



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

**Y Pwyllgor Is-ddeddfwriaeth
The Subordinate Legislation Committee**

**Dydd Mawrth, 20 Ionawr 2009
Tuesday, 20 January 2009**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynnddi 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

Alun Davies	Llafur Labour
Mike German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Joyce Watson	Llafur Labour

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Bethan Davies	Clerc Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Joanest Jackson	Cynghorydd Cyfreithiol Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 8.44 a.m.
The meeting began at 8.44 a.m.

Ethol Cadeirydd
Election of Chair

[1] **Ms Davies:** Good morning and welcome to this meeting of the Subordinate Legislation Committee. In accordance with the decision in Plenary on 13 January 2008, the committee membership has changed. As Dr Dai Lloyd, who was the Chair of the committee, is no longer a member, in accordance with Standing Order No. 10.18, the committee must appoint a Chair. I ask for nominations, please.

[2] **Alun Davies:** I propose Janet Ryder.

[3] **Ms Davies:** Thank you very much. Are there any other nominations? I see that there are not. Janet Ryder will therefore chair the committee.

8.45 a.m.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest

[4] **Janet Ryder:** Thank you very much for the nomination. First of all, I thank Dai Lloyd, who did a very good job of chairing the committee for a number of years, for the work that he has put in. I also thank Eleanor Burnham for her contribution to the work of the committee. Her place will now be taken permanently by Mike German. I thank Dai and Eleanor for their work.

[5] I welcome Members, officials and members of the public to the meeting. In an emergency, the ushers will indicate the nearest safe exit. Headsets are available for translation and amplification of the sound. The ushers can explain if members of the public are unclear about how to operate them. I ask you to switch off all mobile phones and electronic devices. To hear the simultaneous interpretation, please use channel 1 on the headsets and, for amplification, use channel 0. We have not received any apologies.

8.46 a.m.

Offerynnau na fydd y Cynulliad yn cael ei wahodd i roi sylw arbennig iddynt o dan Reol Sefydlog Rhif 15.2, ac Offerynnau sy'n agored i gael eu Dirymu yn unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
Instruments in respect of which the Assembly is not invited to pay special attention under Standing Order No. 15.2, and Instruments subject to Annulment pursuant to a Resolution of the Assembly (the Negative Procedure)

[6] **Janet Ryder:** Joanest has been looking at SLC233, the Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008. Is there anything to report on that one?

[7] **Ms Jackson:** I have nothing to add.

[8] **Janet Ryder:** Is there anything on SLC234, the Transmissible Spongiform Encephalopathies (Wales) (Amendment) (No. 2) Regulations 2008?

[9] **Ms Jackson:** There is nothing to report. I just wish to note that these regulations amend those that we will be considering under the next item on the agenda.

8.47 a.m.

Offerynnau y bydd y Cynulliad yn cael ei wahodd i roi sylw arbennig iddynt o dan Reol Sefydlog Rhif 15.2, ac Offerynnau sy'n agored i gael eu Dirymu yn unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
Instruments in respect of which the Assembly is invited to pay special attention under Standing Order No. 15.2, and Instruments subject to Annulment Pursuant to a Resolution of the Assembly (the Negative Procedure)

[10] **Janet Ryder:** That brings us to item 3. Gwyn has to go to another committee and is asking whether Members would mind if we looked at SLC231, the Assembly Learning Grants and Loans (Higher Education) (Wales) (No. 2) Regulations 2008, first. If Members are happy with that, I ask Gwyn to comment on those regulations.

[11] **Mr Griffiths:** Mae'r rheoliadau hyn yn dilyn patrwm y rheoliadau sy'n ymwneud â grantiau a benthyciadau i fyfyrwyr y buoch yn edrych arnynt yr wythnos diwethaf. Unwaith eto, mae mân gamgymeriadau sy'n hanfodol eu cywiro, er enghraifft, dyddiad anghywir, croesgyfeiriadau sy'n wahanol yn y ddwy iaith ac, yn bwysicaf oll, ffigur anghywir, gan fod gwahaniaeth rhwng y ddau destun. Daeth y rheoliadau hyn i rym ar 9 Ionawr ac felly yr wyf yn argymhell y dylid eu diwygio i'w cywiro cyn gynted â phosibl.

Mr Griffiths: These regulations follow the same pattern as the regulations on student grants and loans that you were looking at last week. Once again, there are small mistakes but ones that are vital to correct, including the wrong date, different cross-references in the two languages and, most importantly, an incorrect figure as there are differences between the two texts. These regulations came into force on 9 January and, therefore, I recommend that they be amended to be corrected as soon as possible.

[12] **Janet Ryder:** This is a different set of regulations, but it relates to the issues that were raised last week. There seems to be a continual issue with inconsistencies occurring, particularly in regulations to do with grants. I think that we can all appreciate how important it is that we get those regulations right. Would any Members like to comment on this?

[13] **Michael German:** Am I to presume that the same person always drafts education regulations or is the Welsh Assembly Government team just a mixed bunch of people who pick up the latest file that comes off the desk?

[14] **Mr Griffiths:** It is the same lawyer who has dealt with all of these regulations. However, I suspect that it is a systematic problem rather than a problem with the lawyer, who is a very experienced drafter.

[15] **Janet Ryder:** The instructions from the last committee meeting were that we should write to the Minister to draw her attention to the problems. As yet, that letter has not been written. Would the committee be content to allow Gwyn to look into this further and to bring a report to the next meeting of the committee, to see whether we can find out why these inconsistencies are happening before we take it any further and write to the Minister? Are committee members happy with that? I see that you are. Having said that, are committee members happy for these regulations to go through?

8.50 a.m.

[16] **Michael German:** I am not happy about that.

[17] **Janet Ryder:** Well, we will note the issues that have been raised.

[18] **Michael German:** The matter might end up in court, if someone were to challenge these.

[19] **Janet Ryder:** Are you not happy for us to proceed?

[20] **Michael German:** I am content, but not happy.

[21] **Janet Ryder:** Okay, so you are content for them to be approved. Thank you, Gwyn. Let us move on to Joaneest and the next item of legislation, SLC230. Members may recall that our consideration of SLC230, the Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, was deferred from the previous meeting.

[22] **Ms Jackson:** I asked that these regulations be deferred at the previous meeting as I understood that the Government was awaiting information from the Department for Environment, Food and Rural Affairs before providing its response to the reporting points raised. The response has been received, and I understand that it relates to the timing of an instrument that will further amend these regulations as they relate to sheep's and goats' milk. You will see that the Government, in its response to the regulations, proposes to correct the errors identified in this amending instrument, which it expects to make in June.

[23] As regards the two reporting points relating to Schedules 3 and 6 to the 2008 regulations, we can probably live with them. However, you will note that one of the reporting points relates to an inconsistency between the English and the Welsh texts in regulation 15(1)(c), which specifies that notices may be served on prescribed persons, requiring them to take the action specified in the notice. The English text of the regulations refers to the 'provider' or 'supplier' of animal feedstuffs and so on, while the Welsh text omits the reference to 'supplier'. The slight complication is that a breach of, or failure to comply with,

this notice is an offence. Should the need arise to take action against a supplier, such a supplier could well be within their rights to complain about the validity of the regulation and to claim that it is uncertain whether the provision applies to them or not, because the English and Welsh texts of the regulations that we are relying on are not consistent. My advice is to respond to the Government on this point saying that you are not happy with the proposed course of action on this particular point, given that it can affect an offence, and that you request that it be corrected as soon as possible.

[24] **Joyce Watson:** I agree. When I read it, I could not believe that there was such a difference. It is a hugely important difference, because it offers a get-out clause. This brings us back to the matter that we just discussed: how are these inconsistencies happening? In this case, there could be serious consequences for us further down the line. There is the wider issue that has to be taken on board, and then there is the specific issue in this case. We must have consistency. There are two points to make. First, we have to get this right, and, secondly, we have to know why this is frequently going wrong, if that is the case.

[25] **Michael German:** I agree with those comments, but I have a question about the procedure. When this committee lays a report, it is never debated by the Assembly. Is that now the process by which things happen, in that a report sits on a metaphorical table, or is there a way of ensuring a debate on matters that could lead to a potentially serious breach? I am not saying that this is necessarily a potentially serious breach, but the National Assembly could be liable given that it passes these regulations, and the matter could well end up in court because of an inconsistency that has not been corrected. Can someone advise me on the procedure?

[26] **Janet Ryder:** Is there any way by which we can schedule a debate in Plenary on this matter to draw attention to the drafting issue, which could be quite serious?

[27] **Mr Griffiths:** We try to bring reports to the committee as soon as possible after we receive the draft legislation, and so I suppose that the ultimate response would be for the committee, or the Chair on behalf of the committee, to table a motion to annul regulations, on the basis that the drafting issues are so seriously defective that they should not remain on the statute book. That is the ultimate response, of course.

[28] **Michael German:** Is there anything in between, such as laying the report and tabling a motion for debate on the report so that we could have a discussion about the inconsistency between the languages?

[29] **Mr Griffiths:** Yes, you could consider that.

[30] **Janet Ryder:** Does this committee not produce an annual report, Olga?

[31] **Ms Lewis:** We lay a report with the Table Office after each meeting if we are considering legislation that goes before Plenary.

[32] **Janet Ryder:** So, we could lay a report highlighting this inconsistency, but it would not necessarily lead to a debate in Plenary, would it?

[33] **Ms Lewis:** That is absolutely right.

[34] **Mr Griffiths:** You could ask for a debate.

[35] **Janet Ryder:** Does the committee feel that this is significant enough to warrant asking for time in Plenary to debate it?

[36] **Michael German:** The important point is that this is a principle about inconsistency between two languages. Has this happened frequently or just on this occasion?

[37] **Alun Davies:** We discussed this issue some months ago and, as a committee, we resolved that we would have a watching brief during the year, and that a report would be prepared in the summer considering a number of different issues that arose in various committees. If we are to accept the principle of having a bilingual legal system, both languages must work equally well. So, I assume that that is ongoing and that we will formally debate a report in the summer term that looks at the range of secondary legislation that has come before the committee during a 12-month period. We can then report to the Government and hold a debate in Plenary on the basis of a wide range of legislation and a wide range of experience. I would prefer to continue to follow that resolution so that we can sustain a debate that is far more wide-ranging than one that would be focusing on individual examples. That way, we can look at a much wider breadth of secondary legislation.

[38] **Mr Griffiths:** Standing Orders specifically provide for the committee to make a general report on issues of concern regarding legislation.

[39] **Janet Ryder:** We are dealing with two issues. The first is the issue of the regulations, which we will deal with first, and then we will come to how we will deal with the drafting matters and the inconsistencies between the two languages. Are Members content for the regulations to go through as they stand but that we write to the Minister drawing her attention to this inconsistency and asking for it to be corrected as soon as possible? I see that you are.

[40] That brings us to the more substantive issue about the inconsistencies arising in both languages. Are Members content for us to follow the path outlined by Alun, noting any inconsistencies until shortly after Easter or halfway through the half term after Easter, draw them together in a report, and ask for a more substantive debate in Plenary on the inconsistencies that the committee has detected?

[41] **Michael German:** If we are to do that, we should have a tally sheet with the number of times it has occurred, and what percentage of the total legislation is affected.

[42] **Janet Ryder:** We could ask the clerks for a running table as part of the papers that come up every week.

[43] **Michael German:** We could include any other inconsistencies that are a regular occurrence, such as the education—

[44] **Janet Ryder:** Yes, it might be an idea at that point to flag up the problems with the education grants as well, but we would want to look primarily at the issues arising from inconsistencies between languages in drafting and highlight any other reports. Are Members content with that? I see that you are. Thank you.

8.59 a.m.

**Unrhyw Fater Arall
Any Other Business**

[45] **Janet Ryder:** There is no other business.

Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting

[46] **Janet Ryder:** I inform Members that there will be no committee meeting next week. There is only one piece of legislation to look at, and there are no points to note about it. So, there will be no committee meeting next week, but, at our meeting the following week, we will start to look at the draft committee report on the future operational practices of the committee, based on the review that we have done.

9.00 a.m.

[47] **Joyce Watson:** We will not be here.

[48] **Janet Ryder:** Next week or the following week?

[49] **Michael German:** The week after next. We are going off together. [*Laughter.*]

[50] **Joyce Watson:** We will be in the same place.

[51] **Janet Ryder:** The draft committee report will be circulated to you before that. If you could let the committee clerk have any comments on that, we could then consider them, and you could arrange to send a substitute.

[52] **Michael German:** As long as Mark Isherwood is here, there should be enough Members for the committee to be quorate. Is that right?

[53] **Janet Ryder:** As long as we have three Members.

[54] **Michael German:** Yes, and one opposition Member.

[55] **Janet Ryder:** However, you could look for substitutes from within your group.

[56] I thank Members for their attendance and draw the meeting to a close.

Daeth y cyfarfod i ben am 9 a.m.
The meeting ended at 9 a.m.