Lord Elis-Thomas:** I move amendment 15 in the name of the Minister. The question is that amendment 15 be agreed to. Are there any objections? There are no objections, therefore amendment 15 is agreed.

*Derbyniwyd gwelliant 15 yn unol â Rheol Sefydlog 17.34.
Amendment 15 agreed in accordance with Standing Order 17.34.*

[28] **Yr Arglwydd Elis-Thomas:** Cynigiad welliant 16 yn enw'r Gweinidog. Y cwestiwn yw y dylid derbyn gwelliant 16. A oes unrhyw wrthwynebiad? Nid oes gwrthwynebiad, felly mae gwelliant 16 wedi'i dderbyn. **Lord Elis-Thomas:** I move amendment 16 in the name of the Minister. The question is that amendment 16 be agreed to. Are there any objections? There are no objections, therefore amendment 16 is agreed.

*Derbyniwyd gwelliant 16 yn unol â Rheol Sefydlog 17.34.
Amendment 16 agreed in accordance with Standing Order 17.34.*

[29] **Yr Arglwydd Elis-Thomas:** Dyna ddiwedd ein trafodaeth ar grŵp 1. Symudwn at grŵp 2, felly. **Lord Elis-Thomas:** That is the end of our discussion on group 1. We will therefore move on to group 2.

Grŵp 2: Hysbysiadau ynghylch Costau (Gwelliannau 17, 25 a 22) Group 2: Notices about Costs (Amendments 17, 25 and 22)

[30] **Yr Arglwydd Elis-Thomas:** Y prif welliant yn y grŵp hwn yw gwelliant 17, yn enw'r Gweinidog. **Lord Elis-Thomas:** The lead amendment in this group is amendment 17, tabled in the name of the Minister.

[31] Cynigiad welliant 17 yn enw'r Gweinidog, a galwaf arno i siarad am y gwelliant ac am y gwelliannau eraill yn y grŵp. I move amendment 17 in the name of the Minister, and invite him to speak to that amendment and the other amendments in the group.

[32] **Alun Davies:** Thank you very much. Again, these amendments are the consequence of discussions that we have had at committee. The three amendments in this group seek to do the same thing, but in different ways. I am pleased that there is at least consistency between

me and William Powell, in the sense of what we are seeking to achieve with amendments 17, 22 and 25.

[33] I would like to say that the purpose of both of the Government's amendments is to insert new subsections into sections 4 and 5, placing a duty on local authorities to provide the identified owner with a notice that states the costs that the owner is liable to pay the local authority, and how those costs were arrived at. Under section 4, this notice will be given prior to returning the horse to that owner. After disposal, similar notices must be given under section 5. The Government's amendments also place a duty on the local authority to inform the owner by notice that they have a right to refer a dispute regarding those costs for resolution by Welsh Ministers, and how that right can be exercised.

[34] These amendments have been tabled in response to Members' concerns around the need for clarity and transparency. Local authorities will be required to explain to the owner of a horse how their costs were incurred, and they must demonstrate that those costs are reasonable. It is envisaged that this increased transparency will assist local authorities to recover their costs and potentially limit any grounds for dispute, for which a referral under the dispute resolution process may be necessary.

[35] As I said earlier, I am pleased that the Government's amendments are consistent with Bill Powell's amendment 25 around the transparency of costs. I think that that is important. I hope, however, that the committee agrees that the Government amendment does go a little further, as it also requires that a local authority does not only explain to owners how the costs were arrived at, but also explains to owners how they can dispute those costs, and that they have a right to refer any disputes on costs to Welsh Ministers—a process that is established by amendment 23 in group 5.

[36] I would therefore urge Members to support the Government amendments on this section and enable us to provide additional and added transparency and information to any owners potentially affected by this order.

[37] **Yr Arglwydd Elis-Thomas:** Diolch **Lord Elis-Thomas:** Thank you very much, yn fawr iawn, Weinidog. Eluned Parrott? Minister. Eluned Parrott?

[38] **Eluned Parrott:** I would like to speak to amendment 25, put forward in the name of William Powell, and also address some of the issues that the Minister has raised with amendments 17 and 22. My primary concern here is that the Minister's amendments concentrate power with the Welsh Ministers. While I think we all have to accept that the appeals process is an incredibly important area in this piece of legislation, and perhaps the only one that is potentially contentious in the future, what we are essentially concerned with is that one area of the Bill that could bear further discussion about how that appeals process would look, because you have proposed to make some quite substantial changes to that appeals process through the method of an amendment. I do not believe necessarily that the case is fully made that the referral should be to the Welsh Ministers. I do not dispute that the appeals process needs to be effectively communicated to those people who are affected by this piece of legislation. However, your amendment in this instance ties that communication to a process of referral to the Welsh Ministers rather than to the more general potential way of referring it, which was referring it to the appeals procedure as set out in section 7. Obviously, we need to come to that section in due course, but my concern with the amendment that you have put forward is that, by going further and being specific about the appeals process being a referral to the Welsh Ministers, you have tied this section into another section, which we would also, potentially, have to discuss further.

[39] **Antoinette Sandbach:** I, too, would support the concerns that Eluned Parrott has expressed. There are real concerns around the concentration of an appeal in the hands of

Welsh Ministers. I am conscious of the fact that the Minister has stated that that is similar, for example, to the common agricultural policy appeal process in terms of cross-compliance. However, I know, from cases I have had with a number of constituents—I can give an example of where there was a delay in a notification of a breach of the CAP rules, for example. As a result of that delay, evidence that would have assisted my constituent had been destroyed at the hands of a third party, and they could not then get a fair trial. I am concerned that, in effect, that process is not a very satisfactory one in itself, and I therefore would not want to see it coming into effect here. When we are looking at the equine regulations that require identification, the Welsh Ministers are, effectively, the body for that and I am concerned that you are the authorising body, and that there is, effectively, an enforcement set down through that process. I am concerned about conflicts of interest.

[40] We have looked at the potential for other options, and my view is that section 7 is preferable to this particular section, and there would, as I understand it, be a reasonable possibility that a magistrates' court would be able to deal with this type of dispute, which would allow an impartial third party to look at it, and we have taken advice on that. We have had concerns expressed in addition by the RSPCA in a briefing yesterday relating to the appeals process. I do think that they are legitimate concerns, so I agree with Eluned Parrott that this needs to be looked at again, and perhaps the amendment tabled by William Powell is better expressed.

[41] **Yr Arglwydd Elis-Thomas:** Galwaf **Lord Elis-Thomas:** I call the Minister to ar y Weinidog i ateb y drafodaeth. reply to the debate.

[42] **Alun Davies:** Amendment 25 in the name of William Powell is less transparent and gives less information to an owner than the amendment proposed by the Government. The Government amendment provides the owner with far more information and an explanation of the rights that the owner has to challenge costs. I actually think that that is a very important matter and I would be disappointed if Members here felt that owners should not have that information and should not have a right to know that they can challenge costs that may be made by a local authority. So, I find it surprising that Members would oppose that level of transparency.

[43] I have to say that a few things that have been said this morning are a matter of some concern. Welsh Ministers are not, in effect, the body for the enforcement of these matters as was stated. The local authority is the responsible authority in Wales for enforcement over equine identification issues, not Welsh Ministers. The disputes process that is used in the CAP is a very effective disputes process; the error rate is significantly less than that of other administrations in the United Kingdom and significantly below the European average. So, there is a very good record there, in terms of the effectiveness of this process.

[44] My issue with conflicts of interest is that, clearly, the local authority has, in itself, issued the register or the breakdown of costs. It would be peculiar, therefore, if local authorities were to be asked to review their own decisions. So, it is quite clear that Welsh Ministers have a role to play in this limited part of the process. Other Members have mentioned magistrates' courts and the rest of it. I have to say that that is not the view of the Ministry of Justice. We have the agreement of the Ministry of Justice and the Home Office for the amendment that we have tabled on the appeals process. They do not agree that these matters should impact on courts.

[45] **Yr Arglwydd Elis-Thomas:** Galwaf **Lord Elis-Thomas:** I call on Julie James and ar Julie James ac Eluned Parrott; nid oes Eluned Parrott; there is no-one else, so the unrhyw un arall, felly bydd y Gweinidog yn Minister is to have the last word—and Julie cael y gair olaf—a Julie Morgan, ac wedyn y Morgan, and then the Minister. Gweinidog.

[46] **Julie James:** I just want to say that we have also had a briefing from the RSPCA, and it does not say anything at all about its concerns about the Welsh Ministers, other than to say that it thinks that it is fine as long as it is speedy. It certainly does not say that it thinks that it is inappropriate, in the briefing that we have had; I just wanted that on the record.

[47] **Eluned Parrott:** I just want to clarify, for the purposes of the record, that I did not say that I did not support the principle of providing effective information on appeals procedures to people affected by this legislation; in fact, I am very supportive of that principle. My specific concern was around the fact that this iteration of that principle ties the appeals process to the Welsh Ministers, and that is something that needs to be discussed when we come to discuss section 7.

[48] **Julie Morgan:** I was going to make the same point, reinforcing what Julie James has said: there is nothing in this briefing, other than the swiftness with which it needs to be expedited.

[49] **Antoinette Sandbach:** It came in the original—*[Interruption.]*

[50] **Lord Elis-Thomas:** I am sorry, I have not called you. I call Antoinette Sandbach.

[51] **Antoinette Sandbach:** Thank you, Chair. It is detailed in the original RSPCA response to the consultation document.

[52] **Alun Davies:** We received no information on such things.

[53] This should not be a conversation between two Members, of course, but I will say to Eluned Parrott that I accept the points that she makes are made in very good faith. However, if you vote against the Government amendments here, you are voting not to do what you say that you would like to see done. This is law; this is not just an aspiration. If you vote against the Government amendments, you are voting against placing an obligation on local authorities to provide potential owners with the right to information about how they can challenge the decisions taken; that is what you are voting against. I would suggest that that is something that is worth due consideration.

[54] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** Minister, would you like Weinidog, a hoffech symud i bleidlais ar welliant 17? to move to a vote on amendment 17?

[55] **Alun Davies:** Hoffwn.

Alun Davies: Yes, I would.

[56] **Yr Arglwydd Elis-Thomas:** Os derbynir gwelliant 17, bydd gwelliant 25 yn methu. **Lord Elis-Thomas:** If amendment 17 is agreed, amendment 25 will fall.

[57] Y cwestiwn yw y dylid derbyn gwelliant 17. A oes unrhyw wrthwynebiad? Gwelaf fod gwrthwynebiad; felly, ceir pleidlais drwy ddangos dwylo. Ynglŷn â dangos dwylo, a allwch, pan fyddwch yn dangos y ffordd yr ydych yn pleidleisio, gadw'ch dwylo i fyny? Nid oes angen iddynt fod reit i fyny yn yr awyr, ond mae angen iddynt o leiaf fod yn weladwy ar lefel y pen er mwyn cofnodi'r bleidlais. The question is that amendment 17 be agreed to. Does any Member object? I see that there is objection; we will, therefore, conduct a vote by show of hands. In terms of the show of hands, when you indicate your vote, could you please keep your hands in the air? They do not have to be right up in the air, but they need to be visible at head level, shall we say, so that the vote can be recorded.

*Gwelliant 17: O blaid 5, Ymatal 0, Yn erbyn 4.
Amendment 17: For 5, Abstain 0, Against 4.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Antoniw, Mick
James, Julie
Morgan, Julie
Price, Gwyn R.
Watson, Joyce

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Davies, Paul
Gruffydd, Llyr
Parrott, Eluned
Sandbach, Antoinette

*Derbyniwyd gwelliant 17.
Amendment 17 agreed.*

10:30

[58] **Yr Arglwydd Elis-Thomas:** Felly **Lord Elis-Thomas:** Therefore, amendment mae gwelliant 25 wedi methu. 25 falls.

*Methodd gwelliant 25.
Amendment 25 fell.*

**Grŵp 3: Gwaredu Ceffylau Sydd wedi eu Cadw (Gwelliannau 18, 19, 20, 2 ac 21)
Group 3: Disposal of Impounded Horses (Amendments 18, 19, 20, 2 and 21)**

[59] **Yr Arglwydd Elis-Thomas:** Y prif welliant yn y grŵp hwn yw gwelliant 18. Rwy'n cynnig gwelliant 18 yn enw'r Gweinidog ac yn galw ar y Gweinidog i siarad ar y gwelliant. **Lord Elis-Thomas:** The lead amendment in this group is amendment 18. I move the amendment 18 in the name of the Minister and I call on the Minister to speak to the amendment.

[60] **Alun Davies:** Again, for the third time, I will start my contribution by saying that these amendments follow the discussions that we have had in committee. We have tabled amendments 18, 19, 20 and 21 in order to ensure that we take account of the points that have been made in committee—in this case, by the Constitutional and Legislative Affairs Committee specifically—to clarify the section of the Bill under which persons were required to be given notice of a horse's seizure, that is, section 33. These amendments require the local authority to give notice to the owner of the horse, stating the amount it considers the owner liable to pay after the horse's disposal. It also states how the amount was arrived at and tells the owner of their right to refer any dispute to Welsh Ministers and how to exercise that right. We have discussed most of that already.

[61] I am concerned by amendment 2, because it places a duty and a cost on local authorities to microchip horses before returning them to their owners if those owners have not already had their horses microchipped, where that is required by law. Secondly, amendment 2 seeks to require that the local authority may not dispose of a horse other than by way of destruction without first microchipping that horse. In respect of the first part of the proposed amendment, in the case where the owner comes forward to reclaim their horse from the local authority, they would need to give their consent to the local authority before any microchipping could take place. This is because article 3 of the relevant EU regulations requires that consent. To do otherwise might amount to a breach of article 3, and this amendment proposes otherwise. In addition, there are further difficulties with the proposed amendment. Any horse born by 30 June 2009 and already identified under previous equine legislation is deemed compliant with the relevant EU regulations even if it is not

microchipped. In those cases, microchipping is legally unnecessary and may be inappropriate on welfare grounds. Therefore, to microchip without the consent of the owner may amount to an unlawful interference with a person's property and a breach of article 1 of the first protocol of the European Convention on Human Rights. It would also be very difficult for a local authority to make a judgment as to whether a horse fell into this category.

[62] In respect of the second part of the proposed amendment, this is unnecessary, since the local authority would be in breach of article 13 of the EU regulations if it disposed of a horse other than by way of destruction without first ensuring that it was compliant with equine identification legislation. I will leave it at that.

[63] **Antoinette Sandbach:** The purpose of amendment 2 is to raise the issue of identification. There was a substantial amount of evidence in response to the Welsh Government consultation that raised the failure to comply with the equine regulations as one of the causes of fly-grazing. The identification requirements in relation to the regulations are not only the responsibility of the owner of the horse, but also the keeper—and that is as defined in Welsh Government regulations. Therefore, the keeper—who, for these purposes, will be the local authority—will be liable for criminal proceedings if they release. The way in which the regulations are currently drafted make that quite clear. I could read article 3.1 to the committee, if it would be helpful, but it states that no keeper of a horse can effectively deal with it without it being identified as required by the European regulations, which requires either a microchip or another permanent marking such as freeze branding.

[64] I accept that I have not made it clear what the implications of this are if the horse is not already identified by microchip or by a method that complies with the regulations. I have said 'in accordance with the Council directives', and those directives permit freeze branding as a form of identification. So, that is dealt with by that issue being mentioned in the amendment itself. So, I disagree with the Minister's interpretation, because it states, 'in accordance with the Council directives'. However, it is very clear from the way that the Equine Identification (Wales) Regulations 2009 are drafted, and indeed the European Commission's own drafting, that were the local authority to return it, having been the keeper, it would in fact be in breach and would be committing a criminal offence. It is quite clear because article 3(1) states that it is an offence for the owner or the keeper of the horse to allow the horse to move without being in compliance with the provisions of that directive. I have the directive here if people think that it is useful for me to read it out.

[65] **Lord Elis-Thomas:** No. It would not be in order in the committee of the National Assembly to start reading out European directives.

[66] **Antoinette Sandbach:** The Minister has said one thing and—

[67] **Lord Elis-Thomas:** I am sorry; I have ruled.

[68] **Antoinette Sandbach:** I am very happy—

[69] **Lord Elis-Thomas:** I am sorry; I have ruled.

[70] **Antoinette Sandbach:** Chair, I am not going to read it out. I am very happy not to read it out, but—

[71] **Lord Elis-Thomas:** I have instructed you not to, so that is the end of the story.

[72] **Antoinette Sandbach:** The evidence from the RSPCA was that 70% of the horses coming into its care as a result of fly-grazing do not have microchips. Therefore, this is a very real issue. In its briefing, received yesterday, it stated that traceability is key to tackling

Wales's equine problem, and that microchipping horses is integral to a robust traceability process and a key aspect of dealing with Wales's equine problems, including tackling fly-grazing, abandonment and other welfare issues. Really, that is why this amendment is here, because releasing a horse back to the owner without making sure that it is microchipped is not solving the problem. That owner cannot get the horse back into its care until it has paid the local authority the costs that are incurred. The costs incurred will include the cost of microchipping. So, if the owner comes forward and wants that horse back into its care, the costs can be included in the notice that the Minister specified earlier.

[73] The British Veterinary Association also stated in its consultation response that the issue of equine identification is at the heart of the fly-grazing abandonment problems. It stated that, currently, few equines grazing private land illegally or grazing common land legally or illegally are microchipped or have a valid passport. It also stated that, without proper enforcement of equine identification requirements, all other related legislation becomes unenforceable as the animal cannot be linked to the owner. Part of the problem of the cause of fly-grazing is that inability to link the animal to the owner. The Welsh Government's own paper, which was put forward in the consultation, identified that as a very real problem. According to the Welsh Government's response, the greatest difficulty with employing this legislation—the legislation prior to this control of horses Bill—is the identification of the owner or persons responsible, coupled with the resources needed to enforce it through the use of specialist or professional expertise. The fact that the legislation hinges on the identity of the owner being known, and also only applies where there is a welfare issue, confirms that it was never designed for dealing with large-scale flagrant breaches. We are going to be in exactly the same position if these horses can be released back into the care of an owner or keeper without being microchipped. It has been a requirement since 2009 that they are microchipped under the regulations. So, for that reason, it has come forward. As I said, the British Veterinary Association has said that, by not including microchipping as part of the Bill, that effectively renders the legislation unenforceable. I have just read that passage out, Minister, and it is on the record and contained within your responses.

[74] We have information from the British Veterinary Association that it costs about £25 to microchip a horse. That could be included in the costs served by the local authority on the owner when they come forward to collect it. The reality is that if the local authority goes on to sell those horses, the Minister accepts that, in those circumstances, the local authority is required to microchip. Therefore, it seems strange that you are going to return animals back to an owner who has, in effect, committed a nuisance, a tort and, very often, environmental damage, and yet you are not going to take the steps to link that horse to the owner. So, that is why this amendment has been tabled.

[75] **Julie Morgan:** I believe that we should resist amendment 2. I know that most organisations agree that microchipping is desirable. I also have the RSPCA briefing that was sent to us last night. It just seems to me that if the owner has come forward and has been identified as the owner you should have the permission of that owner before you microchip. I note that Antoinette Sandbach said that the owner could have been responsible for a nuisance, but it could also be a mistake that the horse has been left in this position. I think that you have to bear in mind that it is not always necessarily something that has been deliberately done on behalf of the owner. You have to accept that that could be the position. So, it seems to me that the human rights issues that the Minister raised when he presented this do cover that point. If you know who the owner is, I think that you should have the permission of the owner to microchip, although accepting that the amendment is put forward in terms of promoting microchipping, which is a good thing.

[76] **Eluned Parrott:** This issue of microchipping is obviously a very contentious one, and perhaps it is something that the Minister might like to reflect on if he is not minded to accept this amendment today. The question in my mind, essentially, is whether it is any more

responsible to hand back an unchipped horse to someone who has been in breach of these rules than it is to sell an unchipped horse. Microchipping is obviously only required when handing an animal back to a known owner; therefore, if we know the owner, we know that we can reclaim the costs. It is not an additional burden on the local authority. However, there must be a mechanism—whether it is this mechanism or another mechanism, potentially—to ensure that we are not handing back unchipped horses to owners who have previously been in breach of these rules. What we want to do with this piece of legislation, if we possibly can, is not only to ensure that we are able to tackle problems as and when they arise now, but that we can perhaps act to prevent problems, particularly problems of traceability, in the future and use this legislation to identify repeat offenders. So, as I say, if you are not minded to accept this particular iteration of this amendment, I would ask you to think again on microchipping. Is there a way in which, for example, we could place a duty on the owner to microchip the horse before we are able to hand it back? Are there ways in which we can achieve the same policy outcome to make sure that microchipping is required in some way by this, so that we can trace people more effectively in the future?

[77] **Yr Arglwydd Elis-Thomas:** Galwaf **Lord Elis-Thomas:** I call on the Minister to ar y Gweinidog i ymateb i'r ddadl. respond to the debate.

[78] **Alun Davies:** Thank you very much. I sympathise with that argument. Microchipping is already a legal requirement for horses within particular classes and descriptions; so, it is already a criminal offence not to microchip your horse. For example, an owner who has not microchipped their horse may come forward—and there is a series of unlikely events here—and the horse is then handed back because the owner, while not having microchipped the horse, is prepared to pay hundreds or thousands of pounds, perhaps, for that horse to be returned to them, and then has a responsibility and duty to microchip it. This is about the whole ethos of what this legislation is about. The legislation is about providing statutory tools for local authorities to deal with fly-grazing in a way that local authorities and enforcement and charity organisations have sought; so, it is a means of delivering those legislative tools, if you like. However, it is also about promoting responsible horse ownership.

10:45

[79] In my view, you do not promote the responsible ownership of horses by taking away the responsibilities that the law has already placed upon ownership of a horse and by giving them to another body, which is, in fact, the regulatory body for that piece of equine identification. The difficulty with this amendment is that it confuses two different things. It confuses the issues of traceability and identification, where there is broad agreement across the whole of the equine community. I have written three times, I think, to DEFRA, expressing my disappointment that the national equine database was abolished, because I think that we need traceability. The events of this past year, I think, have reinforced those arguments. In fact, the European Commission, the European Council and the UK administrations are now looking at how we re-establish an equine database to do exactly the role that you have described and the role that was described earlier. So, issues about traceability are accepted, and we do not have any issues with traceability. We accept the need for traceability. At the moment, EU and Commission regulations provide for a statutory environment whereby an owner, if a horse falls within a particular category—where it is born and so on—has responsibilities under law. Regarding where the local authority steps in under this legislation, Antoinette has quoted article 3(1). If she had gone on to article 3(2), she would have noticed that that implies that a local authority becomes a keeper of the horse; however, where an owner is identified—and in the circumstances of amendment 2, an owner is identified because you are passing that horse back to that person—in order for that microchipping to take place, the local authority or a keeper must have the permission of the natural owner for that to take place. So, this amendment, rather than being in accordance with Council or Commission regulations, is in fact in conflict with it. That is my difficulty with this amendment. It is in

conflict with existing law and regulations on equine identification. That is why we need to reject it, because we do not want to endanger the rest of this Bill.

[80] **Lord Elis-Thomas:** I see that you would like to speak, Antoinette, but the Minister has already responded to your points.

[81] **Antoinette Sandbach:** Yes, but do I not get an opportunity to reply?

[82] **Lord Elis-Thomas:** No. We are now moving to a vote on amendment 18. Very well, Antoinette.

[83] **Antoinette Sandbach:** The Equine Identification (Wales) Regulations 2009, under section 5(1), state:

[84] ‘The owner of a horse or, if different, the keeper who has primary responsibility for it must comply with Article 3(1).’

[85] It is silent on Article 3(2). Section 5(2) states:

[86] ‘Failure to comply with paragraph (1) is an offence.’

[87] So, that is what the Welsh regulations say, Minister. The harm that we are trying to identify is to stop the release back into the public arena of horses that are not microchipped. If there is another way of achieving that, I am very happy for that other way to be explained, but I would like an assurance as to how that can be achieved.

[88] **Mick Antoniw:** Minister, is the position that you have outlined based on the legal advice that has been given to you, as a Minister, from the Welsh Government lawyers?

[89] **Alun Davies:** Yes, it is.

[90] **Mick Antoniw:** Okay.

[91] **Alun Davies:** There has been no dispute about—

[92] **Lord Elis-Thomas:** I will call you now to respond to the further points that have been made on this grouping, Minister.

[93] **Alun Davies:** There has been no dispute about the Equine Identification (Wales) Regulations on this matter at all. There is wide support for ensuring responsible horse ownership, which this Bill seeks to promote. As I said, you do not promote responsible horse ownership by taking away the responsibilities of owners. We cannot be in the situation whereby we potentially pass an amendment that is in conflict with existing Commission regulations. We have a significant issue with amendment 2 falling into that category.

[94] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** Minister, would you like Weinidog, a hoffech symud i bleidlais ar to proceed to a vote on amendment 18? welliant 18?

[95] **Alun Davies:** Hoffwn.

Alun Davies: Yes.

[96] **Yr Arglwydd Elis-Thomas:** Y **Lord Elis-Thomas:** The question is that cwestiwn yw y dylid derbyn gwelliant 18. A amendment 18 be agreed to. Is there oes gwrthwynebiad? Nid oes gwrthwynebiad, objection? There is no objection, so felly derbyniwyd gwelliant 18. amendment 18 is agreed.

*Derbyniwyd gwelliant 18 yn unol â Rheol Sefydlog 17.34.
Amendment 18 agreed in accordance with Standing Order 17.34.*

[97] **Yr Arglwydd Elis-Thomas:** Yn unol â'r rhestr o welliannau wedi'u didoli, symudwn yn awr i waredu gwelliannau 19, 7, 20, 2 a 21. **Lord Elis-Thomas:** In accordance with the marshalled list, we now move to dispose of amendments 19, 7, 20, 2 and 21.

[98] Cynigiau welliant 19 yn enw'r Gweinidog. I move amendment 19 in the name of the Minister.

[99] Y cwestiwn yw y dylid derbyn gwelliant 19. A oes unrhyw wrthwynebiad? Nid oes gwrthwynebiad, felly derbyniwyd gwelliant 19. The question is that amendment 19 be agreed to. Are there any objections? There is no objection, therefore, amendment 19 is agreed.

*Derbyniwyd gwelliant 19 yn unol â Rheol Sefydlog 17.34.
Amendment 19 agreed in accordance with Standing Order 17.34.*

[100] **Yr Arglwydd Elis-Thomas:** Llyr: gwelliant 7. **Lord Elis-Thomas:** Llyr: amendment 7.

[101] **Llyr Gruffydd:** Cynigiau welliant 7 yn fy enw i gyda chefnogaeth William Powell. **Llyr Gruffydd:** I move amendment 7 in my name supported by William Powell.

[102] **Yr Arglwydd Elis-Thomas:** Y cwestiwn yw y dylid derbyn gwelliant 7. A oes gwrthwynebiad? Mae gwrthwynebiad, felly symudwn i bleidlais. **Lord Elis-Thomas:** The question is that amendment 7 be agreed to. Is there objection? There is objection, so we will move to a vote.

*Gwelliant 7: O blaid 4, Ymatal 0, Yn erbyn 5.
Amendment 7: For 4, Abstain 0, Against 5.*

[103] Pleidleisiodd yr Aelodau canlynol o blaid: The following Members voted for: Pleidleisiodd yr Aelodau canlynol yn erbyn: The following Members voted against:

Davies, Paul
Gruffydd, Llyr
Parrott, Eluned
Sandbach, Antoinette

Antoniw, Mick
James, Julie
Morgan, Julie
Price, Gwyn R.
Watson, Joyce

*Gwrthodwyd gwelliant 7.
Amendment 7 not agreed.*

[104] **Yr Arglwydd Elis-Thomas:** Cynigiau welliant 20 yn enw'r Gweinidog. **Lord Elis-Thomas:** I move amendment 20 in the name of the Minister.

[105] Y cwestiwn yw y dylid derbyn gwelliant 20. A oes gwrthwynebiad? Nid oes gwrthwynebiad, felly derbyniwyd gwelliant 20. The question is that amendment 20 be agreed to. Is there objection? There is no objection, so amendment 20 is agreed.

Derbyniwyd gwelliant 20 yn unol â Rheol Sefydlog 17.34.

Amendment 20 agreed in accordance with Standing Order 17.34.

[106] **Yr Arglwydd Elis-Thomas:** Lord Elis-Thomas: Antoinette Sandbach to move amendment 2.
Antoinette Sandbach i gynnig gwelliant 2.

[107] **Antoinette Sandbach:** I move amendment 2 in my name supported by William Powell.

[108] **Yr Arglwydd Elis-Thomas:** Y Lord Elis-Thomas: The question is that amendment 2 be agreed to. Is there objection? There is objection, so we will have a vote on amendment 2 by show of hands.
A oes gwrthwynebiad? Mae gwrthwynebiad, felly cawn bleidlais drwy ddangos dwylo ar welliant 2.

*Gwelliant 2: O blaid 4, Ymatal 0, Yn erbyn 5.
Amendment 2: For 4, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Davies, Paul
Gruffydd, Llyr
Parrott, Eluned
Sandbach, Antoinette

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Antoniw, Mick
James, Julie
Morgan, Julie
Price, Gwyn R.
Watson, Joyce

*Gwrthodwyd gwelliant 2.
Amendment 2 not agreed.*

[109] **Yr Arglwydd Elis-Thomas:** Lord Elis-Thomas: I move amendment 21 in the name of the Minister.
Cynigiau welliant 21 yn enw'r Gweinidog.

[110] Y cwestiwn yw y dylid derbyn gwelliant 21. A oes gwrthwynebiad? Nid oes gwrthwynebiad, felly derbyniwyd gwelliant 21.
The question is that amendment 21 be agreed to. Is there objection? There is no objection, so amendment 21 is agreed.

*Derbyniwyd gwelliant 21 yn unol â Rheol Sefydlog 17.34.
Amendment 21 agreed in accordance with Standing Order 17.34.*

Grŵp 4: Costau a Dynnir gan Drydydd Partïon (Gwelliannau 3 a 10) Group 4: Costs Incurred by Third Parties (Amendments 3 and 10)

[111] **Yr Arglwydd Elis-Thomas:** Y prif Lord Elis-Thomas: The main amendment in this group is amendment 3 in the name of Antoinette Sandbach.
welliant yn y grŵp hwn yw gwelliant 3, yn enw Antoinette Sandbach.

[112] **Antoinette Sandbach:** I move amendment 3 in my name.

[113] The explanation for this amendment was given on the tabling form. Data protection law, which is exempt under the Government of Wales Act 2006 from amendment, prevents local authorities from identifying to the occupier of the land the horse owner, even if it can be established. The previous amendment that we discussed—amendment 2—indicated some of the problems in establishing the identity of non-microchipped horse owners.

[114] This amendment is there where local authorities have sold on horses, where there may

be excess profits—not profits, but excess money—available to the local authority. It is also there to deal with the fact mentioned in the principles of this Bill, and as part of the reason for bringing forward this Bill: the environmental damage that is caused by fly-grazing. Sometimes, that damage will be caused to property that is in the hands of the local authority. As I understand it from the Minister and his advisers, it is proposed that, where that is local authority land, it should be allowed to recover the costs, but where that damage has occurred on private land, similar provisions will not apply.

[115] If the Chinese wall is going to be taken down in the local authority, and one department is going to be able to reclaim for the damage to the property that has been caused, it is my view that that should apply equally where there is private land ownership.

[116] The purpose of the Bill is to work towards establishing a fly-grazing-free Wales, and to enable all local authorities to work together to protect the public and the environment from the nuisance caused by the practice. It is that environmental damage, and compensation for that—in other words, reinstatement costs, or potential reinstatement costs, incurred by the occupier of the land—that this is seeking to address. Without addressing the issues outlined in my amendment, you are not protecting the public and the environment. The damage caused by fly-grazing can be extensive, and it is a significant concern for members of the public when fly-grazing occurs on their land. I do not believe that the Bill, as it stands, fulfils that purpose. In the Welsh Government's summary of consultation responses, it recorded actual damage to property, such as barns being burned down, tyres slashed, fences cut and gate and wall damage. All that was reported, and can be found on page 9 of the Welsh Government's response to the consultation. It recorded problems particularly in relation to common land, and sites accorded as special areas of conservation have been damaged as a result of fly-grazing, both poaching and overgrazing, with selected sites failing to achieve favourable conservation status. This amendment is designed to allow a private landowner or occupier, which may be a tenant, to notify the local authority of their costs, and for those costs to be reclaimed by the local authority.

[117] One of the examples of damage caused was reported in 2012 in an area of Monks Wood in the Vale of Glamorgan, and it was planted by the Woodland Trust. It was completely destroyed: all the planting was destroyed, and the gate and the fencing. The horses had stripped the bark from the trees and eaten all the grass. When you have a charity like that that has put a significant amount of resources into restoring a habitat, and that habitat is destroyed by illegal activity, and the local council has identified who the owner is, but cannot release that information to the occupier of the land, it is my view that there should be a mechanism to allow the costs incurred by the private owner or occupier of that land to be remedied and dealt with through the local authority. I know that officials pointed out in the committee session on 16 October that individuals could deal with it themselves under the Animals Act 1971, but this Bill is being brought forward precisely because the Animals Act 1971 does not provide an appropriate mechanism. In your consultation response, the reason why the greatest difficulty was identified in dealing with the legislation through the Animals Act was that the identification of the owner and persons responsible, coupled with the resources needed to enforce it through the use of professional and specialist expertise, was effectively prohibiting private individuals and local authorities from acting under the Animals Act. In your statement, Minister, you said:

[118] 'The animals involved are in the main unidentified in terms of ownership, appear suddenly, strip the land of available grazing and disappear as quickly as they appeared leaving land owners with large bills to repair the damage caused.'

[119] It is these large bills that we believe ought to be addressed.

[120] This is an amendment tabled to improve the Bill, because we cannot amend the Data

Protection Act in order to get the local authority to disclose the identity of the owner. You are, therefore, putting public bodies in a very different position from private bodies, and one that is inequitable and unfair. That is why this amendment has been tabled.

[121] **Llyr Gruffydd:** Rwyf eisiau siarad yn bennaf ynglŷn â gwelliant 10, wrth gwrs—y gwelliant rwyf i wedi'i osod gerbron. Mae'r ffocws ychydig yn wahanol i welliant 3. Yr hyn rwy'n ei ofyn i'r Llywodraeth ei wneud, mewn gwirionedd, yw gosod gerbron y Cynulliad adroddiad ar y costau sydd wedi cael eu tynnu gan unigolion a sefydliadau eraill y tu hwnt i awdurdodau lleol. Rwy'n teimlo ei bod yn bwysig bod lefel y gost yn cael ei hamlygu, gorau allwn ni beth bynnag, oherwydd ei bod, yn fy marn i, yn gost sylweddol. Byddai hynny wedyn yn amlygu maint y gost o safbwynt meddianydd y tir ond hefyd, ac yn bwysig iawn, elusennau lles ceffylau a lles anifeiliaid yn fwy cyffredinol, sydd yn aml iawn yn wynebu costau sylweddol wrth fod yn rhan o'r broses hon mewn gwahanol ffyrdd. Rwy'n credu y byddai hynny yn cynnig tryloywder i ni, a syniad gwell o faint y broblem. Byddai hefyd yn help i ni fesur pa gamau pellach y dylem fod yn eu hystyried pan fydd y Bil yn cael ei weithredu. Felly, byddwn yn awyddus iawn i'r gwelliant hwn gael ei dderbyn.

Llyr Gruffydd: I want to speak mainly to amendment 10, of course, in my name. The focus is slightly different to that of amendment 3. What I am asking the Government to do in reality is to lay before the Assembly a report on the costs incurred by individuals and organisations other than local authorities. I feel that it is important that the level of costs that we are discussing is highlighted to the best of our ability, because in my opinion it will be a substantial cost. That will then highlight the actual cost in terms of the landowner, but also, very importantly, the cost for equine and animal welfare charities more generally, that often face significant costs in being part of this process in different ways. I think that that would provide us with transparency and a better idea of the scale of the problem. It would also assist us in deciding on further steps to be considered when this Bill is implemented. So, I would be very eager for this amendment to be agreed.

11:00

[122] **Yr Arglwydd Elis-Thomas:** Y Gweinidog i ymateb i'r drafodaeth ar y grŵp hwn.

Lord Elis-Thomas: The Minister to respond to the debate on this group.

[123] **Alun Davies:** I will start with that final point from Llyr. I am happy to give an undertaking to the committee this morning that we will produce a report of that sort if Llyr would be prepared not to press his amendment. I give that undertaking today. You mention 12 months in your amendment; I would be happy to produce that report by the end of 2014, so in around 12 months' time.

[124] **Llyr Huws Gruffydd:** Rwy'n derbyn hynny, felly tynnaf y gwelliant yn ôl.

Llyr Huws Gruffydd: I accept that, so I will withdraw the amendment.

[125] **Yr Arglwydd Elis-Thomas:** Pan ddown i hynny o dan y drefn. Diolch yn fawr am roi gwybod i mi.

Lord Elis-Thomas: When we come to that in the procedure. Thank you very much for informing me.

[126] **Alun Davies:** In terms of the other matters that have been raised, this proposed legislation provides a means by which local authorities may recover the costs of seizing a horse, not the costs associated with fly-grazing, as described. I do not disagree with the points that have been made, but it is not the costs of damage to property that are being recovered here—it is livery costs, veterinary costs and animal welfare costs that are being recovered by local authorities. So, it is a misunderstanding of this proposed legislation to believe that this is

an opportunity for local authorities to recover all sorts of different costs. That is not what the proposed legislation seeks to do.

[127] Antoinette, in speaking to this amendment, mentioned all sorts of different costs implied from barns being burned down and tyres being burned and slashed. That is not the result of fly-grazing, of course—that is the result of criminal intimidation, and the law already outlaws that, not only to prosecute people who are responsible for those criminal actions, but to ensure that criminal action does not take place. So, that is a different issue. I accept that there is intimidation around the issue of fly-grazing, and I accept that there is criminality around the issue of fly-grazing, but that is not what this Bill seeks to deal with. Those are matters for criminal law, and criminal law already provides adequate measures to respond to those issues. That would not come within the competence of this Bill or this institution. So, those issues are outside the purpose of this proposed legislation.

[128] The issues that Antoinette described in the Vale and the issues that I have dealt with in the Gower over the last few weeks and months are profoundly distressing. The reason that the bark is being eaten from trees and the reason that the ground has been scored by animals is because they are starving. They are weak, and, in some cases, they are dying. The purpose of this proposed legislation is to prevent that from happening in the first place. If this piece of proposed legislation had been in place last year, the situation that you describe in the Vale would not have occurred, because the Vale of Glamorgan Council would have had the opportunity to use this to prevent that from happening in the first place.

[129] One of the reasons why there is such broad support for this proposed legislation, and one of the reasons why we are introducing it in the way that we are, is because this proposed legislation comes from the equine community, the law enforcement community and local government. They say, ‘We need the tools to prevent fly-grazing in the first place’. We are seeking to provide the tools for local authorities and law enforcement agencies to prevent fly-grazing from taking place. That is why this proposed legislation has had a very broad welcome from all parts of the community.

[130] What we do not wish to do is to provide additional duties for local authorities that could act as a disincentive for them to take action under this proposed legislation. This is not proposed legislation for compensation—that is not its purpose. When we agreed to expedite this, we said that we would not introduce new elements to the legislation, but that we would seek to reinforce and to ensure that local Acts are rationalised, strengthened and delivered consistently across the whole of Wales. There is existing law that deals with landowners who wish to seek recompense for costs that they have incurred as the result of being the victim of fly-grazing on their land. Those existing pieces of law should be exercised wherever possible. It is not the purpose of this Bill, or in fact this institution in some ways, to provide new remedies under additional law for that purpose. This should be a very straightforward piece of legislation that deals with the issue of fly-grazing, enables local authorities to recover their costs associated with seizing a horse—not the costs that occurred from before horses were seized, but from the point at which those horses were seized—and then to take forward the management of those horses. So, this does not create a differential position between private and public. It does not create a differential position between local authorities and others. It simply creates a process by which fly-grazing can be prevented, by creating a disincentive, and can then be managed effectively. So, with those short words, I seek to ask Members to reject amendment 3.

[131] **Yr Arglwydd Elis-Thomas:** Galwaf **Lord Elis-Thomas:** I call Antoinette Antoinette Sandbach i ymateb i'r ddadl. Sandbach to respond to the debate. Thank you.
Diolch yn fawr.

[132] **Antoinette Sandbach:** In relation to replying to what you have raised, Minister,

clearly, one of your purposes of the Act is to tackle the environmental damage. It is not just to deal with the animal welfare issue, but also to tackle the environmental damage that is caused by fly-grazing. There were two purposes, and they were the principles that you outlined when bringing forward this legislation. Now, while you may say that there is an existing piece of law, all your consultation responses indicate that this piece of legislation needed to come forward, because the existing law is inadequate, and it is inadequate because of the difficulties in tracing the owner. Now, this will become operational only when the animal is traced and has come forward to the local authority. It will be a rare position, I accept, where the money in the hands of the local authority, if you like, exceeds its costs, and I am very grateful for your ministerial assurance that that will not involve costs incurred by a local authority on damage to its own ground. In its briefing, the RSPCA said:

[133] ‘we welcome discussion relating to payments being made to the owner of the land from where the horse was seized’.

[134] RSPCA Cymru, which was of course a member of the cross-party group on the horse, said:

[135] ‘RSPCA Cymru does not envisage that there will be very many instances whereby proceeds arising from horse disposal exceed costs in connection with the disposal.’

[136] I agree that, in the main, that is the evidence that we have had, but it has been anticipated that there may be some circumstances when they will exceed that cost. In fact, Minister, you are proposing an amendment later on where there is a surplus, if you like, of money that is in the hands of the local authority arising out of the disposal through sale that may not necessarily have to be returned to the owner. Now, you are anticipating that there may be circumstances in which they may be a surplus, and the RSPCA says that those circumstances may arise and that they do welcome discussion in relation to payments being made to the owner of the land. It could be a very valuable tool for charities like the Woodland Trust, where extensive damage has been done to planting. I do not dispute the welfare issues, Minister, but it is, in effect, to allow the local authority to pay that money out to third parties, such as the Woodland Trust charity, where there is an excess of proceeds. That will be a matter of fact as to whether or not that happens, and that is the purpose of that amendment. So, I wonder whether you could look at that between now and Stage 3, given your stated intent to tackle the environmental damage that is caused. I do not accept that it is providing a new remedy—the remedy is there; it is just the mechanism for how that is achieved, because of the fact that a local authority cannot disclose the data or information to third parties, despite knowing who the owner is.

[137] **Lord Elis-Thomas:** I believe that this arises under a further amendment that we will come to. Therefore, Antoinette Sandbach, would you like to move to a vote on amendment 3?

[138] **Antoinette Sandbach:** Yes, please.

[139] **Yr Arglwydd Elis-Thomas:** Y **Lord Elis-Thomas:** The question is that cwestiwn yw y dylid derbyn gwelliant 3. A amendment 3 be agreed to. Does any oes gwrthwynebiad? Mae gwrthwynebiad, Member object? There is objection, therefore, felly galwaf am bleidlais. I call for a vote.

Gwelliant 3: O blaid 4, Ymatal 0, Yn erbyn 5.

Amendment 3: For 4, Abstain 0, Against 5.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Davies, Paul
Gruffydd, Llyr
Parrott, Eluned
Sandbach, Antoinette

Antoniw, Mick
James, Julie
Morgan, Julie
Price, Gwyn R.
Watson, Joyce

*Gwrthodwyd gwelliant 3.
Amendment 3 not agreed.*

[140] **Yr Arglwydd Elis-Thomas:** Yn unol â'r rhestr o welliannau wedi'u didoli, rwy'n symud i waredu gwelliant 22 yn awr. Cynigiau welliant 22 yn enw'r Gweinidog. Y cwestiwn yw y dylid derbyn gwelliant 22. A oes gwrthwynebiad? Mae gwrthwynebiad, felly cawn bleidlais drwy ddangos dwylo.

Lord Elis-Thomas: In line with the marshalled list, I will now proceed to dispose of amendment 22. I move amendment 22 in the name of the Minister. The question is that amendment 22 be agreed to. Does any Member object? There is objection, therefore, we will move to a vote by show of hands.

*Gwelliant 22: O blaid 5, Ymatal 0, Yn erbyn 4.
Amendment 22: For 5, Abstain 0, Against 4.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Antoniw, Mick
James, Julie
Morgan, Julie
Price, Gwyn R.
Watson, Joyce

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Davies, Paul
Gruffydd, Llyr
Parrott, Eluned
Sandbach, Antoinette

*Derbyniwyd gwelliant 22.
Amendment 22 agreed.*

**Grŵp 5: Apelau (Gwelliannau 23, 4, 5 ac 8)
Group 5: Appeals (Amendments 23, 4, 5 and 8)**

[141] **Yr Arglwydd Elis-Thomas:** Yng ngrŵp 5, gwelliant 23 yw'r prif welliant. Cynigiau welliant 23 yn enw'r Gweinidog.

Lord Elis-Thomas: In group 5, the lead amendment is amendment 23. I move amendment 23 in the name of the Minister.

[142] **Alun Davies:** Diolch yn fawr, **Alun Davies:** Thank you, Chair. Gadeirydd.

[143] Amendment 23 is, again, the consequence of conversations that we have had in this committee, on the floor of the Chamber and in the Constitutional and Legislative Affairs Committee. A number of Members made the point, during those debates and discussions, that they would like to see an appeals process on the face of the Bill. We have accepted that concern and we have accepted the points that were made by Members at that time. I will also say that, in putting together amendment 23, we have been mindful of the impact on the wider matters that may be affected by an appeals process. We have spoken to both the Ministry of Justice and the Home Office to ensure that what we are proposing here is an appropriate process, not only within this piece of legislation, but also in terms of potential impact on other matters, such as courts and other elements that are not devolved to this place. So, this amendment has been through that process and has received clearance through it.

[144] As I say, it is as a consequence of the debate that took place earlier in this place. By establishing a process of referring disputes to the Welsh Ministers who are independent of the local authority, instead of a detailed appeals system that would need to be established under

statutory instrument, this makes for a simpler, more transparent and cost-effective process, while ensuring that our obligations under article 6 of the European convention on human rights are met. I hope that in doing this we stick with the aims of the Bill, which are to provide local authorities with the relevant powers to assist them in seeking to remedy, in a cost-efficient and streamlined way, the social nuisance of fly-grazing. We regard the grounds for appeal created by this legislation as being very narrow. There is existing law in many places; we have already discussed equine identification and, where there are issues of dispute about identity, there is existing law and there are legal remedies for all those matters. So, what we are looking for is a remedy and a streamlined process that will provide a cost-effective appeals process, where that is required.

[145] The amendment removes the need for making subordinate legislation, and that was a concern of the Constitutional and Legislative Affairs Committee. It ensures that we have a remedy that is independent, and I think that that was the concern of this committee, and we ensure that where a dispute occurs between a local authority and a potential owner, we have a process in place that can resolve that.

11:15

[146] The new section, 'Resolution of disputes about amounts payable', provides that where a dispute arises between the owner of a horse and a local authority as to the amount payable to that authority, the owner of the horse may, within seven days, beginning on the day that he or she receives a notice, refer the dispute for resolution by Welsh Ministers, stating the reasons for the dispute. Where Welsh Ministers receive such a notice, they must forward it to the local authority, which then has seven days in which to make representations to Welsh Ministers from the date of receipt of the notice. This ensures that we have a speedy and well-understood process that will resolve these disputes. Welsh Ministers may also require the local authority to provide any information that they deem appropriate to assist them in resolving the dispute. The amendment also requires Welsh Ministers to determine the amount of liability as soon as possible. The local authority may not dispose of a horse while a dispute is awaiting resolution. This, once again, ensures that these matters are dealt with in a speedy fashion.

[147] This amendment entirely replaces the previous section 7 and, as such, the non-Government amendments 4, 5 and 8 are, I would argue, not necessary. I hope and believe that this amendment provides a better, more efficient and effective process that does not lead to unnecessary bureaucracy or red tape, or overcomplicate matters. Those are all issues that were raised by Members in previous debates and discussions. I am mindful that, as a Government, we must meet our obligations under article 6 of the European convention on human rights, and I believe that this amendment achieves that as well.

[148] **Antoinette Sandbach:** Minister, I fully appreciate why it is that you have tabled this amendment, and I had similar concerns to those expressed by the Constitutional and Legislative Affairs Committee about subordinate legislation. Your amendment does go some way towards dealing with the issue, but the amendment as it is drafted only provides an appeal against the liability for costs; it deals only with the cost issue. It does not provide an appeal against the seizure.

[149] I appreciate that you have had all of these assurances from the Home Office and so on, but I do not accept this and, perhaps, before the Bill gets to Stage 3, I would like a further explanatory memorandum or assessment to deal with the question of whether or not this does comply with the Human Rights Act 1998. It seems to me that, if you are seizing property belonging to another, that is, a horse, and you have no appeals process, you will not be compliant with the Human Rights Act.

[150] You say that you have had advice, and I am absolutely certain that you could provide

it in the form of an explanatory memorandum, but there may well be circumstances where the seizure itself might be challenged. I am sure that you are aware of many instances where people fall out and misinformation is given to one party in order to get another party to act, and it may be that the seizure itself could be very quickly and effectively challenged. It seems to me that there needs to be some sort of process around that. Another possibility is that the notice provisions may not have been correctly complied with. As it is currently drafted, your amendment does not achieve what you hope that it will achieve. Therefore, it is for those reasons that we will not be supporting your amendment. This is a matter that, at Stage 3, you will have to look at and come back to again.

[151] **Mick Antoniw:** I would like to comment on that particular section as well. Disputes resolution is obviously a preferred option at the moment with the Ministry of Justice, but is it the evidence or the assessment of the Government that this process would be cheaper or quicker? Is there any view as to whether there would be fees charged or this is basically considered a process that would not involve the payment of fees? Has any assessment taken place in respect of the potential numbers that might be involved? Are we envisaging the possibility of a very small number of cases that would contribute to this being a more efficient system?

[152] **Llyr Gruffydd:** Hoffwn ategu'r sylwadau sydd eisoes wedi cael eu gwneud gan Antoinette. Rwy'n teimlo bod fersiwn wreiddiol y Bil yn sôn am hawl i apelio mewn perthynas ag unrhyw fater sy'n codi o dan y Bil hwn, tra bod y gwelliant, fel y dywedoch, yn cyfyngu'r hawl i fod ynglŷn ag anghydfodau o ran symiau sy'n daladwy. Gwnaethpwyd y pwynt ynglŷn â delio ag achosion fydd yn codi—nid oes amheuaeth am hynny—ond er mai nifer fach fydd yn codi, nid yw hynny'n rheswm i ni beidio â chael hyn yn iawn. Felly, rwy'n awyddus iawn i ni lyngu at y fersiwn wreiddiol gyda'r gwelliannau eraill sydd wedi cael eu rhoi gerbron.

Llyr Gruffydd: I would like to endorse the comments already made by Antoinette. I do feel that the Bill as originally drafted talks about the right to appeal in relation to any issue that is raised under this Bill, while the amendment, as you say, limits the right to disputes about the sums payable. The point was made about tackling issues that will arise—there is no doubt about that—but although they may be very small in number, that is not a reason to not get this right. Therefore, I would be very eager for us to stick to the original version with the other amendments that have been tabled.

[153] Gan droi at welliant 8, rwy'n teimlo y dylai'r rheoliadau o gwmpas yr apeliadau fod yn ddarostyngedig i weithdrefn gadarnhaol. Mae cyfeiriad eisoes wedi cael ei wneud at farn y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ac ategaf a chefnogaf hynny, oherwydd mae'n bwysig ein bod ni fel Cynulliad yn cael y cyfle fynd i'r afael â hynny yn y ffordd fwyaf trylwyr, fel ei fod mor effeithiol â phosibl ar ddiwedd y dydd.

In terms of amendment 8, I feel that the regulations made around the issue of appeals should be subject to an affirmative procedure. Reference has already been made to the view of the Constitutional and Legislative Affairs Committee and I endorse and support that view, because I do think that it is important that we as an Assembly have the opportunity to get to grips with that in the most thorough way, so that it is as effective as possible at the end of the day.

[154] **Eluned Parrott:** I very much welcome the Minister taking on board the comments of the Constitutional and Legislative Affairs Committee, in terms of including detail on the face of the Bill, which is a song that we sing very often on that particular committee. However, you go further than that in the amendment that you tabled here. I am concerned that there is a substantial amendment to the nature and the practicalities of the appeals process, which I think impinges on the rights of the owners. Originally, you were providing a right of appeal in relation to any matter arising under this Bill, and now we have the ability to appeal only in

relation to the actual amounts that could be recharged; there is no ability to appeal in relation to the alleged offence, to provide defence or any of those kinds of opportunities. We do prefer the existing section 7 to this, with the proviso that the word 'may' is changed to 'must' to ensure that there is a duty to produce those regulations, and also that that must be affirmative.

[155] As I say, in terms of the recommendation of the Constitutional and Legislative Affairs Committee, the request was for there to be more detail, not for there to be a change in the nature, or indeed a change in the—[*Inaudible.*]—through the provision of that detail. That is the point that I would like to make there. I do not think, either, that the new section provides enough detail to make it the kind of actionable, consistent process that you want to see. For example, you quoted that the owner of the horse may refer the dispute for resolution to Welsh Ministers by giving Welsh Ministers notice containing a statement on the reason for disputing the amount. However, I do not believe that we really have a clear idea of what the allowable grounds for those kinds of disputes could be. I do not think that that is clear enough in this new section. I understand that you are trying to move the Bill forward with the amendment that you have put forward, but I think that there needs to be further discussion about what the nature of that appeals process is going to look like; whether it is going to be restricted solely to costs, whether that is appropriate and whether there is an opportunity to appeal in relation to the seizure as well.

[156] **Alun Davies:** There is a crashing irony in the fact that the Member said, 'I actually preferred the original, although I did not prefer it the last time that we discussed the original', but I will let that go. I will give an undertaking to Members this morning that if they wish to make representation on those matters, the nature of the appeals process—and I think that the speech that you made, Eluned, outlined most of those matters—I will take that very seriously and come back with amendments to Stage 3. I think that what we say here is clear, but if Members believe that it requires more clarity and structure on the face of the Bill, then I am happy to take that on board and give that some consideration prior to Stage 3. Clearly, I cannot give an undertaking that we will provide the amendments that you would seek, but I will give an undertaking that we will seriously, actively and proactively consider making amendments at Stage 3, if you make representations on those matters.

[157] Again, my view is that we will not be seeing many disputes. The point that Mick made about there being few appeals under this piece of legislation is a good one and a correct one. To answer your questions, Mick, we do regard this as a cheaper, quicker and more effective remedy than we considered it to be when we first drafted the legislation. I will say, in the same way that I gave an undertaking to Llyr, that we will look at the cost of third parties over the first year of this legislation. I will also give you an undertaking that we will look at some of the costs associated with an appeals process and perhaps include that in the same piece of work that I gave an undertaking to produce earlier by the end of next year. So, we will certainly do that.

[158] In terms of extending the remit and a place for the appeals process, we have looked at every element of the statutory process that has been introduced by the legislation and looked for elements where appeals can be made and where there is no existing provision or remedy for those appeals. There clearly is not under equine identification, because that is a discrete piece of law that exists and which we do not wish to amend through this legislation. We do not believe that there are issues around the seizure of the horse, because there is already legislation in place that provides that a remedy can be sought if there are issues of trespass or anything like that. Therefore, we are content that where there are issues relating to seizure, they are already remedied by general law. We also know that general law provides for a breach of statutory duty. If, for example, the notices that are placed at the point of seizure are not adequate, there is already a remedy for that matter.

[159] When you go through the process introduced by this legislation, you will see that

there are very few points at which a dispute can arise. We felt that the point that was most likely to arise was that of costs. That is why we have followed the process that we have, but I have already given you an undertaking that we will review that. I hope that Members will look at this in a positive way. We have listened to what was said in this committee and other committees. We sought to amend the existing section 7, but it became clear to us that we should replace it in totality in order to take account of other provisions in terms of general rights, and to ensure that we have a process on the face of the Bill, which is what the committee asked for in its previous meeting.

[160] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** Minister, would you like Weinidog, a hoffech symud i bleidlais ar welliant 23? to move to a vote on amendment 23?

[161] **Alun Davies:** Hoffwn. **Alun Davies:** Yes.

[162] **Yr Arglwydd Elis-Thomas:** Os derbynir gwelliant 23, bydd gwelliannau 4, 5 ac 8 yn methu. Y cwestiwn yw y dylid derbyn gwelliant 23. A oes unrhyw wrthwynebiad? **Lord Elis-Thomas:** If amendment 23 is agreed, amendments 4, 5 and 8 will fall. The question is that amendment 23 be agreed to. Are there any objections? I see that there are. Gwelaf fod gwrthwynebiad, felly galwaf am bleidlais drwy ddangos dwylo. Therefore, I call for a vote by show of hands.

*Gwelliant 23: O blaid 5, Ymatal 0, Yn erbyn 4.
Amendment 23: For 5, Abstain 0, Against 4.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Antoniw, Mick
James, Julie
Morgan, Julie
Price, Gwyn R.
Watson, Joyce

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Davies, Paul
Gruffydd, Llyr
Parrott, Eluned
Sandbach, Antoinette

*Derbyniwyd gwelliant 23.
Amendment 23 agreed.*

*Methodd gwelliant 4.
Amendment 4 fell.*

*Methodd gwelliant 5.
Amendment 5 fell.*

*Methodd gwelliant 8.
Amendment 8 fell.*

Grŵp 6: Canllawiau (Gwelliannau 6 a 9) Group 6: Guidance (Amendments 6 and 9)

[163] **Yr Arglwydd Elis-Thomas:** Y prif welliant yn y grŵp hwn yw gwelliant 6 yn enw Antoinette Sandbach. Galwaf ar Antoinette Sandbach i gynnig y gwelliant ac i siarad am y gwelliant. **Lord Elis-Thomas:** The lead amendment in this group is amendment 6 in the name of Antoinette Sandbach. I call on Antoinette Sandbach to move the amendment and to speak to it.

11:30

[164] **Antoinette Sandbach:** I move amendment 6 in my name.

[165] Minister, this amendment is really to provide some clarity for local authorities. You have indicated that your purpose in bringing forward the Bill is to have consistency of approach. I have noticed and welcome the fact that you have given a definite start date for the beginning of the Bill, which will be the day after it receives Royal Assent. Bearing in mind that you have brought this Bill forward through an expedited process because of the perceived animal welfare need, this amendment has been tabled to ensure that you bring forward your guidance equally quickly, within three months of the Bill receiving Royal Assent. That means that all local authorities in Wales would have the same legal powers, but your guidance would also help to give them consistency of approach. It would be very regrettable if the Bill came forward but no guidance was issued, and you started getting conflicting approaches being taken by local authorities and if there started to be differences in the legislation. If you said to me that you could bring forward guidance in two months or a month, or you could give me a ministerial assurance or undertaking on that, I would be happy with it, but—

[166] **Alun Davies:** Could I reply to that, Chair?

[167] **Lord Elis-Thomas:** Not yet.

[168] **Antoinette Sandbach:** I would really like the guidance section to be on the face of the Bill, because it gives you the power to revise, change and withdraw it, but it also requires you to publish it so that it is transparent and out in the public domain. I would very much hope that you would agree that this is an appropriate amendment to table.

[169] **Yr Arglwydd Elis-Thomas:** Galwaf **Lord Elis-Thomas:** I call on Llyr Gruffydd Llyr Gruffydd ar welliant 9. on amendment 9.

[170] **Llyr Gruffydd:** Mae'r sentiment yn debyg iawn; mae'r ddau welliant yn debyg, wrth gwrs, jest bod dim cyfeiriad at dri mis yng ngwelliant 9. Rwy'n meddwl ein bod yn symud at sefyllfa lle'r ydym yn awyddus i weld cysondeb o safbwynt pwerau ar draws Cymru. Y peth pwysig yw sicrhau bod yna gysondeb o safbwynt y modd y mae'r pwerau yna'n cael eu defnyddio a'u gweithredu; felly, byddwn yn disgwyl bod rhaid i awdurdodau lleol roi sylw i ganllawiau sy'n cael eu darparu, oherwydd mae yna berygl o anghysondeb heblaw am hynny. Yn y memorandwm esboniadol, yn adran 104, er enghraifft, dywedir hyn:

Llyr Gruffydd: The sentiment is very similar; the two amendments are similar, of course, although there is no reference to three months in amendment 9. I think that we are moving towards a situation where we are eager to see consistency in terms of powers across Wales. The important thing is to ensure that there is consistency in the way that those powers are used and implemented; therefore, I would expect that local authorities would have to give due regard to any guidance provided, because there is a risk of inconsistency if that is not the case. In the explanatory memorandum, in section 104, for example, it is stated that

[171] 'Gan fod y penderfyniad i adennill costau yn ddewisol, mae dyletswydd ar yr awdurdod lleol, fel corff cyhoeddus, i weithredu'n rhesymol yng ngoleuni ffeithiau bob achos unigol, felly byddai'n rhaid iddo ystyried pa mor rhesymol yw unrhyw hawliad dan sylw. Gallai hyn olygu, er enghraifft, bod awdurdod lleol yn dychwelyd ceffyl i blentyn 16 oed (yr oedran cyfreithiol ieuengaf dan y Ddeddf Lles Anifeiliaid er mwyn bod yn

'As the decision to reclaim costs is discretionary, the local authority as a public body, is under a duty to act reasonably in light of the facts of each case and would therefore have to consider the reasonableness of any claim it considers pursuing. This could for example mean, a local authority returning a horse to a child aged 16 (the minimum legal age under the Animal Welfare Act to own an animal as the legal owner) and not requiring

berchennog cyfreithiol 28 ar anifail) heb ofyn am adennill costau, yn arbennig lle bo achos gwirioneddol o'r ceffyl yn dianc o'i gae.'

reimbursement of costs, particularly where there is a genuine case of a horse escaping from its dedicated field.'

[172] Mae yna bosibilrwydd wedyn y byddwn yn gweld gwahanol awdurdodau'n dehongli hynny'n wahanol ac yn dod i benderfyniadau gwahanol, ac rwy'n meddwl bod yna berygl yn hynny o beth. Wrth gwrs, mae yna oblygiadau difrifol pan ydym yn sôn am anifeiliaid yn cael eu difa.

We would, therefore, be at risk of seeing local authorities interpreting that differently and coming to different decisions, and I think that there is a risk in that regard. Of course, there are serious implications when we talk about animals being disposed of.

[173] Rwyf hefyd yn meddwl y byddai derbyn y gwelliant yn lleihau'r achosion lle byddai apeliadau yn angenrheidiol. Felly, rwy'n awyddus i'r pwyllgor gefnogi gwelliant 9.

I also think that accepting the amendment would reduce the number of cases where appeals would be necessary. I am, therefore, eager for the committee to support amendment 9.

[174] **Eluned Parrott:** Just in support of those points, I think that we need to ensure that this law is implemented consistently across Wales. The problem, by its very nature, is a mobile one. Therefore, if one local authority implements this law in a way that is much more firm than a neighbouring authority, then serial offenders will simply transfer the problem from one local authority to another. So, I think that consistency is critical here, and I hope that you will be minded to accept the principle of these amendments.

[175] We have preferred amendment 9 over amendment 6 on the basis that we do not necessarily think that the three-month deadline is necessary. However, this is something to which we would ask you to give consideration.

[176] **Yr Arglwydd Elis-Thomas:** Yn awr, galwaf ar y Gweinidog i gyfrannu i'r ddadl.

Lord Elis-Thomas: I now call on the Minister to contribute to the debate.

[177] **Alun Davies:** Diolch yn fawr, Gadeirydd.

Alun Davies: Thank you, Chair.

[178] I accept the points that have been made by Members in the debate. Antoinette asks when guidance will be available. Guidance will be available on the day of commencement—not three months, two months or one month after it, but on the day of commencement. I also accept the points made by Eluned on the need for consistency. I would say to the committee that the reason that we are publishing non-statutory guidance is twofold. First of all, I will go back to my role as a midwife, not the parent. This is what was asked for by local authorities; it was what came out of the consultation. No response to the consultation asked for statutory guidance to local authorities; everybody sought non-statutory guidance, and that is why we placed this in the piece of legislation. The other reason is that when statutory guidance is issued to local authorities, it is usually issued where there is a significant degree of discretion available to local authorities. The example that is quite often used is that of social services, where local authorities have statutory responsibilities to deliver care for people. However, clearly, how that care is delivered is not written on the face of the legislation, and therefore statutory guidance is issued to local authorities to ensure that a package of care, sometimes a quite complex package of care, is actually put together in a clear and consistent way, and to provide certainty for people receiving that care that they will have that sort of consistent approach across the whole country. So, those are the two reasons why we have proposed the legislation as we have. I will say this to the committee this morning: I think that the points that have been raised in debate are good and fair points. At the risk of terrifying my officials, I give an undertaking to the committee this morning that we will provide the committee with a

draft of the guidance as soon as it is available, and before it comes into effect. This will provide the committee with an opportunity to comment and amend the guidance before it comes into effect, and before the legislation is commenced.

[179] **Lord Elis-Thomas:** Amend? I am impressed, Minister.

[180] **Alun Davies:** ‘Consider and amend’, I think I said. [*Laughter.*]

[181] **Lord Elis-Thomas:** For the sake of clarification, thank you.

[182] Galwaf ar Antoinette i ymateb i’r I call on Antoinette to reply to the debate.
ddadl.

[183] **Antoinette Sandbach:** I am very grateful for your indication, Minister, that guidance will be issued before commencement. I think that that will be extremely helpful, both for the local authorities and for anyone else who has an interest in this legislation being brought forward. While I appreciate that local authorities did not ask for statutory guidance, it was not a specific question that was asked in the consultation document. So, they were not asked whether they would prefer statutory or non-statutory guidance, and I just want the record to reflect that.

[184] It is clear, as Eluned Parrott said, that the issue is around consistency, and, to my mind, it is helpful to have the possibility of amending or withdrawing the guidance to alter it on the face of the Bill. I would ask you to look at that between now and then, because it may well be—having not asked the specific question of local authorities—that the feedback that you now get is that they would prefer statutory guidance.

[185] **Alun Davies:** No, they would not.

[186] **Antoinette Sandbach:** In fact, in terms of your issue on appeals, you said that there are appeals where the local authorities are in breach of statutory guidance. Well, if you are not issuing statutory guidance, then perhaps that appeals route is not then available.

[187] **Alun Davies:** May I just—

[188] **Lord Elis-Thomas:** I do not think so, because otherwise everybody will want to. If I were to do so, I would have to call Antoinette as well.

[189] **Alun Davies:** Yes.

[190] **Lord Elis-Thomas:** All right. I call the Minister.

[191] **Alun Davies:** Thank you very much, Chair. I mentioned ‘guidance’ rather than ‘statutory guidance’ in my earlier comments. I am happy to provide guidance, and I want to provide guidance, for local authorities and others, on the implementation of this piece of law, and also the delivery of the action plan, of which, of course, this is a subset. So, the guidance will be issued. I will write to the committee as soon as possible to inform the committee—

[192] **Lord Elis-Thomas:** We always enjoy receiving letters from you, Minister.

[193] **Alun Davies:** I am delighted to hear that—almost as much as I enjoy reading the committee’s letters, no doubt. [*Laughter.*] I will, however, write to the committee to inform you when we believe that the draft is available, and I am happy to come back to committee to give evidence on that guidance and to accept amendments from the committee on that. I hope that reassures the committee that we are committed to consistency and to providing guidance.

It is fair to say, however, that local authorities have asked for non-statutory guidance, not statutory guidance.

[194] **Lord Elis-Thomas:** Antoinette Sandbach to reply further to this. [*Laughter.*]

[195] **Alun Davies:** To reply to the reply, yes.

[196] **Antoinette Sandbach:** Minister, I am very grateful for that indication. I think that what this amendment does, though, is to ensure—. I appreciate that you are in post now, but, in many years' time, you may not be in post—

[197] **Lord Elis-Thomas:** Oh, surely not. [*Laughter.*]

[198] **Antoinette Sandbach:** It is to ensure that that provision is on the face of the Bill, because, hopefully, this piece of legislation will not need amending in the future. While you as a Minister may be prepared to give that undertaking and that guidance, there may be other Ministers in the future who will not be, and that is why I would ask for it to be on the face of the Bill.

[199] **Lord Elis-Thomas:** So, you wish to move to a vote on amendment 6.

[200] **Antoinette Sandbach:** I do.

[201] **Yr Arglwydd Elis-Thomas:** Os derbynir gwelliant 6, bydd gwelliant 9 yn methu. Y cwestiwn yw y dylid derbyn gwelliant 6. A oes gwrthwynebiad? Oes, felly galwaf am bleidlais.

Lord Elis-Thomas: If amendment 6 is agreed, amendment 9 falls. The question is that amendment 6 be agreed to. Does any Member object? There is objection, so I call for a vote.

Gwelliant 6: O blaid 4, Ymatal 0, Yn erbyn 5.

Amendment 6: For 4, Abstain 0, Against 5.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Davies, Paul
Gruffydd, Llyr
Parrott, Eluned
Sanbach, Antoinette

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Antoniw, Mick
James, Julie
Morgan, Julie
Price, Gwyn R.
Watson, Joyce

*Gwrthodwyd gwelliant 6.
Amendment 6 not agreed.*

[202] **Yr Arglwydd Elis-Thomas:** Yn unol â'r rhestr wedi'i didoli, rydym yn awr yn symud i waredu gwelliant 9.

Lord Elis-Thomas: In accordance with the marshalled list, we move now to dispose of amendment 9.

[203] **Llyr Gruffydd:** Cynigiau welliant 9 yn fy enw i gyda chefnogaeth William Powell.

Llyr Gruffydd: I move amendment 9 in my name supported by William Powell.

[204] **Yr Arglwydd Elis-Thomas:** Y cwestiwn yw y dylid derbyn gwelliant 9. A oes gwrthwynebiad? Oes, felly, galwaf am bleidlais drwy ddangos dwylo.

Lord Elis-Thomas: The question is that amendment 9 be agreed to. Does any Member object? Yes, therefore, I call for a vote by show of hands.

*Gwelliant 9: O blaid 4, Ymatal 0, Yn erbyn 5.
Amendment 9: For 4, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Davies, Paul
Gruffydd, Llyr
Parrott, Eluned
Sanbach, Antoinette

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Antoniw, Mick
James, Julie
Morgan, Julie
Price, Gwyn R.
Watson, Joyce

*Gwrthodwyd gwelliant 9.
Amendment 9 not agreed.*

[205] **Yr Arglwydd Elis-Thomas:** Deallaf nad oes bwriad i welliant 10 gael ei symud i bleidlais. Felly, nid yw'r gwelliant yn dod ger ein bron.

Lord Elis-Thomas: I understand that the Member does not wish to move amendment 10 to a vote. Therefore, we will not vote on the amendment.

*Ni chynigwyd gwelliant 10.
Amendment 10 not moved.*

Grŵp 7: Dehongli (Gwelliant 24) Group 7: Interpretation (Amendment 24)

[206] **Yr Arglwydd Elis-Thomas:** Un gwelliant sydd i grŵp 7, sef gwelliant 24. Cynigiau welliant 7 yn enw'r Gweinidog.

Lord Elis-Thomas: There is a single amendment in group 7, namely amendment 24. I move amendment 24 in the name of the Minister.

[207] **Alun Davies:** Thank you very much, Chair, for this. The purpose of this amendment is to ensure consistency between the English and the Welsh languages on the face of the legislation. We seek to remove the word 'hinny' from the legislation. This was, of course, a recommendation of the Constitutional and Legislative Affairs Committee, which I attended last month. We invite Members to support this amendment.

[208] **Yr Arglwydd Elis-Thomas:** Diolch yn fawr i'r Gweinidog. Mae cysondeb ieithyddol wastad yn rhoi pleser pur i'r Gadeirydd. Galwaf ar Llyr.

Lord Elis-Thomas: Thank you, Minister. Linguistic consistency is always a matter of great pleasure to the Chair. I call Llyr.

[209] **Llyr Gruffydd:** Diolch, Gadeirydd. Rwy'n cyd-fynd bod cysondeb ieithyddol yn bwysig. Yn amlwg, ni fyddai neb yn disgwyl dim llai. Y cwestiwn yr wyf am ei ofyn yw: pam dileu 'bastard mul' yn unig? Mae'n dweud 'unrhyw anifail ceffylaidd', felly, pam tynnu 'bastard mul' allan ac nid merlod, asynnod, mulod ac yn y blaen? Os ydym yn sôn am gael cysondeb, yna byddwn i'n meddwl y byddai cyfeirio at 'unrhyw anifail ceffylaidd' yn unig yn ddigonol.

Llyr Gruffydd: Thank you, Chair. I agree that consistency in language is important. Clearly, one would expect nothing less. What I would ask is: why delete 'bastard mul' alone? It states 'any equine animal', so why remove 'bastard mul' and not the other categories? If we are talking about consistency, then I would have thought that referring to 'any equine animal' alone would be sufficient.

[210] **Yr Arglwydd Elis-Thomas:** I **Lord Elis-Thomas:** For the purpose of the

bwrpas y gwrandawr diniwed, nid rheg oedd honno, ond diffiniad o anifail. innocent listener, that was not a case of swearing, but a definition of an animal.

[211] **Mick Antoniw:** This is not an unimportant matter, and it is a matter that occupied the Constitutional and Legislative Affairs Committee, which sat at some length—[*Inaudible.*]—actually endorse in terms of seeking your explanation.

[212] **Yr Arglwydd Elis-Thomas:** Galwaf y Gweinidog i ymateb i'r ddadl allweddol hon. [*Chwerthin.*] **Lord Elis-Thomas:** I call the Minister to reply to this key debate. [*Laughter.*]

[213] **Alun Davies:** Diolch i'r Aelodau am eu cyfraniadau. Rwy'n teimlo y dylwn ofyn i'r Cadeirydd am ei gyngor yn hyn o beth. **Alun Davies:** I thank the Members for their contributions. I feel that I should ask the advice of the Chair in this matter.

[214] **Yr Arglwydd Elis-Thomas:** Na. **Lord Elis-Thomas:** No.

[215] **Alun Davies:** O ran materion ieithyddol, wrth gwrs. **Alun Davies:** When it comes to linguistic issues, of course.

[216] Y cyngor yr wyf wedi ei gael yw bod y disgrifiad 'ceffylaidd' yn ddigonol yn y ddwy iaith—'equine' yn Saesneg, 'ceffylaidd' yn Gymraeg—ac y byddai'n cynnig y sicrwydd y mae ei angen arnom a hefyd yn disgrifio'r anifeiliaid ceffylaidd sy'n rhan o'r ddeddfwriaeth, ac mae hynny'n cynnwys bastard mul, mul, merlyn a cheffyl. The advice that I have received is that the definition of 'equine' is appropriate in both languages—'equine' in English, 'ceffylaidd' in Welsh—and that would provide the assurance required and would also properly describe the equine animals caught within the auspices of this Bill, and that includes 'bastard mul', 'mul' and so on.

[217] **Yr Arglwydd Elis-Thomas:** Wrth gwrs, mae sylwadau'r Gweinidog yn y pwyllgor wastad yn taflu goleunu ar unrhyw achos a allai godi yn y llysoedd, gan eu bod yn dangos beth oedd bwriad y Llywodraeth yn y ddeddfwriaeth. **Lord Elis-Thomas:** Of course, the Minister's comments in the committee always shed light on any cases that may arise in a court of law, as they show what the Government's intention was in the legislation.

[218] Felly, symudwn at waredu gwelliant 24 yn enw'r Gweinidog, gan ein bod wedi delio ag ef. Y cwestiwn yw y dylid derbyn gwelliant 24. A oes gwrthwynebiad? Mae'n ymddangos nad oes. Dyma— Therefore, we move to dispose of amendment 24 in the name of the Minister, as we have dealt with it. The question is that amendment 24 be agreed to. Does any Member object? It appears not. This—

[219] **Llyr Gruffydd:** Gadeirydd, rwy'n dymuno ymatal. **Llyr Gruffydd:** Chair, I wish to abstain.

[220] **Yr Arglwydd Elis-Thomas:** Mae'n ddrwg gennyf—roeddech bach yn *slow*. Gofynnaf eto, felly. Y cwestiwn yw y dylid derbyn gwelliant 24. A oes gwrthwynebiad? Oes, felly galwaf bleidlais drwy ddangos dwylo ar welliant 24. **Lord Elis-Thomas:** I am sorry—you were a little slow there. I will ask again, then. The question is that amendment 24 be agreed to. Does any Member object? There is objection, therefore I call a vote by a show of hands on amendment 24.

11:45

Gwelliant 24: O blaid 6, Ymatal 3, Yn erbyn 0.

Amendment 24: For 6, Abstain 3, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Antoniw, Mick
James, Julie
Morgan, Julie
Parrott, Eluned
Price, Gwyn R.
Watson, Joyce

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Davies, Paul
Gruffydd, Llyr
Sandbach, Antoinette

Derbyniwyd gwelliant 24.
Amendment 24 agreed.

[221] **Yr Arglwydd Elis-Thomas:** Rydym bellach wedi gwaredu'r holl welliannau, a bernir bod pob adran o'r Bil a phob Atodlen wedi ei derbyn gan y pwyllgor. O dan Rheol Sefydlog 26.27, rwyf yn cynnig bod y Gweinidog yn paratoi memorandwm esboniadol wedi'i ddiwygio, gan fod y Bil wedi cael ei ddiwygio'n sylweddol iawn o ganlyniad i drafodion heddiw. A yw'r Aelodau yn cytuno? Gwelaf eich bod.

Lord Elis-Thomas: We have now disposed of all of the amendments, and all sections of and Schedules to the Bill have been deemed agreed by the committee. Under Standing Order 26.27, I propose that the Minister prepares a revised explanatory memorandum, as the Bill has been very substantially amended as a result of today's proceedings. Do Members agree? I see that you do.

[222] Gan fod Cyfnod 2 wedi ei gwblhau heddiw, bydd Cyfnod 3 yn dechrau yfory. Bydd yr Aelodau yn gallu cyflwyno gwelliannau i'r Bil drwy'r swyddfa ddeddfwriaeth i'w hystyried yng Nghyfnod 3. Hysbysir yr Aelodau ynghylch yr amserlenni cyflwyno maes o law. Diolch yn fawr i chi am eich cydweithrediad.

As Stage 2 has been completed today, Stage 3 begins tomorrow. Members will be able to table amendments to the Bill with the legislation office for consideration at Stage 3. Members will be informed of the tabling deadlines in due course. Thank you all very much for your co-operation.

[223] **Alun Davies:** Cyn i chi gau'r cyfarfod, a gaf i wneud cais am gopi cynnar o'r *transcript*? Rwyf yn ymwybodol fy mod wedi rhoi *undertakings* i'r pwyllgor, ac rwyf yn awyddus i fod mewn sefyllfa i weithredu'r addewidion yr wyf wedi eu rhoi i'r pwyllgor mor fuan â phosibl.

Alun Davies: Before you conclude the meeting, may I make a request for an early copy of the transcript? I know that I have given certain undertakings to the committee, and I would be eager to be in a position to act on those undertakings that I have given to the committee as soon as possible.

[224] **Yr Arglwydd Elis-Thomas:** Bydd y Cofnod wedi clywed cais y Gweinidog, ac yr wyf i fel Cadeirydd y pwyllgor, ac aelodau'r pwyllgor, yn cytuno â'r cais. Rwy'n gwybod bod Cofnod y Trafodion yn gweithio'n galed iawn yn y lle hwn—ni wnaaf ddweud yn galetach nag Aelodau a Gweinidogion—ond os oes modd i ni allu cael trawsgriafiad o'r trafodaethau, yna gorau po gyntaf. Fodd bynnag, rwy'n sicr bod swyddogion y Gweinidog yn cofio pa addewidion mae wedi eu gwneud yn ystod y trafodaethau.

Lord Elis-Thomas: The Record of Proceedings will have heard the Minister's request, and I as Chair, and committee members, agree with that request. I know that the Record of Proceedings works very hard in this place—I will not say that it works harder than Members and Ministers—but, if it were possible, we would be grateful to have a transcript of the proceedings as soon as possible. However, I am sure that the Minister's officials will recall what pledges he has made this morning.

[225] Diolch yn fawr i chi i gyd am eich cydweithrediad. Rwyf yn rhagweld na fydd Cyfnod 2 o graffu ar rai o'r Biliau y bydd gennych chi a Gweinidogion i ddod ger ein bron mor gyfforddus ag y mae'r profiad hwn wedi bod y bore yma, ond o leiaf roedd yn braf iawn cychwyn, fel petai, ar gefn ein ceffylau.

Thank you all very much for your co-operation. I anticipate that Stage 2 scrutiny of some of the Bills that you and other Ministers will bring before us will not be as comfortable as this experience has been this morning, but at least it was good to start on our high horse, as it were.

11:47

Papurau i'w Nodi **Papers to Note**

[226] **Yr Arglwydd Elis-Thomas:** Mae gennym gofnodion y cyfarfod ar 6 Tachwedd a llythyr gan y Gweinidog Tai ac Adfywio. Bydd y cyfarfod nesaf ar 20 Tachwedd, pryd y bydd Cyfoeth Naturiol Cymru yn trafod pwnc llif pŵer hydro. Diolch yn fawr iawn, a dyna ddiwedd y—. Julie, a hoffech chi ddweud rhywbeth?

Lord Elis-Thomas: We have the minutes of the meeting on 6 November, and a letter from the Minister for Housing and Regeneration. The next meeting will be on 20 November, when Natural Resources Wales will discuss the issue of hydro power flow. Thank you very much, and that concludes—. Julie, did you want to say something?

[227] **Julie James:** I just want to raise something on the letter from the Minister and on the issue of the letter that went to the Finance Committee. I was not present during the debate with the Minister that gave rise to that letter, and I received an e-mail that was one of 400 e-mails that I received on the day that I was supposed to look at the letter. I just want to draw to the committee's attention the number of e-mails that we get, and to ask for the clerks to make it very clear on the subject line of the e-mail if there is a very short deadline to be complied with. I also wanted to say that I was very unhappy indeed that that letter was leaked in draft to anyone at all, and I think that the committee should consider its procedures, given that that happened. We are very unhappy about the leak; this had been a committee of some trust and confidence before that.

[228] I also did not like the tone of the letter at all, and I felt that some of the communications from the clerking team had tonal difficulties. I am not going to say any more than that; it would be invidious to do so. However, I wanted to put that on record. I was not present, so I cannot comment on any of the substantive points in the letter. However, I really wanted to say on public record how very disappointed I was in the way that the rest of that was handled.

[229] **Lord Elis-Thomas:** As regards the leaking of the letter, I was approached by the media regarding the existence of a letter, which, obviously, it would know about, because this is a procedure that all committees adopt. I told it in no uncertain terms that, as far as I was concerned, our letter as a committee was to the Finance Committee, not to anyone else and, therefore, that the Finance Committee should have full sight of it. When it became one of its public papers, then, clearly, it would be available. However, it was obvious that there was discussion.

[230] All I would say about the content and tone was that there was a full discussion after the meeting with the Minister. We have since had a response from the Minister, which we have not been able to circulate yet, but it will be done today.

[231] **Mr Davidson:** It has been circulated.

[232] **Lord Elis-Thomas:** It has been circulated; okay, there we are. As regards the point about the workload and the question of response times, I agree entirely with you and we will try to facilitate that.

[233] **Julie Morgan:** We did have a discussion on this when we were in Builth Wells; so, there was the opportunity for some of us to put our views forward at that point. However, I do feel very concerned that, with the deadlines, which the Chair has recognised, we do need a different system in order to ensure that this does not happen again, where a letter was published, which a lot of us were unhappy about and would not have agreed to had we managed to fit into those very tight timescales. I would suggest that, if such a letter goes out again, it is not published until there is a response from everyone on the committee, or a response to say that they do not want to respond.

[234] **Lord Elis-Thomas:** The publication was not something that we did. I was under the impression that the letter had been agreed when it was sent to the Finance Committee. That is still my impression.

[235] **Mick Antoniw:** To endorse those points, the first that I actually heard about it—and I accept the point in terms of the timescales, and that sometimes these timescales are imposed on us from elsewhere, which is another issue—was when I was contacted by the media about it, which then draws attention. It just seems to me that, where there are letters of that importance and so on, they just have to come before the full committee. We have to make sure that we get that right, probably in the interest of the committee and the way that we operate.

[236] **Lord Elis-Thomas:** I would be concerned about that because I think that it is important that the principle of agreeing a draft electronically, when we have had a full discussion, enables us to work more effectively. However, I will consider all of those points.

[237] **Joyce Watson:** I was hugely unhappy with the content of the letter, and yet I did sit in the committee. I would have to concur with what others have said. I have sat on quite a few committees since I have been here. Normal practice and procedure actually highlight, in other committees, if there is a letter and there is an urgent reply. It is not usually tucked within the body of lots and lots of other papers. We do get, and we welcome, lots and lots of e-mails to our offices, but there is a management issue here, clearly. In my opinion, this could have been managed better. I put my hand up to having missed it, for the reasons that I have said. There is also the fact that I was actually on Assembly business elsewhere and had gone there that weekend. Like my colleagues, once I realised what the content of it was—and I have to say that that was through reading articles in the media, which did not please me at all—I then tried to make some representation, only to be told that that was too late.

[238] For the committee to go forward—and it has run extremely well on trust and respect—I think that we really seriously have to do something to make sure that this sort of issue, whatever it might be, does not happen again, and that all of the Members in the room, whoever they are, whichever party they belong to, and whatever view they want to express, feel that they have had the opportunity to do that. I think that that is what is wrong here at the moment, and that is why we are having this discussion: people do not feel that they had the opportunity to express the opinions that they wanted to. Also, the other huge issue that is missed in all of this is that reading things in the press before we have had a chance to agree them is not the way forward.

[239] **Lord Elis-Thomas:** In my view, that did not happen, do you see?

[240] **Joyce Watson:** It happened.

- [241] **Lord Elis-Thomas:** No, because it was agreed—
- [242] **Joyce Watson:** It was not agreed.
- [243] **Lord Elis-Thomas:** I want to protect the opportunity for things to be able to be agreed electronically, because, otherwise, that does introduce a serious—
- [244] **Julie James:** However, in terms of the timing, Chair, it appeared in the media before the deadline for us to respond, because that is how I know about it.
- [245] **Lord Elis-Thomas:** I was not aware—*[Interruption.]*
- [246] **Joyce Watson:** Yes, it did.
- [247] **Lord Elis-Thomas:** Excuse me, I was not aware of that.
- [248] **Julie James:** That is how we knew about it.
- [249] **Lord Elis-Thomas:** It would be inappropriate, or it might not be, I do not know—I will consider, anyway, whether there is any merit in trying to make further inquiries into how it was leaked. I call on Antoinette and then Llyr.
- [250] **Antoinette Sandbach:** I want to make sure that the record accurately reflects that, after the meeting with the Minister, we had been advised orally by the clerking staff that there was a very short timescale, that we would be getting an e-mail—
- [251] **Julie James:** However, I was not at the meeting.
- [252] **Antoinette Sandbach:** I accept that, but your colleagues were—
- [253] **Julie James:** But I was not—
- [254] **Lord Elis-Thomas:** Order. Please, let us not have an argument across the table.
- [255] **Antoinette Sandbach:** We were advised orally that there was a very short timescale, that we would be getting the letter on the Friday and that we would need to agree it by the Monday. That timetable was laid out before the committee left the room that day, following the discussion and after the Minister's evidence. Julie, I accept that you were not there, but you had colleagues who were there—
- [256] **Julie James:** But I was not there; I am a member of the committee and I am perfectly entitled to the same information as everybody else—
- [257] **Antoinette Sandbach:** May I finish my submission?
- [258] **Lord Elis-Thomas:** Please do.
- [259] **Antoinette Sandbach:** I also think that the tone and the content of the letter accurately reflected what happened in that meeting, and I was there, I did hear the evidence and a transcript is available for committee members who were not there to have a look at and see. But, in my mind—
- [260] **Julie James:** That is not the point that is being raised.
- [261] **Antoinette Sandbach:** All that I am saying, because I do feel that an issue has been

raised that some sort of notification needed to be given, is that, actually, as committee members, we were advised, before leaving the room—[*Interruption.*] The people who had turned up to the meeting were advised that we were on a very tight timescale, that we needed to reply by Monday and that the letter would be going out on the Friday.

[262] **Llyr Gruffydd:** Mae'n bwysig nodi y rhybuddiwyd pawb yn y cyfarfod. Felly, o ran y bobl a oedd yn bresennol, nid wyf yn meddwl bod rheswm yr wyf i wedi ei glywed sydd yn awgrymu na allent fod wedi ymateb. I'r Aelodau nad oedd yn bresennol, rwy'n meddwl bod gwrs yn y fan honno er mwyn sicrhau bod y rheini yn cael yr un wybodaeth, ac efallai mai mater o alwad ffôn i'r rhai sy'n absennol yn eu rhybuddio yw e. Nid wyf yn gwybod, ond mae hwnnw yn rhywbeth i'w ystyried. Mae gwendid, rwy'n meddwl, yn hynny o beth.

Llyr Gruffydd: It is important to note that everyone at the meeting was warned. So, in terms of those who were in attendance, I do not think that there is a reason that I have heard that suggests why they could not have responded in due time. For those Members who were absent, I think that there is a lesson to be learned in terms of ensuring that those people get the same information, and perhaps it is a matter of a phone call to those who are absent to give them a word of warning. I do not know, but that is something to be considered. There is a deficiency there.

[263] **Yr Arglwydd Elis-Thomas:** Mae'r llythyr hwn yn perthyn i gategori arbennig o lythyrau, oherwydd mae e'n llythyr sydd yn mynd i bwyllgor arall o'r Cynulliad, y Pwyllgor Cyllid, fel rhan o'r broses graffu ar y gyllideb. Felly, rwy'n awyddus i sicrhau bod hynny'n gallu digwydd yn effeithiol. Yn amlwg, nid yw wedi digwydd yn effeithiol yn yr achos hwn neu ni fyddem yn cael y drafodaeth hon. Felly, gwnaf i edrych ar hyn eto a dof yn ôl at y pwyllgor gydag adroddiad ar y sefyllfa.

Lord Elis-Thomas: This letter falls in a particular category of letter, because it is a letter to another committee of the Assembly, the Finance Committee, as part of the scrutiny of the budget. So, I am eager to ensure that that can happen effectively. Obviously, it has not happened effectively in this case, or we would not be having this discussion. So, I will review the situation and return to the committee with a report on it.

[264] A gaf i ddweud un peth arall? Fy mhrofiad i o bethau sydd yn cael eu rhyddhau i'r wasg yw mai gwleidyddion sydd fel arfer yn gyfrifol. Ni ddywedaf fwy. Nid wyf yn mynd i fynd o gwmpas pob un ohonoch yn unigol a gofyn, 'Ai ti wnaeth?' achos nid wyf yn credu y cyrhaeddwn unman. Fodd bynnag, dyna fy mhrofiad i.

May I make one further point? In my experience of things that are leaked to the press, it is usually politicians who are responsible. I will say no more. I am not going to go around and ask each of you individually whether you are responsible, because I do not think that we will get anywhere. However, that is my experience.

[265] Felly, down yn ôl gydag adroddiad i ymateb i'r pwyntiau sydd wedi cael eu codi, ac edrych hefyd i weld a oes modd i ni fflagio pethau i fyny mewn rhyw ffordd fwy amlwg, heb fod hynny yn tanselio'n hawydd i weithio'n effeithlon yn electronig ac yn gyflym ond yn deg.

So, we will return with a report to respond to the points that have been raised and we will also see whether we can flag things up in a more prominent way, without undermining our ability to work efficiently electronically and to do so swiftly, but in a manner that is fair to all.

[266] I cannot say any more than that in a public session.

[267] Dyna ddiwedd y cyfarfod.

That concludes the meeting.

*Daeth y cyfarfod i ben am 11:59.
The meeting ended at 11:59.*

