



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

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

**Dydd Mercher, 22 Chwefror 2012  
Wednesday, 22 February 2012**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal,  
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.  
In addition, an English translation of Welsh speeches is included.

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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Janet Finch-Saunders	Ceidwadwyr Cymreig Welsh Conservatives
Mike Hedges	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Gwyn R. Price	Llafur Labour
Kenneth Skates	Llafur Labour
Rhodri Glyn Thomas	Plaid Cymru The Party of Wales

**Eraill yn bresennol**  
**Others in attendance**

Louise Gibson	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Stephen Phipps	Y Tîm Moeseg a Rheoleiddio, Llywodraeth Cymru Ethics and Regulation Team, Welsh Government
Carl Sargeant	Y Gweinidog Llywodraeth Leol a Chymunedau Minister for Local Government and Communities

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

Bethan Davies	Clerc Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Leanne Hatcher	Dirprwy Glerc Deputy Clerk
Rhys Iorwerth	Ymchwilydd Researcher

*Dechreuodd y cyfarfod am 9.29 a.m.*  
*The meeting began at 9.29 a.m.*

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

[1] **Ann Jones:** Good morning, everyone, and welcome to the Communities, Equality and Local Government Committee. We have had apologies this morning from Bethan Jenkins and Joyce Watson, but we have not been notified of any substitutes. I remind Members to switch off their BlackBerrys, pagers and mobile phones, because they interfere with the broadcasting equipment. We operate through the medium of English and the medium of Welsh; channel 0 on the headsets provides the floor language, and channel 1 provides the

translation from Welsh into English. We are in a formal session, so Members do not need to touch their microphones. They will come on automatically for us, courtesy of the background staff. We are very grateful for the work that they do. We are not expecting a fire drill, so if the fire alarm operates, it is a genuine incident, and we will take our directions from the ushers. For your information, the fire assembly point is by the Pierhead building.

9.30 a.m.

**Bil Is-ddeddfau Llywodraeth Leol (Cymru): Sesiwn Dystiolaeth  
Local Government Byelaws (Wales) Bill: Evidence Session**

[2] **Ann Jones:** We move on now to the main item on the agenda, which is to continue taking evidence as part of our scrutiny of the Local Government Byelaws (Wales) Bill. We are still at Stage 1, and today is our final evidence session, which is why we have the Minister back with us.

[3] Minister, we are delighted to have you back with us, along with your officials. Could you introduce yourself and the officials for the record, please?

[4] **The Minister for Local Government and Communities (Carl Sargeant):** Good morning, Chair, and good morning to members of the committee. I am Carl Sargeant, the Minister for Local Government and Communities.

[5] **Mr Phipps:** I am Stephen Phipps, and I am the policy lead for the Bill.

[6] **Louise Gibson:** I am Louise Gibson, and I am the lead lawyer for the Bill.

[7] **Ann Jones:** Thank you very much. As I said, Minister, this is your second appearance and this is the committee's final evidence session. We have sets of questions to ask you, and you may find some of them to be repetitious, following your first visit on 12 January. If so, perhaps you would indicate that that is the case, and we would be happy to check the transcript. I do not want to prolong this evidence session. We need to get on with writing the report and move this legislation forward.

[8] I will ask the first question: why do the powers in this proposed legislation not extend to other authorities, such as national park authorities?

[9] **Carl Sargeant:** The Bill makes comparable provision to that in section 235 of the Local Government Act 1972. We have just transferred that across. It relates to good rule and government and applies to county borough councils and county councils. In terms of the broader provision, we believe that there are already provisions that are suitable for other organisations such as national park authorities. There are references to the Countryside and Rights of Way Act 2000, which facilitate this in terms of the preservation of their own areas.

[10] **Ann Jones:** Do you not feel that it is necessary to have national park authorities included on the face of the Bill?

[11] **Carl Sargeant:** No, we do not believe that it is necessary.

[12] **Gwyn R. Price:** Section 2(1) refers to the power of councils in Wales to make byelaws for (a) good rule and government, and (b) the prevention of nuisances. Is it the case that both of these conditions must be met, or is it a case of either/or? Should the Bill be made any clearer in this respect?

[13] **Carl Sargeant:** ‘Either/or’ is the answer. These are not conditions in the Bill, but the answer is ‘either/or’.

[14] **Ann Jones:** I believe that Mike wants to come in, before Gwyn continues.

[15] **Mike Hedges:** In your letter regarding the Local Government Byelaws (Wales) Bill, you said that:

[16] ‘it would be at the discretion of the local authority as to whether they wish to delegate the functions relating to byelaws to a committee to deal with each part of the byelaw process.’

[17] My understanding of the Local Government Act 1972 is that councils can have only overview, scrutiny, staffing and regulatory committees. What type of committee do you envisage looking at the draft bye-laws?

[18] **Carl Sargeant:** I do not have a view as to which committee this function should be delegated. It is for the local authority to designate. Perhaps I do not understand the question.

[19] **Mike Hedges:** I will submit the question to you in writing. The point that I am trying to make is that there are only four types of committees. Staffing committees would obviously not be suitable, and most local authorities have combined overview and scrutiny committees, with most of the overview and scrutiny taking place after decisions have been made rather than prior to them being made. Regulatory committees tend to deal with regulatory matters. So, I am not sure which of those four types of committees would look at this process in the in-between period. However, I will put my question in writing to you.

[20] **Carl Sargeant:** Chair, I would be happy to receive the question from the Member, but I would say that local authorities operate on very different levels across Wales, and I would not want to articulate today my preference for which type of committee should deal with this.

[21] **Mike Hedges:** I just wondered which ones could deal with it.

[22] **Ann Jones:** We could perhaps look at that issue in our reporting mechanism. It may be that we as a committee will ask the Minister to issue some guidance on this. As the Minister says, each of the 22 local authorities works totally differently, and it is their right to do so as local authorities.

[23] **Carl Sargeant:** I think that the Member recognises some of the issues around that himself, in terms of identifying the correct committee. However, I believe that it would really be a matter for the local authority.

[24] **Ann Jones:** Okay. Gwyn, would you like to carry on?

[25] **Gwyn R. Price:** Yes. Section 5(1) permits Welsh Ministers to revoke a bye-law that they think is obsolete. Why was the word ‘think’ chosen rather than something more certain such as ‘conclude’?

[26] **Carl Sargeant:** I think that that is purely a drafting issue. If the committee believes that there is a better word, I would be happy to consider it, though I am sure that we would come back and discuss that word as well. I think that ‘think’ is a reasonable word. *[Laughter.]* It is used in Welsh Measures and Acts. However, if the committee suggests another suitable word, I am not opposed to using another ‘think’-type word.

[27] **Ann Jones:** We will get the lexicon out when we do the report.

- [28] **Rhodri Glyn Thomas:** The Minister could use ‘considers’.
- [29] **Ann Jones:** We will discuss this when we are doing our report.
- [30] **Gwyn R. Price:** I think that the Minister likes ‘think’.
- [31] Moving on, the Welsh Local Government Association told us that Welsh Ministers should be obliged to consult before exercising their power to revoke an obsolete bye-law under section 5. Why is there not a provision in section 5 that makes this a requirement?
- [32] **Carl Sargeant:** I believe that I told the committee in the previous meeting in which I gave evidence that section 5 is a fall-back provision, where the identification of a bye-law to be revoked is unclear. In terms of that proposal, the consultation process is very difficult, given that there are cases in which we do not know who the owner is in the first place. It has to fit into the section, which is why we framed that purely as a fall-back position.
- [33] **Ann Jones:** Are you happy with that, Gwyn? I see that you are. I will now bring in Ken.
- [34] **Kenneth Skates:** Minister, what would happen if a relevant legislating authority disagreed with a decision by Welsh Ministers to revoke a bye-law that they classed as ‘obsolete’?
- [35] **Carl Sargeant:** That happens now. We do not always agree on issues. Regarding your possible thoughts on this provision, I would go back to the point that this is a fall-back position. It would not be for me to go seeking bye-laws to revoke; it would be a case of a bye-law being presented by an authority that was unable to deal with it. A Welsh Minister would then have to deal with it. It would be odd for an authority to come to me with a contentious bye-law that it does not want to get rid of, and for me to then get rid of it. However, I can see the potential for tensions with other authorities or units. That happens now. Procedurally, this is about being presented with a bye-law for revoking purposes by an authority that cannot revoke it by itself.
- [36] **Kenneth Skates:** Okay, thank you. Under section 6, one local authority said that it valued the Welsh Ministers’ role in confirming new bye-laws and that it was concerned that this will not be a requirement any more. How would you respond to those concerns?
- [37] **Carl Sargeant:** I would be more concerned if it was not just one authority that was raising this. In general, we have discovered that this Bill is relatively uncontroversial. While that authority’s opinion is valid, I would suggest that there is probably more supporting evidence to suggest that Ministers’ intervention was not at the appropriate level.
- [38] **Kenneth Skates:** Finally, the North Wales Association of Town and Larger Community Councils told us that some level of confirmation should still be needed when councils at town or community level were making bye-laws, to ensure their credibility. What are your views on this?
- [39] **Carl Sargeant:** I probably do not agree with that. My view is that the whole purpose of the Bill was to remove the function from Welsh Government Ministers, in terms of making determinations. The purpose was to push that function down to community councils and unitary authorities. I still believe that that is appropriate. Where appropriate, I believe that local determination is right.
- [40] **Mike Hedges:** I am very concerned about one thing: can community councils only

make bye-laws in their own areas of competence?

[41] **Carl Sargeant:** Yes.

[42] **Ann Jones:** Have you finished, Ken? I see that you have. I will now bring in Rhodri Glyn.

[43] **Rhodri Glyn Thomas:** Weinidog, yn dilyn ymlaen o gwestiwn Ken Skates, mae gen i gyfres o gwestiynau am y parciau cenedlaethol yng Nghymru. Awgrymodd y parciau yn eu tystiolaeth i ni y gallai'r Bil gynnwys darpariaethau a fyddai'n galluogi Gweinidogion Cymru i alw i mewn unrhyw is-ddeddfau dadleuol, fel sy'n digwydd yn naturiol yn y system gynllunio. Beth yw eich barn am hynny?

**Rhodri Glyn Thomas:** Minister, following on from Ken Skates's question, I have a series of questions about the national parks in Wales. In evidence to us, the parks suggested that the Bill could include provisions that would enable Welsh Ministers to call in any contentious bye-laws, as occurs naturally as part of the planning system. What are your thoughts on that?

[44] **Carl Sargeant:** Thank you for that question, Rhodri Glyn. We touched on that issue last time. I will give a similar response to the one I gave to Ken Skates's question earlier. The policy intention of the Bill was to deliver a procedure to make the creation and revocation of bye-laws easier, not for the inclusion of additional bye-laws and so on. The confirmation process would be simplified by the removal of a ministerial function at the appropriate level. We believe that we have presented that in the Bill.

[45] **Rhodri Glyn Thomas:** Os oes mater dadleuol yn y system gynllunio, sydd wedi'i datganoli i awdurdodau lleol ac i awdurdodau cynllunio yn benodol, mae modd galw hwnnw i mewn. Serch hynny, nid oes unrhyw ddarpariaeth yn y Bil ar gyfer galw i mewn unrhyw beth a allai fod yn ddadleuol.

**Rhodri Glyn Thomas:** If there is a contentious issue within the planning system, which is devolved to local authorities and planning authorities in particular, that can be called in. However, the Bill does not contain any provision for calling in something that might be contentious.

[46] **Carl Sargeant:** As you will be aware, in the procedure, there are areas relating to the national parks that remain subject to confirmation by Welsh Ministers. We have tried to balance the elements of national or major significance, such as national parks and areas of special scientific interest that still require ministerial confirmation, with the bye-laws created locally by town and community councils and local authorities, on which they have their own local determination. We think that we have struck the balance between instances when ministerial confirmation is required and when it is not. However, you may have a view on that.

[47] **Rhodri Glyn Thomas:** Weinidog, yn y Bil, yr unig bŵer sy'n cael ei roi i barciau cenedlaethol yw'r pŵer i ddirymu is-ddeddfau sydd eisoes yn bodoli. Pa bwerau eraill sydd gan barciau cenedlaethol y gellid bod wedi'u cynnwys yn y Bil? Os oes pwerau eraill, pam nad ydych wedi'u cynnwys?

**Rhodri Glyn Thomas:** Minister, in the Bill, the only power given to national parks is the power to revoke bye-laws that already exist. What other powers do the national parks have that could have been included in the Bill? If there are other powers, why have you not included them?

[48] **Carl Sargeant:** That is a similar sort of question. The nature of the Bill was to provide a package for the creation and revocation of bye-laws, subject to an authority making or deciding to revoke a bye-law. Where the national parks create a bye-law, they use the same procedure to revoke it. The conditions are the same. If one is created, it is just a reversal of the process to revoke it. The Bill was never intended to bring in bye-laws. It was a case of

moving on from that position. Chair, I have said in previous evidence that this is not a consolidation Bill for the raft of bye-laws out there; it is about simplifying the procedures for making or revoking bye-laws for the appropriate authorities—including national parks.

[49] **Rhodri Glyn Thomas:** Credaf mai'r hyn oedd gan y parciau cenedlaethol dan sylw oedd Deddf Mynediad i Gefn Gwlad 1949 a Deddf Cefn Gwlad a Hawliau Tramwy 2000. O dan y Deddfau hynny, mae gan y parciau cenedlaethol hawl i greu is-ddeddfau, ond ddim ond gyda chaniatâd y Gweinidog. Pe baech wedi cynnwys hynny yn y Bil hwn, byddent yn rhydd i greu is-ddeddfau heb y caniatâd hwnnw, yn enwedig o gofio eich bod yn rhoi'r hawl honno i gynghorau cymuned a thref drwy Gymru.

**Rhodri Glyn Thomas:** I think that what the national parks had in mind was the Access to the Countryside Act 1949 and the Countryside and Rights of Way Act 2000. Under those Acts, the national parks had a right to create bye-laws, but only with the confirmation of the Minister. Had you included that in this Bill, they would have been free to create bye-laws without that confirmation, particularly as you afford that right to community and town councils throughout Wales.

9.45 a.m.

[50] **Carl Sargeant:** To reiterate the point I made earlier, the issue of the creation of bye-laws for national parks is procedurally the same now, with ministerial confirmation. If they wish to create a bye-law, they can, and if they wish to revoke a bye-law, they can. What I said was that this was not about consolidation and bringing old bye-laws into this process; there are other procedures for that. This is about the creation of new bye-laws, and the removal of old ones, subject to an authority wishing to do that.

[51] **Rhodri Glyn Thomas:** However, because national parks are not included in the Bill, they are not able to do that. I thought that the whole rationale of what you are telling us was that you wanted to devolve that power and did not want ministerial interference in the process; yet you have retained that power in terms of the national parks.

[52] **Carl Sargeant:** I will refer you to Steve on the technical element of this.

[53] **Mr Phipps:** These are the powers that the Minister decided should not at this point be subject to the alternative procedure, but the Bill does provide Ministers with the power to add these to the alternative procedure at a later date if they think that that is appropriate.

[54] **Rhodri Glyn Thomas:** I am just not clear why you have not done it at this point. What is the rationale behind it? What is the reason?

[55] **Carl Sargeant:** As I said earlier, this was not about consolidation; it was about the opportunity to create new bye-laws. That is the primary purpose of this process, as opposed to the consolidation of old bye-laws and old rules.

[56] **Rhodri Glyn Thomas:** I am still lost in terms of the consistency of that, but I will leave it there.

[57] **Ann Jones:** Minister, the WLGA has told us that it would be beneficial to include on the face of the Bill the rationale behind the powers in section 5. It says that that rationale is explained in paragraph 17 of annex 1 to the explanatory memorandum. Should it be on the face of the Bill?

[58] **Carl Sargeant:** It is that fine balance of detail, Chair, in terms of what should be on the face of the Bill and what should be in the regulations or guidance. We believe that we have got that right, but again, if the committee believes that there are elements that should be

considered or changed, then of course I am happy to consider that.

[59] **Ann Jones:** Sorry, Peter—I jumped in there, when you were down to speak next.

[60] **Peter Black:** I just wanted to follow up on the national park question if I may, Minister. Would your attitude towards national parks be different if they were directly elected and therefore directly accountable to the people they are making bye-laws for?

[61] **Carl Sargeant:** That goes beyond the scope of this Bill, but it is an interesting question.

[62] **Ann Jones:** There might be an interesting paragraph on that somewhere. Minister, we have heard from some local authorities that it would be helpful if there was a list of bye-law-making provisions that do not fall within part 1 of your Schedule 1 to the Bill. When you were here previously, you told us that you thought that that was an onerous task; is that still the case?

[63] **Carl Sargeant:** That is still the case, but I do not believe that lists are the appropriate approach. Part 1 clearly shows what is in, and if it is not in, it is out. That is pretty obvious to me. What I do not want to do is create a list that is limited, so that things outside the list could not be added at the appropriate time.

[64] **Rhodri Glyn Thomas:** It sounds like the constitutional settlement for Wales.

[65] **Ann Jones:** We are not discussing that, thankfully.

[66] **Rhodri Glyn Thomas:** Not yet.

[67] **Ann Jones:** When you were here last, Minister, you were questioned on the scope for bye-laws, and we talked about dog fouling, for example—there is provision for such bye-laws within another piece of legislation. The North Wales Association of Town and Larger Community Councils made a strong plea for those to be included in part 1 of Schedule 1. Have they got that mixed up? Are you able to put parts of other Acts in your Act?

[68] **Carl Sargeant:** I will ask Steve to talk about the technical elements of adding or removing elements of part 1—he can explain that process for committee. However, in terms of the specifics of your question about dog fouling, litter, and so on, there is already statutory provision to deal with that. It would be foolish at best to create additional legislation covering the same process as the Clean Neighbourhoods and Environment Act 2005. The north Wales councils may wish to make reference to that in terms of the ability to deal with those issues now.

[69] **Ann Jones:** That is fine. The City and County of Swansea Council has asked us to ask you why the Swansea City Council (Tawe Barrage) Act 1986 has not been included in Part 1 of Schedule 1, when it makes reference to the Cardiff Bay Barrage Act 1993. I have purposely asked that question, because there are Members from Swansea here.

[70] **Carl Sargeant:** We did not know that it was there, Chair.

[71] **Ann Jones:** Right, okay. That is fine.

[72] **Carl Sargeant:** Also, on the basis that it has been raised with us, I will give consideration to where that should be. That helps to explain the point about the lists of bye-laws being endless. To consolidate them is a nightmare, but thank you for raising that one with me.



[73] **Ann Jones:** I will let Peter come in, because he is going to move on to his set of questions.

[74] **Peter Black:** I want to follow that up, because there are other Acts that have been brought in by local authorities, such as the West Glamorgan Act. I am not sure whether other local authorities have done similar things, but have you taken them into account when you looked at powers to make bye-laws?

[75] **Carl Sargeant:** As I have said previously, we looked at the scope of bye-laws that we are aware of. Louise may be able to reference some of the bye-laws, which go back to the 1800s. There are reams of bye-laws.

[76] **Peter Black:** I think that the West Glamorgan Act was from the 1980s.

[77] **Carl Sargeant:** With respect, that is a little bit more recent. [*Laughter.*] Nonetheless, it is a minefield out there; there are an awful lot of bye-laws. That is why I said that consolidating this would have made it a completely different Bill. I could guarantee you that we would have missed bye-laws. That is why lists are not appropriate. The process of looking back is probably not appropriate either, and where it is evidenced that they are significant and we recognise them, we will deal with them appropriately. The one that you raised will be among them, Chair.

[78] **Peter Black:** I raised my example because it gives the local authority powers over Swansea Airport, for example, and the area of outstanding natural beauty and stuff like that. It might have powers in there to make bye-laws, so I am sure that you will do that.

[79] What are your views on comments from the WLGA that, under section 6(5)(a), it would clarify matters if the Bill specified whether a local newspaper could include a local authority's own newsletter or newspaper?

[80] **Carl Sargeant:** My opinion is mixed on this. We have to be reasonable in the guidance that we put forward. I know that you always question me on what 'reasonable' is. The issue for me is how we can maximise the advertising and the ability to consult through whatever media. You will be aware that, in a separate guise, there is a consultation going on with regard to the media and road traffic orders at the moment. Hopefully, I will not compromise any decisions that I may need to make in the future.

[81] The issue is similar: it is about maximising the use of the media, whatever they are. That could be newspapers or local authority newsletters. I do have a view on local authority newsletters anyway, but that is perhaps another issue for another day. [*Laughter.*] The issue for me is that, in guidance, we will stipulate to maximise the process for enabling people to be consulted, be that through newspapers or local authorities' own newsletters.

[82] **Peter Black:** One town council told us that section 6(2)(b) should be enhanced to make explicit provision for town and community councils to be consulted when other legislating authorities make bye-laws that affect them. Would you consider amending this section to ensure that this is the case, or do you believe that the Bill already covers that?

[83] **Carl Sargeant:** It is about being able to demonstrate that consultation has taken place with the appropriate bodies. I would be somewhat surprised if a local authority or a body acting to create a bye-law did not consult the significant parties that would be affected by it. That could seriously compromise the bye-law in any case, if it could be demonstrated that that had not happened.

[84] **Peter Black:** If you have a situation in which a bye-law is consulted upon and a complaint is made that a significant body has been omitted, do you have powers to intervene in the matter?

[85] **Carl Sargeant:** No.

[86] **Peter Black:** How would that be broached?

[87] **Carl Sargeant:** It would probably be settled in court, Peter.

[88] **Peter Black:** Okay. One Voice Wales expressed concern that not all town and community councils have websites or principal officers, and that this will make it impossible for them to comply with the provisions in section 6 if they wish to introduce a bye-law. How would you respond to that?

[89] **Carl Sargeant:** As you are all aware, town and community councils vary in size. I recognise this, and I think that we can use guidance to deal with how we could make it feasible for a very small town or community council to make a bye-law. Such a council would have to seriously consider how it would consult with residents appropriately, and we will make reference to that in guidance. In support of that, I would be happy for small town councils to make bye-laws, should they feel that it is necessary to do so, but they could work in collaboration with the unitary authority to do that; I would hope that all unitary authorities would have websites and the ability to use the media to consult the public. There are ways around this, but I am happy to look at the guidance that we provide in terms of the issues raised by One Voice Wales.

[90] **Janet Finch-Saunders:** One Voice Wales was also concerned that the minimum notice period of a month for the intention to make a bye-law and to publish a draft bye-law was too short, as it could create difficulties for some town and community councils wishing to respond. Do you believe that the minimum notice period of a month is sufficient?

[91] **Carl Sargeant:** That period mirrors the requirements in the 1972 Act. Again, Chair, these are not just figures that we have dreamed up: these are standard figures. I do not support the argument that one month is the wrong timeline; it mirrors the 1972 Act.

[92] **Janet Finch-Saunders:** The concerns were more about if the consultation period was prior to a holiday, for example. A month is not a long period for consultation, given the scope and the different sizes of town and community councils, and even some county borough councils. That seems to be an overriding factor that came out during our evidence taking: it was felt that a month was not a long period.

[93] **Carl Sargeant:** If you want me to be controversial on the small issue of the month for consultation, I will say this: if we are making bye-laws appropriately, at a town and community council or unitary authority level, or whatever, we have to grow up and come into the twenty-first century. If that means us having an interim meeting in a two week cycle to comply with some of the regulations, so be it. This is not a new number; that is what authorities deal with now. The committee may have a view on lengthening that period. However, we believe that a month is appropriate, and authorities—be they town and community councils or local authorities—can call for special meetings in order to deal with these issues. We have to come into the twenty-first century.

[94] **Rhodri Glyn Thomas:** Y term sy'n cael ei ddefnyddio yw 'lleiafswm o fis'. Os cofiaf yn iawn, yn nhystiolaeth y parciau cenedlaethol, yr oeddynt yn sôn am leiafswm, **Rhodri Glyn Thomas:** The term used here is 'a minimum of a month'. If I remember correctly, when we received evidence from the national parks, they talked about a

ond gallai'r uchafswm fod hyd at chwe mis, yn eu barn nhw, pe bai is-ddeddfwriaeth a oedd yn arbennig o ddadleuol yn dod gerbron. Ai dyna yw'r realiti? Nid wyf yn gwbl glir ynglŷn â hynny. Fodd bynnag, dyna oedd dehongliad y parciau cenedlaethol.

minimum period, but the maximum period could be up to six months, in their opinion, if an especially contentious bye-law was laid. Is that the reality? I am not completely clear about that. That was the national parks' interpretation anyway.

[95] **Carl Sargeant:** I believe that to be correct: one month minimum and six month maximum.

[96] **Rhodri Glyn Thomas:** When you say that you believe it to be the case, is it the case or is it not the case?

[97] **Carl Sargeant:** Okay; do you want me to say that I think that that is right? *[Laughter.]*

[98] **Ann Jones:** Or that you consider it to be right.

[99] **Carl Sargeant:** I understand that to be correct. We will clarify that.

[100] **Rhodri Glyn Thomas:** I am not totally clear about that myself.

[101] **Mr Phipps:** The Bill provides that the authority must make a bye-law no later than six months from the day on which it gives formal notice of its intention to do so. So, six months as the absolute maximum is probably stretching it a bit, because there will be some administrative processes. However, the period is somewhere between at least a month and six months. It is a considerable period.

[102] **Ann Jones:** It may be a period of five months and 29 or 30 days.

[103] **Mike Hedges:** I accept that the Minister says that you can call special meetings and that you can come into the twenty-first century and so on, but it would make life a lot easier for community councils if it was a six-week period rather than a period of a month, because most of them have monthly meetings. That would be nice, and it would not have a great deal of effect on anyone else. I will not go to the wall over this, but would a six-week period not fit in with planning regulations?

10.00 a.m.

[104] **Carl Sargeant:** As I said, this is not new; it mirrors the 1972 Act, and we did not want to create something outside the scope of what councils are used to dealing with. If you tell me that there is a better way of doing this, then I will certainly listen, but I do not want to complicate the system with different dates or different times for different things; if there are standard processes, then I believe that they would be the appropriate way to do this.

[105] **Ann Jones:** We have heard what you have said, and we will look at the evidence that we have received as well. That will be part of our report. Janet, do you want to move on?

[106] **Janet Finch-Saunders:** You say in your paper that there are pros and cons to consultation before or after creating a draft bye-law. Can you explain why you have decided only to include a requirement to consult on that draft written statement, and not after the draft bye-law has been created? Did you decide that that was the best option?

[107] **Carl Sargeant:** There is a process for the creation of a bye-law that includes places for interested members to scrutinise the draft bye-law—when it is proposed it will be

deposited, and there will be a public inspection, so there are appropriate points at which it will be subject to public inspection and consideration through that process.

[108] **Janet Finch-Saunders:** Both a local authority and a community council told us that the removal of ministerial consent should only be allowed when authorities are using model bye-laws, and that confirmation should still be required when authorities deviate from those. Did you consider including such a provision in the Bill?

[109] **Carl Sargeant:** Yes we did, but again, the whole purpose of the Bill is not for me to prescribe to local authorities or town and community councils what they should and should not do in aspects of model bye-laws. These are to be determined locally. These are local issues around what is happening in Swansea, or Aberconwy, or wherever. The issue therefore has to be determined by the appropriate legislating authority, and while we are more than happy to provide guidance and support around model bye-laws, they are already in existence in England and Wales, and we are working to provide more support for them. The members who are making these decisions have to be able to administer them, and have the authority to do that, without ministerial intervention.

[110] **Mike Hedges:** Can you explain why the powers of seizure in section 11 only apply to bye-laws made under section 2 of the Bill and not bye-laws made under any other section of the Bill?

[111] **Carl Sargeant:** Again, we are recasting what is in the 1972 Act—we have just lifted and moved across the provisions on power of seizure. It can only be exercised by county and county borough councils in relation to section 2, but again, it is not new—we have just moved that across.

[112] **Mike Hedges:** That was just a point that someone raised with us, and we were passing it on to you.

[113] **Mark Isherwood:** Moving on to the creation of fixed penalty notices under section 5, and alternative enforcements for the types of bye-laws specified, how do you respond to concerns expressed by One Voice Wales and the North Wales Association of Town and Larger Community Councils that many of their members will not have the resources to put fixed penalty notice systems in place even if they wish to? Often they refer to not having an office, just having part-time clerks and so on.

[114] **Carl Sargeant:** I recognise that, and again, I work with One Voice Wales to strengthen support for town and community councils across Wales, recognising that there are still some small councils that would probably find it difficult. I raised the point earlier about how they could—and I would expect them to—start working in collaboration with their primary unitary authority, so that they could help with some of these issues that they may wish to deal with under a bye-law. This is not an easy one, because, again, recognising that some of the town and community councils are very small, nevertheless a bye-law may be equally important to them as to as a unitary authority. It is just the way that, procedurally, they would deal with that.

[115] **Mark Isherwood:** What do you understand the view of unitary authorities to be regarding that proposal? Are they content with the thought that this might happen?

[116] **Carl Sargeant:** I was cautious in what I just said to you because I do not want to place a burden on a unitary authority from a town or community council. What I believe should happen, in the spirit of collaboration—and I talk a lot about collaboration—is that, if a smaller council feels it does not have the capacity to deal with this internally, the first port of call should be the unitary authority to discuss exactly how it could do that. We are seeing that

happen in other areas, with charters already in place, so that town and community councils and unitary authorities can work together. So, this would not be unique. It creates an opportunity for the smaller councils to work within this structure.

[117] **Mark Isherwood:** Subject to local relationships.

[118] **Carl Sargeant:** Of course.

[119] **Mark Isherwood:** Turning to the national parks again, they are concerned that the powers to issue fixed penalty notices will not apply to them because they are not included in part 2 of Schedule 1. Why did you decide not to include them? Would you consider amending part 2 of Schedule 1 to do so?

[120] **Carl Sargeant:** The issue with national parks—the whole reason for excluding them from this process—was that we recognised their significance and the controversy that surrounds them. I mentioned earlier that there are already provisions for them to deal with issues relating to national parks. However, I am not minded to change my view on this. Again, with regard to enforcement and so on, procedurally, this would go through the courts. Therefore, as we have seen recently with people parking on the top of mountains and so on, it raises a great deal of concern and attracts a lot of media attention—and quite rightly—on the dangers of the inappropriate use of vehicles and so on in areas of outstanding natural beauty. My view is that the national parks are special and that we have to deal with them in a special way; that is why I have not enabled that power. The courts will deal with that appropriately.

[121] **Mark Isherwood:** How do you respond to the question asked by one local authority about why the power to issue fixed-penalty notices applies only to those bye-laws listed in part 2 of Schedule 1 and not all bye-laws?

[122] **Carl Sargeant:** Again, it is just a balance that we believe is appropriate with regard to which bye-laws attract a fixed penalty. That is an opinion that has been formed rather than a technical decision.

[123] **Mark Isherwood:** Okay. We will move on to the issue of default fixed penalties, as specified in section 13(2) and the power to amend the amount by Order in section 13(5). Would it not be more consistent and transparent to specify on the face of the Bill the range within which the fixed penalty must fall?

[124] **Carl Sargeant:** It is challenging to balance the detail to be set out in the regulations and on the face of the Bill. We believe that the ability to react quickly and to change easily the range of fixed-penalty notices is best dealt with by regulation rather than on the face of the Bill as the difficulty of changing it later is unthinkable.

[125] **Mark Isherwood:** All right. How do you respond to comments made by a local authority in evidence to us that section 14 could be strengthened in order to give local authority officers powers of arrest or detention if someone refuses to co-operate and provide a name and address? We heard that if the person concerned were to refuse to provide a name and address, the local authority would be left unable to enforce this.

[126] **Carl Sargeant:** I would be nervous about giving powers to local authorities similar to those of the police or CSOs. I do not support the thoughts of the authority that raised that with you. There are certainly processes for this and, if there was a difficulty in obtaining a name and address or something, there is also a 101 number that that person could ring to find the appropriate person to deal with it.

[127] **Mark Isherwood:** By ‘that person’, you mean the local authority officer?

[128] **Carl Sargeant:** What I am saying is that if the local authority is having difficulty in enforcing a bye-law because of a failure to give a name and address, for example, I am sure that the local authority would be able to contact the local constabulary, who may be able to help.

[129] **Mark Isherwood:** Should that be formalised?

[130] **Carl Sargeant:** I think it is now; you can ring 101 or 999, depending on the nature of the case.

[131] **Mark Isherwood:** I know that there is a memorandum of understanding between police forces and local authorities, but to ask a local authority officer in a matter such as this to ring 101 might be treated as a little casual.

[132] **Carl Sargeant:** I have not given that much consideration to this, procedurally, if I am being honest, but it would be something that I would be happy to look at, if that would be helpful.

[133] **Mark Isherwood:** Thank you.

[134] **Carl Sargeant:** I am not going to legislate for it, though. I will be very clear about that now.

[135] **Peter Black:** Will the local authority officer have similar powers to any other citizen of a citizen's arrest in these circumstances?

[136] **Carl Sargeant:** Any more powers than a citizen's—

[137] **Peter Black:** No, the same powers as a normal citizen in terms of making a citizen's arrest if they came across a breach in this way.

[138] **Carl Sargeant:** I am not a legal expert on this and Louise may or may not be a specialist in this area, but I cannot see why someone working for a local authority, enacting this, would have any less power than an ordinary citizen to make a citizen's arrest.

[139] **Ms Gibson:** It is something that we can look into. The Bill provides for an accredited person who is specified by the local authority, or a CSO, to enforce. They would be the individuals who would responsible for that.

[140] **Peter Black:** So, if an ordinary citizen can decide to perform a citizen's arrest and detain someone until a police officer comes, a local authority officer could do similar things? I am trying to be helpful here.

[141] **Ms Gibson:** You are.

[142] **Carl Sargeant:** I am trying not to think about this actually happening in real life. I am not sure that this is in the scope of the Bill in terms of who can make a citizen's arrest on a hillside, for whatever reason, but I am sure that we could send the committee a note about some of the questions that you have raised.

[143] **Mike Hedges:** If there is no change, the situation will not be any different to what it is now, will it?

[144] **Carl Sargeant:** No.

[145] **Rhodri Glyn Thomas:** Cyn symud i'r cwestiwn oedd gen i, yng nghyd-destun yr hyn yr oedd Peter Black yn ei holi, roedd rhaglen 'Week In Week Out' ar y BBC neithiwr yn dangos swyddog sy'n cael ei chyflogi gan Gyngor Caerdydd i geisio rheoli ceffylau gwyllt. Cafodd hi ei hun mewn sefyllfa lle roedd hi'n ceisio cael enw a chyfeiriad rhywun oedd yn berchen ar geffyl, ac fe fethodd yn llwyr. Cerddodd y person hwnnw i ffwrdd heb i achos gael ei gymryd yn ei erbyn. Felly, mae hwn yn fater o bwys ac yn un sy'n haeddu ystyriaeth bellach, achos, o dan yr amodau sy'n cael eu gosod yn y Bil, gallai rhywun wrthod rhoi gwybodaeth a cherdded i ffwrdd, a heblaw bod yr heddlu'n digwydd cyrraedd mewn pryd, ni fyddai modd gweithredu'r is-ddeddf.

**Rhodri Glyn Thomas:** Before moving to the question that I was to ask, in the context of what Peter Black was asking, 'Week In Week Out' on the BBC last night showed an officer who is employed by Cardiff Council to try to control wild horses. She found herself in a situation where she was trying to get the name of address of a horse owner, but she failed. That person walked away without any case being brought against him. Therefore, this is an important matter, and one that deserves further consideration because, under the conditions being imposed by the Bill, someone could refuse to give information and walk away, and unless the police happen to arrive in time, the bye-law could not be implemented.

[146] Ond nid dyna oedd y cwestiwn oedd gennyf. Mae fy nghwestiwn yn ymwneud â swyddogion cymorth cymunedol yr heddlu. Mae pryderon wedi'u mynegi inni dan adran 17 fod pwerau'r swyddogion hyn yn amrywio o'r naill awdurdod i'r llall. A yw hynny yn eich poeni chi?

However, that was not my question. My question is about police community support officers. Concerns have been expressed to us under section 17 that these officers' powers vary from one authority to another. Does that concern you?

[147] **Carl Sargeant:** Yes, it does. I have raised this during my regular meetings with Wales's chief constables. I am not concerned about the variety of powers that they have. The chief constables have made it clear what they believe their CSOs should or should not be doing. What concerns me is the complexity of there being the same or similar bye-laws in more than one authority, in an area that crosses a police boundary, and what would happen if the CSOs had different powers to enact them. I have asked the chief constables to look at the power of CSOs across Wales so that we can have some consistency.

10.15 a.m.

[148] I am not entirely sure that the powers that they have or do not have currently would have an impact on their ability to enforce a bye-law, because I do not think that that is the case, but there are other elements around traffic and other issues where that possibly may have an impact. The consistency issue is an issue for me as opposed to an issue in relation to the ability to enforce a bye-law, and I have raised that with the chief constable. However, I do not think that it would have an impact on the bye-laws that may or may not be created.

[149] **Rhodri Glyn Thomas:** O ran y Bil ei hun, mae pwynt wedi cael ei godi gyda ni gan Gymdeithas Llywodraeth Leol Cymru a dau awdurdod lleol ynglŷn ag a ddylid gosod ar wyneb y Bil p'un ai'r cyngor llawn neu'r weithrediaeth ddylai arfer y pwerau hyn. A oes gennyfch farn ar hynny?

**Rhodri Glyn Thomas:** In terms of the Bill itself, a point has been raised with us by the Welsh Local Government Association and two local authorities regarding whether it should be put on the face of the Bill whether the full council or the executive should exercise these powers. Do you have a view on that?

[150] **Carl Sargeant:** I think that a similar question was raised last time by Mike in terms

of the power of function. I am comfortable about the drafting of where this is placed and it not being on the face of the Bill. The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 is very clear about the process for councils to create, revoke, amend or re-enact bye-laws, and that is already in place. So, I do not believe that there is any confusion about this. We are comfortable with the question of whether it should be on the face of the Bill or in the regulations.

[151] **Rhodri Glyn Thomas:** Rwy'n meddwl bod y pwynt a gododd Mike yn gynharach yn ymwneud â pha bwyllgor o fewn y cyngor fyddai'n ystyried yr is-ddeddfwriaeth wrth iddi gael ei datblygu. Mae hwn yn gwestiwn gwahanol ynglŷn ag arfer pwerau. Heb roi hynny ar wyneb y Bil, a ydych yn poeni na fyddai angen mynd gerbron y cyngor llawn er mwyn arfer y pwerau hynny?

**Rhodri Glyn Thomas:** I think that the point that Mike raised earlier was to do with which committee within the council would consider the bye-law as it is developed. This is a different question about the exercise of powers. Without putting that on the face of the Bill, are you concerned that there would not be any need to go before the full council to exercise those powers?

[152] **Carl Sargeant:** I am sorry if I was not very clear; I think that this question was raised at the last meeting I attended. The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 provide that the power to make, amend, revoke and re-enact bye-laws is not a power for which an authority's executive is to be responsible. So, it is already very clear in that process.

[153] **Rhodri Glyn Thomas:** Yn olaf, rydych yn nodi yn eich papur y gallai'r Bil hwn greu sefyllfa lle byddai mwy o is-ddeddfau yn cael eu greu. A yw hynny'n bryder i chi o ran y ffaith y gallai greu problemau dirfawr?

**Rhodri Glyn Thomas:** Finally, you note in your paper that this Bill could create a situation where more bye-laws were created. Is that a concern for you in that it could create serious problems?

[154] **Carl Sargeant:** It is a 'How long is a piece of string?' question, really. I do not what the demand for this will be. We know that the demand for the creation of bye-laws has been quite low in the past. There are two schools of thought on this: one is that it is too complex to create bye-laws and the other is that bye-laws were not needed in the first place, or a bit of both. We hope that the creation of this Bill—I should add, Chair, that this is the first piece of Welsh legislation, which is very important—will make the procedures to make bye-laws easier for the authorities listed. I do not know whether people are going to make more bye-laws in the future just because the Bill is there. That will be something that we will have to test. Am I worried about it? No.

[155] **Ann Jones:** Finally, the WLGA told this committee that it is difficult to provide an exact figure for the potential financial impact of the proposed bye-law-making and enforcement procedures. However, it goes on to say that the estimations in your explanatory memorandum could be regarded as accurate and realistic, which is quite a first for the WLGA. Therefore, how do you respond to comments from local authorities that the additional requirement in the Bill for formal consultation might offset the time and cost savings achieved by removing the requirement for ministerial confirmation?

[156] **Carl Sargeant:** I probably do not agree with that. I could expand on that. I do not agree with that; I do not think that there is anything to support that evidence.

[157] **Ann Jones:** One Voice Wales also raised concerns about the cost of administering bye-laws. It is more concerned about the fact that the sector needs to address a capacity and training issue. Should you or the sector address that?



[158] **Carl Sargeant:** I would be happy to look at that. I meet One Voice Wales regularly and it always asks me for additional funding for training. [*Laughter.*] I make it clear that it has to demonstrate the training it is giving in order for me to fund it appropriately. I am keen to support local authorities and local government in doing their job properly. In another area, beyond bye-laws, we are exploring how we support councils with their training provisions for new councillors, and we will be rolling that out after May. If there is anything that we can do to help the situation, at minimal cost or no cost, then I am always keen to explore that.

[159] **Ann Jones:** Do Members have any other questions that we have not covered? I see that they do not. I thank you and your officials, Minister, for coming back to go over the evidence yet again. I am sure that you will consider seriously the recommendations that we make in our report. There were a couple of issues that you said you would send us a note on. I know that I cannot ask a Minister to provide that immediately, but could it be sent so that we can look at it in the deliberation of our findings to prepare the report? You will receive a copy of the transcript to check for accuracy. I thank you all for coming today.

*Daeth y cyfarfod i ben am 10.21 a.m.  
The meeting ended at 10.21 a.m.*