



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

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

**Dydd Mawrth, 6 Mai 2008  
Tuesday, 6 May 2008**

**Cynnwys**  
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Procedural Motion

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg. Cyhoeddir fersiwn derfynol ymhen pum diwrnod gwaith.

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**

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Andrew R.T. Davies	Ceidwadwyr Cymreig Welsh Conservatives
Irene James	Llafur Labour
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

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

Mike Clancy	Pennaeth Tîm y Mesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru), Llywodraeth Cynulliad Cymru Head of Learner Travel (Wales) Measure Team, Welsh Assembly Government
Ieuan Wyn Jones	Dirprwy Brif Weinidog a Gweinidog dros yr Economi a Thrafnidiaeth Deputy First Minister and Minister for Economy and Transport
Keith Parsons	Tîm Mesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru), Llywodraeth Cynulliad Cymru Learner Travel (Wales) Measure Team, Welsh Assembly Government
Iwan Roberts	Uwch Gyfreithiwr, Tîm Addysg (Ysgolion), Llywodraeth Cynulliad Cymru Senior Lawyer, Education (Schools) Team, Welsh Assembly Government

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

Anna Daniel	Clerc Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Joanest Jackson	Cynghorydd Cyfreithiol Cynorthwyol Assistant Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk

*Dechreuodd y cyfarfod am 8.15 a.m.*  
*The meeting began at 8.15 a.m.*

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

[1] **David Lloyd:** Croeso i chi i gyd i **David Lloyd:** I welcome you all to the latest gyfarfod diweddaraf Pwyllgor Is-ddeddfwriaeth y Cynulliad. Croesawaf fy meeting of the Assembly's Subordinate Legislation Committee. I welcome my fellow

nghyd-Aelodau, swyddogion a'r cyhoedd sydd yn tyrru i mewn i'r oriel gyhoeddus wrth imi siarad. Os bydd argyfwng, bydd y tywyswyr yn eich arwain at yr allanfa agosaf. Gellir defnyddio'r clustffonau i dderbyn cyfieithiad ar y pryd ac i addasu lefel y sain, ac eto, gall y tywyswyr ddangos i'r cyhoedd sut i'w defnyddio. Mae cyfieithiad ar y pryd o Gymraeg i Saesneg ar gael ar sianel 1, a gellir clywed cyfraniadau yn yr iaith wreiddiol ar sianel 0. Mae'n rhaid diffodd ffonau symudol yn llwyr. Nid oes unrhyw ymddiheuriadau am absenoldeb; mae pawb yn bresennol.

Members, officials and members of the public who are pouring into the public gallery as we speak. If there is an emergency, the ushers will lead you to the nearest exit. Headsets are available for interpretation and amplification, and, again, the ushers can show the public how to operate them. Interpretation from Welsh to English is available on channel 1, and contributions in the language of the floor can be found on channel 0. All mobile phones must be completely switched off. No apologies for absence have been received; everyone is present.

8.16 a.m.

### **Craffu ar y Mesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru) Scrutiny of Proposed Learner Travel (Wales) Measure**

[2] **David Lloyd:** Croesawaf Ieuan Wyn Jones a'i dîm i'r pwyllgor. Ar 22 Ebrill, rhoddodd y pwyllgor ystyriaeth i'r Mesur arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru), a phenderfynodd aelodau'r pwyllgor i roi ystyriaeth bellach i ddarpariaethau is-ddeddfwriaeth y Mesur arfaethedig hwn. Cytunwyd i wahodd Dirprwy Brif Weinidog Cymru a'r Gweinidog dros yr Economi a Thrafnidiaeth, Ieuan Wyn Jones, i roi rhagor o wybodaeth a sylwadau am ddarpariaethau is-ddeddfwriaeth y Mesur hwn. Croesawaf Ieuan i'r pwyllgor ac yr wyf yn ei wahodd i gyflwyno ei swyddogion. Awn ymlaen wedyn at y cwestiynau sydd wedi'u paratoi.

**David Lloyd:** I welcome Ieuan Wyn Jones and his team to the committee. On 22 April, the committee considered the proposed Learner Travel (Wales) Measure, and committee members decided to give further consideration to the subordinate legislation provisions of the proposed Measure. It was agreed that we would invite the Deputy First Minister and Minister for the Economy and Transport, Ieuan Wyn Jones, to provide further information and comments on this Measure's subordinate legislation provisions. I welcome Ieuan to the committee and I invite him to introduce his officials. We will then proceed to the prepared questions.

[3] **Y Dirprwy Brif Weinidog:** Mewn 20 mlynedd, dyma'r cyfarfod cynharaf imi fod ynddo. Mae'n rhaid eich bod yn foregodwyr go arw yn eich pwyllgor, Mr Cadeirydd—

**The Deputy First Minister:** In 20 years, this is the earliest meeting that I have ever attended. You must be very early risers in your committee, Mr Chairman—

[4] **David Lloyd:** Yr ydym yn cymryd craffu o ddifrif.

**David Lloyd:** We take scrutiny seriously.

[5] **Y Dirprwy Brif Weinidog:** Mae hynny'n amlwg.

**The Deputy First Minister:** Evidently so.

[6] Ar fy chwith, mae Mike Clancy, ac ar fy ne mae Keith Parsons, sydd yn aelodau o'r tîm sy'n gweithio ar y Mesur. Mae Iwan Roberts yma hefyd i ateb y cwestiynau caled, fel yr wyf wedi'i ddweud wrtho, gan mai ef yw'r cyfreithiwr y bore yma. A ydych am i

On my left is Mike Clancy, and on my right is Keith Parsons, who are members of the team that is working on the Measure. Iwan Roberts is also here to answer the difficult questions, as I have told him, because he is the lawyer here today. Do you want me to

mi wneud rhyw sylwadau agoriadol, Mr Cadeirydd?

[7] **David Lloyd:** Cewch wneud rhai sylwadau byr, ac wedyn byddwn yn gofyn ein cwestiynau.

[8] **Y Dirprwy Brif Weinidog:** Croesawaf y cyfle i ddod yma i drafod gyda chi fel pwyllgor. Gobeithiaf eich bod wedi cael y llythyr a anfonais, gyda chymalau priodol o'r memorandwm esboniadol, yn ddefnyddiol. Mae gwybodaeth fanwl am yr hyn sy'n berthnasol o safbwynt is-ddeddfwriaeth yn y nodiadau hynny, ac yr wyf yn hapus i drafod gyda chi, os hoffech, sut yr ydym wedi mynd ati i gynnwys pethau yn y Mesur a beth, o safbwynt is-ddeddfwriaeth, yr ydym yn teimlo sydd yn briodol ei roi yn y rheoliadau a fydd yn dilyn. Fodd bynnag, gan fod rhai pethau na allwn eu gwneud yn y Mesur, fel oeddem yn ei drafod yn y ddadl yr wythnos ddiwethaf, dim ond canllawiau anstatudol allwn eu cyflwyno ar hyn o bryd. Felly, mae'n siŵr y byddwch am graffu ar y tri chategori hynny.

8.20 a.m.

[9] **David Lloyd:** Diolch am y cyflwyniad hwnnw. Symudwn yn syth at gwestiynau ac fe ofynnaf y cwestiwn cyntaf, fel Cadeirydd. Mae adran 2(1)(c) yn caniatáu Gweinidogion i ddynodi pa ddysgwyr eraill fydd yn destun y gofyniad hwn ar awdurdodau lleol i asesu eu hanghenion teithio. A oes gennych esiamplau penodol felly o grwpiau o ddysgwyr eraill a fyddai'n dod o dan y gofyniad hwn?

[10] **Y Dirprwy Brif Weinidog:** Oes. Yn y craffu a fu yn y pwyllgor—yr oedd y pwyllgor perthnasol wedi craffu arnom ar gynnwys y Mesur—yn ôl yr hyn yr wyf yn ei ddeall, yr oedd aelodau'r pwyllgor yn ystyried bod dau gategori yn briodol, sef plant oed meithrin, yr oed cyn ysgol, hynny yw plant o dan dair oed, ac, o bosibl, dysgwyr hŷn. Gofynnaf i fy swyddogion gadarnhau hyn, ond fy nealltwriaeth i o'r sefyllfa yw bod y Mesur yn caniatáu i ni ymestyn y categorïau heb fod angen Mesur newydd, ond yr hyn y gallwn ei wneud yw cynnwys rheoliadau o dan y weithdrefn gadarnhaol sy'n caniatáu trafodaeth yn y

make some opening remarks, Mr Chairman?

**David Lloyd:** You may make some brief comments, and then we will ask our questions.

**The Deputy First Minister:** I welcome the opportunity to come here to speak with you as a committee. I hope that you found the letter that I sent with the appropriate clauses of the explanatory memorandum useful. There is detailed information about what is relevant in terms of subordinate legislation in those notes, and I am happy to discuss with you, if you wish, how we have gone about including things in the Measure and what, in terms of subordinate legislation, we feel is appropriate to put in the subsequent regulations. However, as there are some things that we cannot do in the Measure, as we discussed in last week's debate, we can only introduce non-statutory guidelines at the moment. Therefore, I am sure that you will wish to scrutinise those three categories.

**David Lloyd:** Thank you for that introduction. We will move straight into questions, and I will ask the first, as Chair. Section 2(1)(c) allows Ministers to denote which other learners would be subject to this requirement on local authorities to assess their travel needs. Do you have specific examples of other groups of learners that would come under this requirement?

**The Deputy First Minister:** Yes. In the scrutiny that took place in committee—the relevant committee has scrutinised us on the content of the Measure—from my understanding, there were two categories that committee members considered appropriate, namely children of nursery, pre-school age, which is those under three years of age, and, possibly, older learners. I will ask my officials to confirm this, but my understanding of the situation is that the Measure allows us to extend the categories without requiring a new Measure, but what we can do is include regulations under the affirmative resolution, which allows

Cynulliad os bydd angen.

discussion in the Assembly if required.

[11] Is my understanding of that correct, Mike?

[12] **Mr Clancy:** Yes. I will just add to that, if I may. In relation to the duty to assess travel needs, a good example—as the Minister referred to someone older that we do not cover at the moment—would be a former looked-after child, because those people are the responsibility of the local authority up to the age of 25. There is no duty to assess their needs at the moment, but in future we may want to do that, so that is a good example of someone who is not currently covered but could be covered in the future under that power.

[13] **Irene James:** A part of my question has been answered, because I was going to mention the issue of pupils' age. Is giving Welsh Ministers the power to alter the eligibility for free or subsidised travel the most effective way of dealing with any changes—you have mentioned the age of pupils—in terms of travel distance? Should the Measure be amended with the possibility of future changes?

[14] **The Deputy First Minister:** Again, my understanding is that whether it is on the issue of age in terms of the categories of people that could be transported under these regulations or whether it is on distance, the Measure is sufficiently drafted to be able to amend those by regulation. The difficult question for any Government is to know exactly how narrow the Measure should be. If you draft the Measure sufficiently widely to allow you to add categories, it means that you only need to amend it by regulation, as the Measure is already in place. That means that it is only the regulations that need to be introduced, and not a new Measure, which, inherently, makes it much easier for the Government. The trade-off of that is that people might not consider the scrutiny of a regulation to be as full as the scrutiny of a Measure.

[15] **Andrew R.T. Davies:** I thank the Minister and the officials for coming along today. As someone who has children in various phases of education, I fully understand the difficulties of understanding the needs of those educational requirements. Nursery education and post-16 education is obviously completely different from primary education or secondary education. You propose to deal with these via regulations, but given that the regulations will transfer significant power to you as a Minister, is that the most appropriate way to deal with these complex issues? Would we have been better off including them in the original Measure so that they could have been scrutinised?

[16] **The Deputy First Minister:** In a sense, that touches on the trade-off that one has to consider. The question that any Government must ask is whether or not the Measure needs to include everything. In a sense, you could have a Measure that is twice as long to begin with. The trend in recent years has been that Acts of Parliament have become more like enabling pieces of legislation, and the actual detail that follows comes through the regulations or statutory instruments. I believe that, due to the way in which the Assembly currently scrutinises, whereby there is a committee to scrutinise even before the Measure is laid, a lot of the issues will have been aired quite considerably. My understanding is that the arrangements in relation to the older pupils are not particularly complex and, therefore, one could introduce those under regulations quite easily. I think that the one on nursery education is a little more complex and, because of its complexity, it would probably be better done by regulation because, otherwise, the Measure would have to be extremely technical in many areas. My feeling is that the trade off that we have done is probably about right; it is always a balance. Is my understanding correct that that would be done by way of an affirmative resolution?

[17] **Mr Clancy:** Yes, Minister.

[18] **The Deputy First Minister:** So, as it will be done by way of an affirmative resolution, it is likely that there will be sufficient time for the matter to be scrutinised.

[19] **Andrew R.T. Davies:** In the explanatory memorandum, you referred to impact studies and cost benefit analyses that your Government will commission. Can you summarise what sort of additional information will be gathered from these studies and explain how that will affect nursery and post-16 education that could be included in the Measure?

[20] **The Deputy First Minister:** I think that that is one that I am going to have to ask my officials to answer.

[21] **Mr Clancy:** Perhaps I could come in there, with your agreement, Chair. A good example would be post-16 education, because this is essentially a transport Measure, but we are driven by the education policy and the 14-19 learning pathways. In terms of the cost benefit studies that are to be done, you first have to look at the numbers that are going to be affected, because we are beyond the compulsory years if we are looking at post-16 education. So, you have to look at the take-up and at a much more diverse pattern of moving between educational and training establishments. Also, who should you put the duties on? This Measure very firmly puts the duty on local authorities. When you get to post-16 education, you are looking at FE institutions, workplace trainers and training providers, as well as the more traditional mainstream schools. So, we would need to look at the costs of those aspects and the benefits flowing from them. Quite a study needs to be undertaken and it would need to estimate the take-up, because it is different from compulsory schooling because, with that, you know the numbers that you are going to be dealing with.

[22] **Eleanor Burnham:** I am looking at section 16, information about travel arrangements.

[23] **Weinidog,** beth yw'r manteision o osod gofyniad ar awdurdodau lleol i gyhoeddi'r wybodaeth drwy reoliadau? Oni fyddai'n fwy priodol i sefydlu'r gofyniadau hynny drwy ganllawiau Llywodraeth y Cynulliad? **Minister,** what are the advantages of placing a requirement on local authorities to publish that information through regulations? Would it not be more appropriate to establish those requirements through Assembly Government guidelines?

[24] **Y Dirprwy Brif Weinidog:** Na. Teimlaf fod rheoliadau'n llawer mwy priodol os ydych yn rhoi dyletswydd statudol ar gyrff. Yn naturiol, mae nifer o ganllawiau hefyd y byddwn yn rhoi i awdurdodau lleol mewn meysydd penodol, gan gynnwys, wrth gwrs, y meysydd lle nad oes gennym unrhyw bwerau. Buaswn i'n meddwl bod rheoliadau'n fwy priodol yn y cyd-destun hwnnw. **The Deputy First Minister:** No. I feel that regulations are much more appropriate if you are placing a statutory duty on a body. Naturally, we will also give local authorities guidelines in specific fields, including, of course, the fields in which we have no powers. I would think that regulations are more appropriate in that context.

[25] **Eleanor Burnham:** Efallai eich bod wedi ateb y cwestiwn hwn yn gynharach wrth ateb cwestiwn y Cadeirydd. A allwch roi esiamplau o grwpiau eraill o ddysgwyr o fewn y Mesur? **Eleanor Burnham:** You may have answered this question earlier, in response to the question from the Chair. Can you give examples of other groups of learners in the Measure?

[26] **Y Dirprwy Brif Weinidog:** Credaf ein bod wedi edrych ar hynny yn eithaf gofalus. Hynny yw, mae gennych bobl o **The Deputy First Minister:** I think that we have looked at that quite closely. That is, you have people who used to be in care up until

oedd gynt mewn gofal tan iddynt gyrraedd 25 oed, fel dywedodd Mike, a phlant iau. Ni allaf feddwl am gategorïau eraill y buaswn am eu cynnwys. O ystyried y craffu a fu yn y pwyllgor cynharach, ni chredaf y cododd unrhyw grŵp oedran arall fel posibilrwydd.

the age of 25, as Mike said, and younger children. I cannot think of other categories that I would like to see included. Given the scrutiny in the earlier committee, I do not think that another age group was raised as a possibility.

8.30 a.m.

[27] **Eleanor Burnham:** Beth am bobl gydag anghenion addysg ychwanegol, nas cynhwyswyd yn y Gorchymyn cymhwysedd deddfwriaethol a drafodasom fisoedd yn ôl ar wella cyfleusterau i bobl gydag anghenion addysg bellach?

**Eleanor Burnham:** What about people with additional learning needs, who were not included in the LCO we discussed months ago on improving facilities for people with further educational needs?

[28] **Y Dirprwy Brif Weinidog:** Os deallaf yn iawn, mae rhyw drafodaethau wedi bod rhwng yr adrannau ar beth fedrwn ei gynnwys yn y Mesur hwn, a beth oedd yn briodol i gynnwys yn y Gorchymyn cymhwysedd deddfwriaethol blaenorol. Gofynnaf i Mike gyfeirio ato yn y fan hyn.

**The Deputy First Minister:** If I understand it correctly, there have been some discussions between departments on what we could include in this Measure, and what was appropriate to be included in the previous LCO. I will ask Mike to refer to it here.

[29] **Eleanor Burnham:** Yr wyf yn siarad am anghenion addysg ychwanegol, nid anghenion addysg bellach.

**Eleanor Burnham:** I am talking about additional learning needs, not further educational needs.

[30] **Y Dirprwy Brif Weinidog:** Fe'ch cyfeiriaf at adran 2(4)(b):

**The Deputy First Minister:** I refer you to section 2(4)(b):

[31] 'the duty to assess learner travel needs includes the needs of learners with learning difficulties'.

[32] That is included as a duty in the Measure.

[33] **Eleanor Burnham:** Y cwestiwn olaf yw: sut ydych yn diffinio 'ysgol addas agosaf'? Mae rhai rhieni'n cael trafferthion mewn rhai mannau—efallai nid yng Nghymru gymaint—i gael eu plant yn yr ysgol agosaf, a'r ysgol y maent yn ei dewis. Mae'r sefyllfa yn gymhleth y dyddiau yma. Nid yw mor syml â phan oeddech chi a fi'n mynd i'r ysgol; yr oeddem yn mynd i'r ysgol agosaf a dyna hynny. Sut mae'r rheoliadau hyn yn mynd i amharu ar neu wella'r manteision?

**Eleanor Burnham:** The final question is: how do you define the 'nearest suitable school'? Some parents are having difficulties in some places—perhaps not so much in Wales—in getting their children in the nearest school, and the school of their choice. The situation is complex these days; it is not as simple as when you and I went to school; we just went to the nearest school and that was that. How will these regulations worsen or improve the advantages?

[34] **Y Dirprwy Brif Weinidog:** Nid wyf yn siŵr a yw'n gwella'r manteision. Nid yw'n newid y patrwm hwnnw o fynediad i'r ysgol. Yr hyn y mae'r Mesur yn ei wneud yw cadarnhau mai'r ysgol mwyaf priodol yw'r

**The Deputy First Minister:** I am not sure that it improves the advantages. It does not change that pattern of school access. What the Measure does is confirm that the most suitable school is the school nearest to the



ysgol agosaf at y cartref. Yr unig eithriad—a hoffwn i'r cyfreithiwr fy nghynorthwyo fan hyn—yw petai disgybl yn methu â chael lle yn yr ysgol agosaf am ba reswm bynnag, a bod rhaid iddo fynd i ysgol sy'n bellach i ffwrdd. Byddai'r Mesur yn cwmpasu hynny. Fodd bynnag, nid wyf yn credu y byddai'n effeithio ar sefyllfa lle mae'r ysgol agosaf o fewn 4 milltir, dywedwn, ond bod y rhieni'n dewis anfon y plentyn at ysgol 20 milltir i ffwrdd.

[35] **Eleanor Burnham:** Beth am bobl sydd eisiau ysgol cyfrwng Cymraeg, sydd o bosibl yn bellach i ffwrdd na'r ysgol agosaf?

[36] **Y Dirprwy Brif Weinidog:** Yr ydym wedi ystyried hynny yn y Mesur. Mae cymal ychwanegol yn y Mesur, yn dilyn y trafodaethau yn y pwyllgor, sy'n dweud ei bod hi'n bwysig hefyd i'r awdurdod lleol asesu'r angen am addysg cyfrwng Cymraeg. Ein teimlad ni yw bod hynny'n ddigonol, gan fydd y patrwm presennol y mae awdurdodau lleol yn ei ddefnyddio yn sicrhau hynny.

[37] **David Lloyd:** Symudwn ymlaen yn awr at y defnydd o weithdrefnau cadarnhaol neu negyddol. Mae gan Alun gwestiwn.

[38] **Alun Davies:** Thank you very much, Chair, and thank you for your time this morning, Deputy First Minister. Through this Measure—and we have discussed this with other Ministers on other occasions—you differentiate clearly between the regulations that will be made under affirmative and negative procedures. You have listed in the Measure the regulations that are complex and important and require an affirmative procedure. Why is it, Minister, that you intend to deal with these matters by regulation rather than placing these issues on the face of the Measure?

[39] **The Deputy First Minister:** This is an issue of trade-off again. It is about how complex you want the Measure to be, or whether you would rather it be more of an enabling Measure, which allows you then to put the flesh on the bones through regulation. It seems to me that that has been the trend in legislation in recent years, namely that legislation tends to be enabling legislation and the detail comes through regulations. So, that is the trade-off, and we have decided that it is desirable to take a fairly broad-brush approach in the Measure. To be honest, it takes a lot more time and effort to introduce a Measure than to introduce regulations, and it is desirable in terms of its future progress. My feeling is that you want to ensure that the Measure gives you sufficient information as to what the Government intends to do, and then have regulations to back that up. The question then is whether there will be substantive changes that will require the affirmative resolution procedure rather than the negative resolution procedure. If there are substantive changes, such as in relation to post-16 learners, those would be done through affirmative resolution, and there will be plenty of opportunity to scrutinise them. Changes of a more technical nature will be done by means of the negative resolution procedure.

[40] **Alun Davies:** I hesitate to continue this line of questioning, given your legal

home. The only exception—and I would like the lawyer to assist me here—would be if a pupil fails to secure a place at the nearest school for whatever reason, and has to go to a school that is further away. The Measure would cover that. However, I do not believe that it would affect a situation in which, say, the nearest school is within 4 miles, but the parents choose to send the child to a school 20 miles away.

**Eleanor Burnham:** What about people who want a Welsh-medium school, which may be further away than the nearest school?

**The Deputy First Minister:** We have considered that in the Measure. There is an additional clause in the Measure, following the discussions that we had in the committee, which states that it is also important that the local authority assesses the need for Welsh-medium education. Our feeling is that that is sufficient, as the current pattern that local authorities use will ensure that.

**David Lloyd:** We will move on now to the use of affirmative or negative procedures. Alun has a question.

background, Minister. You are right that there is a trend towards having more enabling legislation in recent years. However, that trend has not been broadly welcomed by all sides on the political spectrum. Enabling legislation involves a transfer of power from the legislature to the Executive, and in terms of how we as a legislature maintain checks and balances on the Executive, it is quite important to enable the scrutiny of regulations where they address quite ‘substantive’ changes, to use your word, in relation to the Measure. It is important that we maintain an ability to scrutinise legislation, whether made by Ministers through regulations or done through the Measure. Do you think that, as we introduce Measures and legislation in Wales for the first time, it might be better to ensure that the balance is more towards the legislature and less towards the Executive?

[41] **The Deputy First Minister:** That is a good question. I am sure that there will be much debate around that. I get the feeling that, although it is early days here, the way that the scrutiny system here works—you have pre-legislative scrutiny of a Measure, before it is introduced—allows you to air many of the issues that might be included in regulations further down the line. That is done in a way that I have not seen previously in terms of my experience in Parliament, where you are just hit with the Second Reading and it goes immediately to committee. Here, there has been quite a strong approach, which I welcome. I think that the Measure is much better as a result of that scrutiny, and I readily acknowledge that. Many issues were raised during the scrutiny, and much of what we are talking about, which is an extension of the categories, if you like, was raised in the early scrutiny session. I am more comfortable, if I can put it like that, with putting things in regulations, bearing in mind that the scrutiny opportunities here are much greater, although, of course, there will always be—and I acknowledge this—a tension in that what you include in Measures, as you quite rightly point out, then leaves the legislature and comes under the ownership of the Executive. I readily acknowledge that, but I am not sure whether we will ever get that absolutely right, and it will be a source of creative tension down the years.

[42] **Alun Davies:** We will leave it at that.

[43] **David Lloyd:** Cyn inni symud ymlaen, mae gennyf gwestiwn ar gefn cwestiwn Alun. Nid yw creu Mesurau a rheoliadau newydd yn fater i’r lle hwn nac i’r Llywodraeth yn unig; mae o ddiddordeb i bobl y tu allan i’r Cynulliad hefyd. Ar gefn y cwestiwn blaenorol, pa ymgynghori fydd ynghylch y rheoliadau wedi penderfynu ai’r broses gadarnhaol ynteu’r broses negyddol a ddefnyddir? Pa ymgynghori pellach ydych yn disgwyl ei wneud?

**David Lloyd:** Before we move on, I have a question on the back of Alun’s question. Creating new Measures and regulations is not a matter for this place or the Government alone; it is of interest to people outside the Assembly as well. Following on from the previous question, what consultation will take place with regard to the regulations once it has been decided whether the affirmative procedure or the negative procedure will be used? What further consultation do you expect to do?

[44] **The Deputy First Minister:** That is an important question, and I am not sure that I am in a position to answer it entirely correctly. Mike, do you want to respond to that? In other words, if we are introducing regulations, do we then go out to consult all the stakeholders that we consulted in the original Measure?

8.40 a.m.

[45] **Mr Clancy:** Yes, I can confirm that. If an affirmative resolution procedure is used, then we would need to undertake consultation, because we would need to present a regulatory impact assessment. As I indicated previously, we would need to work with local authorities and a wide variety of stakeholders to get at the issues of take-up, cost, and so on. So, there would be quite a wide consultation. Indeed, as an indication of that, although we are not yet

required to do so, we have already started work—with the Minister’s approval—on sounding out people about the travel behaviour code and the shape that it should take. We will need to consult on that; it is a requirement in the Measure. However, we are already talking to stakeholders about what would work for them in their travel behaviour code. The Minister encouraged that right from the outset.

[46] **David Lloyd:** Alun, a hoffech ofyn **David Lloyd:** Alun, would you like to ask eich cwestiwn nesaf? your next question?

[47] **Alun Davies:** I think that it has been answered by the previous response. I was going to question you, Minister, on the travel behaviour code and scrutiny of that. One issue that you raised in response to one of my previous questions related to pre-legislative scrutiny. Both Parliament and the Assembly have benefited from pre-legislative scrutiny in terms of the legislation that is coming out. However, there is difference between pre-legislative and post-legislative scrutiny. Pre-legislative scrutiny is about expectations and the sort of impact that legislation may have on the people affected by it. However, in terms of things such as the travel behaviour code and other levels of regulation, you are working in a context of legislation and regulations having been made. So, you have a great deal more experience of the Measure in question. Therefore, the level of scrutiny and the nature of that scrutiny will change. The question that I wanted to ask related to your expectations of the consultation that you will be undertaking. The travel behaviour code would be a good example of that.

[48] **The Deputy First Minister:** We are consulting and negotiating with local authorities on the travel behaviour code. We want them to be comfortable with it, because they will take some of the lead responsibility for ensuring that that code is adhered to. If we were to revise that code, then we would need to consult with other people as well. I would also expect, as we go through this, that perhaps in two or three years’ time the relevant scrutiny committee might want to revisit the Measure and look at how it is working in practice. I think that that would be very much welcomed. You are right that, in these early days, this is a learning curve for all of us, whether in the legislature or the Executive. I am pretty sure that we would expect, however many years down the line, the relevant committee to look again at the success of the Measure. There may be praise for it or complaints about it and, therefore, it could come back. That is the sort of regular scrutiny that I think that the legislature should always be involved in.

[49] **Irene James:** In your concluding remarks in the debate on the Measure last week, you said that you were unable to place guidance on procurement on a statutory basis. Can you clarify the legal position regarding statutory guidance on procurement and explain why it is outside the legislative competence of the Assembly?

[50] **The Deputy First Minister:** I can certainly ask Iwan to comment on that.

[51] **Mr Roberts:** I am sure that Members will be aware that a number of matters were raised in the scrutiny of this Measure in relation to areas in which the National Assembly does not have legislative competence. This is one of those issues. Therefore, The Deputy First Minister has indicated that he is minded to issue guidance. However, because the Assembly does not have the legislative competence, that has to be non-statutory in nature.

[52] **David Lloyd:** Diolch. Symudwn **David Lloyd:** Thank you. We will move on ymlaen at y cwestiwn olaf. Fel yr ydym to the next question. As we have already wedi’i glywed eisoes, ac fel a nodwyd yn y heard, and as was noted in evidence to the dystiolaeth gerbron y Pwyllgor Menter a Enterprise and Learning Committee, the Dysgu, mae cwmpas y Mesur efallai’n rhy scope of the Measure is perhaps too limited gyfyngedig i wneud popeth yr ydych yn to do everything that you would like to do, dymuno ei wneud, ac mae dymuniad i and that there is a desire to look for further

chwilio am bwerau ychwanegol gan yr adran berthnasol yn Llundain. Pa waith sydd wedi'i wneud i ofyn am bwerau ychwanegol gan San Steffan?

powers from the relevant department in London. What work has been done to ask for further powers from Westminster?

[53] **Y Dirprwy Brif Weinidog:** Yr wyf wedi gwneud penderfyniad, fel Gweinidog, wedi darllen yn ofalus yr hyn a ddywedwyd yn y pwyllgor craffu, ein bod yn fyr o'r pwerau angenrheidiol i wneud rhai pethau sydd â chonsensws clir o'u plaid. Felly, penderfynais, yn dilyn trafodaeth â swyddogion, y byddem yn gwneud cais am y pwerau ychwanegol hynny. Cyhoeddais hynny yn y Siambr yr wythnos diwethaf ac yn y datganiad a gyflwynais cyn hynny. Ar hyn o bryd, yr ydym yn llunio llythyr at yr Ysgrifennydd Gwladol dros Drafnidiaeth yn y Deyrnas Gyfunol, Ruth Kelly, a fydd yn nodi'r pwerau ychwanegol yr ydym yn teimlo y bydd arnom eu hangen. Gobeithiaf y byddaf mewn sefyllfa i roi mwy o wybodaeth ar union gynnwys y llythyr wedi i'r pwyllgor graffu ymhellach ar y Mesur. Nid oes llythyr wedi'i anfon eto, ond yr ydym yn y broses o'i lunio.

**The Deputy First Minister:** I have made a decision, as Minister, having read carefully what was said at the scrutiny committee, that we do not have sufficient powers to do some of the things for which there is a clear consensus. Therefore, I decided, following discussions with officials, that we would like to ask for those further powers. I announced that in the Chamber last week and in the statement that I laid beforehand. We are currently drafting a letter to the UK Secretary of State for Transport, Ruth Kelly, which will set out the further powers that we feel that we will need. I hope that I will be in a position to give you more information on the exact content of the letter after the committee has scrutinised the Measure further. A letter has not yet been sent, but we are in the process of drafting it.

[54] **Andrew R.T. Davies:** The question was about the progress that has been made. Have any initial consultations taken place with the Secretary of State, or will this letter be the first consultation? I sense that everyone wants a feel for when we will be making progress on this. Moving beyond our remit, perhaps, there is a desire that, if we are going to be sincere about safe travel, we need those powers sooner rather than later.

[55] **The Deputy First Minister:** I agree entirely with that. My feeling was that, constitutionally, I needed the support of the Assembly before I wrote the letter, and, in a sense, delaying that letter has helped, because I can now indicate that there is 100 per cent support in the Assembly for that request, which makes it much stronger. My intention was to contact the Secretary of State as soon as possible after the debate, and we are now drafting the letter, ensuring that it contains all of the things that we think are necessary. I now hope that, with the full support of the Assembly—

[56] **Andrew R.T. Davies:** But have you had initial discussions with the Secretary of State and her officials?

[57] **The Deputy First Minister:** No, there have been no discussions, because I needed the Assembly's support. Once that support was given, the discussions could start.

[58] **David Lloyd:** A oes cwestiynau eraill? Gwelaf nad oes. Diolchaf i Ieuan Wyn Jones am ateb y cwestiynau mor fendigedig, mewn sesiwn graffu fendigedig. Diolchaf hefyd i'r swyddogion a fu'n bresennol, sef Keith Parsons, Iwan Roberts a Mike Clancy. Diolch yn fawr am atebion clir a pherthnasol.

**David Lloyd:** Are there any further questions? I see that there are none. I thank Ieuan Wyn Jones for answering the questions so wonderfully, in such a wonderful scrutiny session. I also thank the officials who have been present, namely Keith Parsons, Iwan Roberts and Mike Clancy. Thank you for such clear and relevant answers.

[59] Bydd Cofnod o'r sesiwn hon ar gael ar gyfer pwyllgor Cyfnod 2—y pwyllgor Mesur perthnasol—ac mae'n siŵr y gallwn sicrhau ei fod ar gael i Gadeirydd y pwyllgor perthnasol hwnnw. Yn naturiol, mae'n agored i unrhyw Aelod o'r Cynulliad gyflwyno gwelliannau, os y dymunant, i'r Mesur hwn yn ystod trafodaethau Cyfnod 2.

There will be a Record of this scrutiny session available to the Stage 2 committee—the relevant Measure committee—and I am sure that we can ensure that it is available to the Chair of that committee. Naturally, any Member of this Assembly can table amendments to this Measure, if they so wish, as part of the Stage 2 deliberations.

[60] Dyna ddiwedd y sesiwn graffu. Diolch ichi am eich cwestiynau. Diolch hefyd i'n ffrindiau o wasanaeth ymchwil yr Aelodau am baratoi cwestiynau a gwaith cefndir mor arbennig.

That ends the scrutiny session. Thank you for your questions. I also thank our friends from the Members' research service for their sterling work on preparing questions and background information.

8.49 a.m.

### **Cynnig Trefniadol Procedural Motion**

[61] **David Lloyd:** Cynigiaf fod

**David Lloyd:** I propose that

*y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â Rheol Sefydlog Rhif 10.37(ix).*

*the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 10.37(ix).*

[62] Gwelaf fod y pwyllgor yn gytún.

I see that the committee is in agreement.

*Derbyniwyd y cynnig.  
Motion carried.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 8.50 a.m.  
The public part of the meeting ended at 8.50 a.m.*