



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

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

**Dydd Llun, 27 Ebrill 2009
Monday, 27 April 2009**

Cynnwys
Contents

- 3 Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest
- 4 Offerynnau ac Offerynnau Drafft na fydd y Cynulliad yn cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2, ac Offerynnau Drafft sy'n Agored i gael eu Cymeradwyo yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Gadarnhaol) ac Offerynnau sy'n Agored i gael eu Dirymu yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
Instruments and Draft Instruments in Respect of which the Assembly is not Invited to Pay Special Attention Under Standing Order No. 15.2, and Draft Instruments Subject to Approval Pursuant to a Resolution of the Assembly (the Affirmative Procedure) and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (the Negative Procedure)
- 5 Offerynnau ac Offerynnau Drafft 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 and Draft 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)
- 6 Ystyried y Mesur Prentisiaethau, Sgiliau, Plant a Dysgu
The Consideration of Apprenticeships, Skills, Children and Learning Bill
- 16 Mesur Arfaethedig ynghylch Plant a Theuluoedd (Cymru)
The Proposed Children and Families (Wales) Measure
- 17 Mesur Arfaethedig Ynghylch Llywodraeth Leol (Cymru) 200-: yr Wybodaeth Ddiweddaraf
Proposed Local Government (Wales) Measure 200-: Update
- 17 Cynnig Trefniadol
Procedural Motion

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi 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
Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Kate Cassidy	Pennaeth Is-adran Materion Cyfansoddiadol a Rheoli Deddfwriaeth, Llywodraeth Cynulliad Cymru Head of Constitutional Affairs and Legislation Management Division, Welsh Assembly Government
John Griffiths	Aelod Cynulliad, Llafur (y Dirprwy Weinidog dros Sgiliau) Assembly Member, Labour (the Deputy Minister for Skills)
Barbara Morris	Pennaeth y Gangen Polisi Gweithredol a Datblygu Rhaglenni, Llywodraeth Cynulliad Cymru Head of Operational Policy and Programme Development Branch, Welsh Assembly Government

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 Cynorthwyol Assistant Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 3.59 p.m.
The meeting began at 3.59 p.m.

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

[1] **Janet Ryder:** I welcome you all to the first Monday afternoon session of the Subordinate Legislation Committee. I thank Members for coming in on a Monday afternoon for this meeting. I welcome Members, officials and any members of the public to the committee. In an emergency, ushers will indicate the nearest safe exit. Headsets are available. I remind Members to switch off their mobile phones completely. We have received an apology from Mark Isherwood and I welcome William Graham to the committee as his substitute.

[2] **William Graham:** Thank you, Chair.

4.00 p.m.

Offerynnau ac Offerynnau Drafft na fydd y Cynulliad yn cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2, ac Offerynnau Drafft sy'n Agored i gael eu Cymeradwyo yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Gadarnhaol) ac Offerynnau sy'n Agored i gael eu Dirymu yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
Instruments and Draft Instruments in Respect of which the Assembly is not Invited to Pay Special Attention Under Standing Order No. 15.2, and Draft Instruments Subject to Approval Pursuant to a Resolution of the Assembly (the Affirmative Procedure) and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (the Negative Procedure)

[3] **Janet Ryder:** We now move on to item 2. For this item, Gwyn has been looking at SLC264, the Traffic Management Permit Scheme (Wales) Regulations, and SLC268, the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (Wales) Regulations 2009. Is there anything to say about those instruments, Gwyn?

[4] **Mr Griffiths:** Nid oes dim ar hyn o bryd, Gadeirydd. Nodwyd ambell bwynt am y drafftiau blaenorol. Fe'u cywirwyd, ac mae'r drafftiau hyn yn awr yn gywir. **Mr Griffiths:** There is nothing to add at this point, Chair. Certain points were raised about the previous drafts. They were corrected, and these drafts are now correct.

[5] **Janet Ryder:** Are Members content with those two instruments? I see that you are.

[6] Joanest has been looking at SLC269, the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009, SLC270, the Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009, and SLC271, the Wildlife and Countryside Act 1981 (Variation of Schedule 4) (Wales) Order 2009. Anything to report, Joanest?

[7] **Ms Jackson:** There is nothing to report on any of those.

[8] **Janet Ryder:** In that case, are Members content, technically, with those? I see that you are.

[9] Gwyn has been looking at the next set: SLC273, the Education (Admission of Looked After Children) (Wales) Regulations 2009, SLC275, the Education Maintenance Allowances (Wales) (Revocation) Regulations 2009, and SLC276, the Education (Infant Class Sizes) (Wales) (Amendment) Regulations 2009. Gwyn.

[10] **Mr Griffiths:** Nis oes dim i'w ychwanegu. **Mr Griffiths:** There is nothing to add.

[11] **Janet Ryder:** Are Members happy with those? I see that you are.

[12] Joanest has been looking at the last set of measures in this section: SLC277, the Merthyr Tydfil and Powys (Areas) Order 2009, and SLC278, the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. Do you have anything to add, Joanest?

[13] **Ms Jackson:** Again, I have nothing to add.

[14] **Janet Ryder:** Are Members content with those items? I see that you are.

4.02 p.m.

Offerynnau ac Offerynnau Drafft 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 and Draft 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)

[15] **Janet Ryder:** For this item, Joanest has been looking at SLC272, the Eggs and Chicks (Wales) Regulations 2009.

[16] **Ms Jackson:** The Government's response has been received, and I consider it to be satisfactory.

[17] **Janet Ryder:** Are Members content with that response?

[18] **Michael German:** I want to ask a question. In the report from our legal advisers, the phrase, 'the clock is stopped' is used. Has that been changed?

[19] **Ms Jackson:** It will be changed because, I am told, the Government has instructions to revoke and remake these regulations to implement further controls in relation to salmonella in eggs. It proposes to amend the wording in the forthcoming new set of regulations. We will, hopefully, have sight of the proposed new wording, which will perhaps contain something a little more satisfactory.

[20] **Michael German:** Than 'the clock is stopped'.

[21] **Janet Ryder:** Are you content with that, Mike?

[22] **Michael German:** Yes.

[23] **Janet Ryder:** Are Members content with that Order? I see that you are. Let us now turn to SLC274, the Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2009.

[24] Gwyn, mae rhywbeth i'w ddweud am hyn, onid oes? Gwyn, there is something to say about this, is there not?

[25] **Mr Griffiths:** Mae dau bwynt sylfaenol iawn am y rheoliadau hyn. Os ydych yn diwygio rheoliadau, dylid defnyddio'r un derminoleg ag a ddefnyddir yn y Ddeddf sy'n rhoi'r grym i wneud y rheoliadau hynny. Nid yw hynny wedi digwydd yn yr achos hwn, ac eithrio mewn dau le, lle y defnyddir y term cywir yn y fersiwn Gymraeg. Mae'r Llywodraeth wedi cytuno bod angen cywiro hynny, a bydd rheoliadau i gywiro'r pwynt hwnnw yn cael **Mr Griffiths:** There are two very basic points with regard to these regulations. If you amend regulations, you should use the same terminology as that used in the Act that conferred the power to make those regulations. That has not happened in this case, except for two examples, where the correct term was used in the Welsh version. The Government has agreed that a correction is needed, and regulations to correct that point will be made within three months. I

eu gwneud o fewn tri mis. Cymeradwyaf commend that to the committee as a hynny i'r pwyllgor fel ateb boddhaol. satisfactory answer.

[26] **Janet Ryder:** Gan fod Gwyn yn **Janet Ryder:** As Gwyn is content with that, fodlon ar hynny, a oes gan rywun arall does anyone else have something to add? rywbeth i'w ddweud?

[27] I see that Members are content to accept that. That concludes business under item 3 of our agenda.

4.04 p.m.

Ystyried y Mesur Prentisiaethau, Sgiliau, Plant a Dysgu The Consideration of Apprenticeships, Skills, Children and Learning Bill

[28] **Janet Ryder:** At this point, we invite the Deputy Minister for Skills, John Griffiths, to join us. We thank the Deputy Minister for coming, and welcome him to this afternoon's session where we will look at the Apprenticeships, Skills, Children and Learning Bill. I am sure that the Minister will be aware that this piece of legislation has already been looked at by the relevant subject committee. Our intention is to look at the legal process behind it, of creating the law. We are interested in learning much more about this process, the interaction between the Assembly and Westminster, and how Welsh powers eventually end up in the Bill. Thank you very much for coming along to give us information this afternoon.

[29] Members will recall that we decided to scrutinise this Bill on 10 February and wrote to the Minister for Children, Education, Lifelong Learning and Skills, Jane Hutt. On 12 March, we received a response from the Deputy Minister. The Enterprise and Learning Committee has been scrutinising the Bill, and its report was agreed on 26 March. Members have had that report circulated to them. They have also had the legal advisers' report and a series of other documents relating to this Bill. Before we start the questions, Deputy Minister, may I ask you to introduce the officials who are with you, for the Record?

[30] **The Deputy Minister for Skills (John Griffiths):** I will allow them to introduce themselves, Chair.

[31] **Ms Cassidy:** I am Kate Cassidy, head of constitutional affairs and legislation management.

[32] **Ms Morris:** I am Barbara Morris, head of operational policy and programme development.

[33] **Janet Ryder:** Deputy Minister, before we start the questions, is there anything that you wish to say first of all?

[34] **John Griffiths:** I do not think so, Chair.

[35] **Janet Ryder:** In that case, we will move straight into the questions. We have shared out a series of questions between ourselves to ask you on different aspects of this Bill, and I will ask the first few. The first question relates to what was said in the Enterprise and Learning Committee's report and during its investigation. When the committee looked at the Bill, it stressed clearly that,

[36] 'the legislative process by which the Welsh clauses were incorporated into a major UK bill was far from satisfactory and left little room for thorough scrutiny either at Westminster or by the National Assembly'.

[37] That is very pertinent to the work of this committee and is very much in line with the work that it sees itself doing. In light of that, Deputy Minister, how have you been working with UK Ministers to ensure that the proposed delegated powers are adequate to achieve the policy outcomes of the Bill as well as the Welsh Assembly Government's own policy objectives?

[38] **John Griffiths:** On whether the scrutiny has been adequate at the National Assembly for Wales, I have appeared before the Enterprise and Learning Committee on two occasions. We will soon be providing a response to the committee's report. Scrutiny at Westminster is a matter for Parliament, to make sure that its scrutiny processes are all that they should be. We always work very closely with the UK Government on its legislation insofar as it affects Wales. We have the devolution guidance note that sets out the convention that applies, so, if legislation is proposed at Westminster that will affect Wales, it is done with the Welsh Assembly Government's agreement, both to that legislation taking place and to its content. That convention governs the arrangement that applies generally and particularly to this Bill. We have guidance for our officials, which determines effective joint working at an early stage between our officials and their counterparts at Westminster. What generally applies, applied to this legislation. We are content that our working arrangements with UK Government colleagues are effective and that we will deliver what we want to see delivered through this legislation.

4.10 p.m.

[39] **Janet Ryder:** Thank you for that answer, Deputy Minister. We have seen copies of that guidance, which we have discussed previously in this committee. That is general guidance, but, in particular, in relation to this Bill, can you give us a little more information about how and when that advice was used and how it was interpreted in your department? At what point was there communication between either you and Whitehall or Whitehall and you in the development of this Bill?

[40] **John Griffiths:** That is not the sort of detail that we would expect to provide, because it is about confidential working arrangements between the two Governments. I am happy to discuss the general guidance that is applicable and the devolution guidance note in general terms, but the detail of contact about this particular Bill is properly the province of confidential joint working between us and the Westminster Government.

[41] **Michael German:** I want to be absolutely clear on the operation of the convention. Is it your view, Deputy Minister, that the operation of the convention is a confidential matter, which is not open to scrutiny or the public gaze? If that is the case, can you tell us whether or not we will be party to the discussion on the possible adoption of powers by the National Assembly for Wales? Will we be able to get an answer to those questions? Perhaps you can tell us in which part of the convention the provision of confidentiality occurs.

[42] **John Griffiths:** Confidentiality applies in how the convention works. The applicable wording is set out in the documentation and can be scrutinised and discussed, but, as to how it works in a particular instance with regard to particular legislation, such as we are discussing today, it is only right that the confidentiality that generally applies to joint working between different administrations is respected.

[43] **Michael German:** So, can we be absolutely clear that the debate that goes on—quite properly—between the Welsh Assembly Government and the UK Government about the devolution of powers in Government Bills is not open to scrutiny or discussion by the National Assembly? Can we be clear about that?

[44] **John Griffiths:** It is open to scrutiny in a variety of ways, through the general debates and operation of the National Assembly. When it comes to questions of who made contact with whom and when, they are the sort of details that are rightly confidential between the Welsh Assembly Government and the Westminster Government.

[45] **Janet Ryder:** To confirm that, would you be willing, at this stage, to inform us at what stage your officials were involved on the apprenticeship clauses and on the foundation-degree-awarding powers?

[46] **John Griffiths:** What I can say, generally, is that we want to be involved at an early stage, because that is what makes the process meaningful. We are content that we have been involved at an early stage and that we have been able to influence the legislation, to get the provisions that we want for Wales.

[47] **Janet Ryder:** This is fundamental to the working of this committee. Can you tell us whether your officials were involved at the pre-drafting stage, at the policy-development stage or at the first draft stage?

[48] **John Griffiths:** Our officials were involved at an early stage and certainly pre draft.

[49] **Janet Ryder:** Do any Members have further questions on that? I see that you do not. We will move on to questions 3 and 4 from Joyce.

[50] **Joyce Watson:** Good afternoon, Deputy Minister. The public Bill committee at Westminster did not include any Welsh Members of Parliament. Are you content that the Welsh clauses will be fully scrutinised at Westminster and in the National Assembly for Wales?

[51] **John Griffiths:** As I mentioned earlier, scrutiny processes at Westminster are matters for Westminster, which will undoubtedly have its own processes for addressing these issues. Some stages are still to be undergone in respect of this Bill, so I think that it is fair to say that the involvement of Welsh Members of Parliament is yet to take place. In terms of our scrutiny, as I said earlier, I appeared before the Enterprise and Learning Committee on two occasions. Soon, we will make our response available on the committee's report and recommendations. Today is a further example of the scrutiny process in the Assembly. That is how this Bill and the proceedings in Wales have taken place thus far. I am sure that there will be further scrutiny.

[52] **Joyce Watson:** I draw your attention, in particular, to the stand-alone clauses on foundation-degree-awarding powers, and on a consistent complaints procedure for governing bodies. Will they be subject to proper parliamentary scrutiny?

[53] **John Griffiths:** Again, I can only repeat that parliamentary scrutiny at Westminster is a matter for Westminster, which has long-established procedures for scrutiny with which I am sure that we are all fairly familiar.

[54] **Joyce Watson:** Okay. Thank you.

[55] **William Graham:** Deputy Minister, do you believe that there has been adequate and full consultation between Welsh Ministers and UK Ministers? If so, are you content with the clauses relating to Wales as they currently stand?

[56] **John Griffiths:** I think that there has been adequate consultation. I think that we have worked in a spirit of co-operation. The acid test for that is whether we are able to achieve what we want to achieve for Wales through this legislation. I believe that we are able to do so,

and we will get the sort of provision that we identified as necessary. Therefore, I would answer that question positively.

[57] **William Graham:** Have you sought any further amendments that have been rejected? If so, could we have details of those and of why they were rejected?

[58] **John Griffiths:** As I have said, we have the provision that we wanted for Wales through this legislation. We have been very concerned to make sure, for example—in relation to the apprenticeship provisions—that we get the sort of uniformity and commonality between England and Wales that employers and those undertaking apprenticeships rightly feel is very important. Therefore, we have the content that we required through this legislation and we believe that it will deliver what is necessary for Wales.

[59] **Janet Ryder:** Are you satisfied with that response, William? I see that you are. I will therefore call on Mike to ask the next question.

[60] **Michael German:** All of your answers so far, Deputy Minister, will help me in trying to understand again how this process of asking for powers and deliberation on powers works. I am sure that you are familiar with paragraph 36 of the recommendations from the Enterprise and Learning Committee, which states:

[61] ‘We recommend that the Welsh Assembly Government adopts a more strategic approach to law making, which would take account of the opportunities provided by Measure-making powers and delegated powers in UK Bills’.

[62] That was the committee’s recommendation. Gareth Jones, the committee Chair, said:

[63] ‘We very much regret the fact that the Welsh government did not use this opportunity to seek measure-making powers’.

[64] That is the view of the committee and its Chair.

4.20 p.m.

[65] At the same time, you have told us that you are satisfied with the powers that you have, and that, therefore, subtracting one from the other, you did not seek Measure-making powers. I need to understand why you did not seek Measure-making powers. We have had the Counsel General before us, and he has told us that it is your responsibility, and not his or anyone else’s, to decide which powers you ask for. I would, therefore, like to understand why you did not seek Measure-making powers in relation to apprenticeship programmes in Wales.

[66] **John Griffiths:** It goes back to some things that I have already said about the need to ensure that employers, and those undertaking apprenticeships in Wales, are not in any way disadvantaged compared to their counterparts in England. There is an obvious need for uniformity and commonality between apprenticeships on this side of the border and the English side of the border. It is also important to ensure that that commonality and uniformity is delivered in a timely way. We would not have wanted any time lag, with different provision in Wales to England. That meant that the fairly obvious choice was to use this Bill to achieve that for Wales and England, rather than seeking Measure-making powers, which obviously would have taken quite some time to go through the Assembly processes.

[67] **Michael German:** I can understand the timetable issue—you want to get the thing through quickly. However, the idea that Wales would be disadvantaged by doing something different is a presumption, is it not? You might have wanted to introduce something different, and therefore, the first of the reasons that you gave—that there might be a disadvantage to

Wales in having different provisions—makes it clear that you would never, at any time, want different provisions in Wales in this area.

[68] **John Griffiths:** No, that is not the case. We might want different provisions, and in fact, I made that point to the Enterprise and Learning Committee. However, it would be at the margins of the great bulk of provision when it comes to apprenticeships. All of the employers and learning providers, and indeed the apprentices, that I have met are very clear about the need for portability between England and Wales, for very obvious reasons. Overwhelmingly, the concern was to ensure that that portability was maintained, and timeliness around that is crucial. There should not be any interval when that commonality does not apply.

[69] On the Assembly Government's approach on these matters, and the question of when we seek one avenue for Welsh provision rather than another, look at 'Skills That Work for Wales', for example: it is our overarching skills strategy, and when opportunities come along to further that strategy, we are obviously interested in using them. A Bill of this nature is one example of that kind of opportunity. When it is important to have that commonality between England and Wales, a Bill such as this is an obvious opportunity to further the agenda of 'Skills That Work for Wales', and it is an opportunity that we are pleased to be able to use.

[70] **Michael German:** So, to be absolutely clear, where you have a different policy to the Government in Whitehall, you would seek Measure-making powers, but where your current policy is the same as the policy of the UK Government, you would not seek Measure-making powers. Is that the case in your policy area?

[71] **John Griffiths:** That is not the case, no. We have always said that we would look at all of the possible legislative routes on a case-by-case basis. That is a pragmatic, effective and common-sense approach, and that is the declared attitude of the Welsh Assembly Government. It is the correct one; on a case-by-case basis we look at the legislative opportunities available and select the most appropriate.

[72] **Michael German:** So it would not be your judgment that, whenever an opportunity for a Measure-making power arose you would seize it?

[73] **John Griffiths:** Not necessarily, no.

[74] **Alun Davies:** It is quite an interesting approach that Mike is exploring with the Deputy Minister. Skills are an area in which the Welsh Assembly Government has been extraordinarily active, in legislation terms and in its wider strategic approach in response to the current economic crisis. I therefore find it somewhat surprising, Deputy Minister, that the Welsh Assembly Government would not seek quite wide Measure-making powers in this area to give it the opportunity, as a Government, to respond in a considered and agile way. Those of us who are victims, so to speak, of the affordable housing LCO process would look upon the opportunity here with great envy. The LCO relating to environmental protection and waste management, which will be published this afternoon, started life nearly two years ago—I think that the first speech I made here in the Assembly was on that, shortly after the 2007 election. Therefore, we know that the LCO process, although it can be quite smooth, can be fraught with difficulty. So, where an opportunity such as this arises, my expectation would be that the Assembly Government would seek these powers, not perhaps to use today or tomorrow, but to enable you to respond in a more agile way in future. However, you seem to be suggesting that that is not the approach that the Assembly Government is taking.

[75] **John Griffiths:** As I said, we look at all of these opportunities on a case-by-case basis. Obviously, we must stay within the scope of any particular Bill, and it is not possible within the legislative process at Westminster to seek very wide Measure-making powers outside the scope of a particular Bill. Therefore, there are constraints by which we must abide,

just as they are generally abided by at Westminster.

[76] **Alun Davies:** Would you not concede, Deputy Minister, that a more strategic and far-sighted approach might be better? I understand what you say about the scope, and we had this issue with the affordable housing LCO, but, where there are opportunities to seek out powers, it might be good to do so, not necessarily to use today, but in order to have the ability to move quickly and in a more agile fashion tomorrow. Given where we are at the moment in economic terms and with your general approach as a Government, it would provide you with a greater armoury, if you like, were you to take a more strategic approach, rather than a case-by-case approach.

[77] **John Griffiths:** I think that we are taking a case-by-case approach within a strategy. The strategy is to use appropriate opportunities as and when they arise. 'Skills That Work for Wales' is an example of an overall strategy, and when opportunities arise to further the aims and objectives within that strategy, we seize those if appropriate. In general terms, we obviously look to build the capacity and the ability of the Welsh Assembly Government to legislate to respond to needs in Wales and make our strategies a reality in Wales. I would argue that this Bill was such an opportunity; it offered an opportunity to further 'Skills That Work for Wales'; it made eminently good sense with regard to commonality between apprenticeships on both sides of the border. Therefore, it was a case of seizing opportunities as they arose within the context of that strategy. However, in general, of course we are looking to increase our capacity and ability to legislate for Wales in Wales.

[78] **Janet Ryder:** Are you satisfied with those answers?

[79] **Alun Davies:** I will leave it at that. I am sure that we will continue with the discussion another time.

[80] **Michael German:** In 2007, we were told by Nick Ainger that the option to seek further powers to enable further education institutions in Wales to award foundation degrees had not been requested by the Welsh Assembly Government. Later in 2007, Jane Davidson, the Minister for education at the time, said that those powers would be sought. Why has the Welsh Assembly Government now decided to seek these powers, in clause 245 of the Bill, when the Ministers felt in 2007 that they were not needed? What has happened in the intervening period?

4.30 p.m.

[81] **John Griffiths:** I do not know whether the Chair would consider this to be straying into the area of policy, but I am quite happy to explain. It is a matter that was addressed by Adrian Webb in 'Promise and Performance'. Before Adrian Webb presented that very important report to the Welsh Assembly Government, there were differing views, including within further education institutions, about whether foundation-degree-awarding powers would be useful and productive in Wales. It was considered that there was little demand from further education institutions for those powers at that stage. The Webb report was clear that there were advantages to having those powers for further education. Further education institutions, at that stage, saw greater utility for those powers. We were clearer about higher education's view on these matters, in that it wanted proper provision for close partnership between further education and higher education and for progression routes. With all of that in the background, at that stage, it was felt that there was greater demand for the powers and for more provision for partnership and progression between FE and HE. Given the evolution of 'Skills That Work for Wales', it also made perfectly good sense for employer demand and ensuring that provision relates more closely to what employers want; by offering other routes for further education to develop; and, importantly, developing income streams.

[82] **Michael German:** So, the Government changed its mind. It thought that it was a good idea. It wanted more power and more competence on the basis of the evidence that had been put to it. That is very good. The First Minister then says in your legislative programme that the Government is seeking legislative competence to enable the Assembly to legislate for further education, so you should have the power to award foundation degrees. Having changed your mind—and I agree that it is important that you should have those legislative powers—why have you decided not to seek legislative competence and Measure-making powers regarding foundation degrees in this Bill, which is before Parliament, but, instead, to incorporate the clauses into the UK Bill?

[83] **John Griffiths:** That was considered to be the most effective way of introducing foundation-degree-awarding powers to Wales. It is a pragmatic approach to timeliness in that it does not duplicate time and effort. We are very willing to take these opportunities when they arise, as I mentioned in general terms earlier, and this is another example of that. The opportunity came along, and it offered a timely and effective route and a good use of resource, so we took that opportunity.

[84] **Michael German:** I am sorry to labour this point, but you could have—and you referred to seizing the opportunity earlier—seized the opportunity and got the legislative powers for the National Assembly in the way that the First Minister described in your legislative programme for 2008-09. As it is, that has now been laid down for us in a UK Government Bill. We do not have the legislative, Measure-making powers over this area of work; we only have the competence to execute the work. You say that you have to seize the opportunities, but you keep falling back on time and effort. Is this a time-and-effort problem rather than a desire problem?

[85] **John Griffiths:** It is an example of that pragmatic approach that I mentioned earlier: taking opportunities as they come along. It is about having the strategies and then, when the opportunities arise, furthering those strategies, policies and objectives—using those opportunities. We should not dismiss time and resource; they are important matters. If a pragmatic approach can be taken, and there is an opportunity to use a timely and resource-effective route, there is a lot to be said for taking that opportunity.

[86] **Michael German:** The time and resource issues are separate, are they not? The Bill is going through Parliament, and you could have had the Measure-making clauses in that Bill, and that would have been just as timely, as the passage of the Bill will end at the same time whether it has clauses in it or Measure-making powers. I would like you to give a bit more of an explanation of the resource issue as the issue here is not about being timely. Can you tell us what additional resources you would have had to put in to this Bill in order to get those Measure-making powers?

[87] **John Griffiths:** Obviously, a lot of work goes into drafting and preparing legislation, and if it is being done at a Westminster level and we can use the resource at Westminster, that means that we do not have to duplicate that effort here in Wales. However, it is also the case that it takes some time for a Measure to go through our processes, and rightly so, because those processes have to be observed. So, we do have to factor in those elements of time, resource and effort.

[88] **Michael German:** Could we separate the resources needed to get Measure-making powers from the resources needed to create a Measure here afterwards? Would getting Measure-making powers into the Bill, as opposed to getting the clauses into it, have made any difference to the resources that you and your officials needed to put in? If so, what would that difference of resource mean?

[89] **John Griffiths:** The answer to whether it would have made a difference is 'yes'. I

think that Kate would like to come in here and perhaps explain in more detail what is involved.

[90] **Ms Cassidy:** When making the case for Measure-making powers in a Bill, we would have to prepare additional memoranda for the UK Government explaining the scope of the powers being sought, what those powers would achieve, and so on. So, there is additional paperwork to be generated in order to get that agreed at a collective level within the UK Government. That is set out within the published guidance for our officials on seeking Measure-making powers in Bills.

[91] **Michael German:** Would you like to hazard a guess as to how much extra time that additional paperwork would take?

[92] **Ms Cassidy:** That would have depended on how much questioning there might have been on the need to seek Measure-making powers, when the policy objective could be achieved by direct provision in a Bill.

[93] **Michael German:** So, in this particular case, with regard to the officials, would the extra paperwork have been extensive?

[94] **Ms Cassidy:** It is not possible for me to say; we did not do that, because it was possible to achieve the objective directly through clauses in the Bill.

[95] **Michael German:** So, the decision to include clauses rather than seeking a Measure was taken fairly early on.

[96] **Ms Cassidy:** When looking at what needed to be achieved—the policy objective—and when that was translated into instructions, it was possible to achieve it directly in the Bill.

[97] **Michael German:** There was no discussion as to whether a Measure-making power, which would be applicable from hereon in, in this whole area of work, would have been suitable? The most expedient view was simply taken to get the speediest result.

[98] **John Griffiths:** That would have been considered, as I said earlier. When opportunities arise to further aims and objectives of the Welsh Assembly Government, consideration is given to the most appropriate vehicle for the policy. When one opportunity arises, there is necessarily a consideration of other possible routes in order to decide which is best.

[99] **Michael German:** Given that we know that this was a decision taken by either yourself or Jane Hutt—there is no collective view because of the way in which we question the Counsel General—that decision must have rested with you.

[100] **John Griffiths:** Yes; I am quite happy to defend that decision.

[101] **Janet Ryder:** We will move on to William at this point.

[102] **William Graham:** Deputy Minister, you will recall that the Enterprise and Learning Committee stated that anomalies in relation to employment for those completing apprenticeships in England was a matter of concern, and asked you to make sure that there would be proper flexibility. Do you think that you have managed to achieve that with regard to the characteristics of the Welsh economy? Do you believe that the correct balance has now been achieved in respect of Welsh apprenticeships as currently drafted?

[103] **John Griffiths:** Sorry, Bill, I did not catch the last part of the question.

[104] **William Graham:** Do you think that the correct balance has been achieved in the Welsh apprenticeships clauses as presently drafted?

[105] **John Griffiths:** Yes, I think so. Ultimately, it would be a judgment made by those providing apprenticeship training, those undergoing the training, and employers. However, I feel that the balance is right. A great deal of thought has gone into making sure that what needs to be achieved in Wales in relation to England is properly factored in to what comes out of this legislation. I know that the Enterprise and Learning Committee was keen to ensure that that was the case. I was pleased to be able to reassure the committee, I hope—and perhaps I can reassure it further through our response to its report and recommendations—that that will happen.

4.40 p.m.

[106] **William Graham:** I have a supplementary question. Are you confident that someone starting the course in Wales would be able to complete it in England without major difficulty?

[107] **John Griffiths:** Yes.

[108] **Janet Ryder:** Mike, you have the next question. I was very liberal with the last one.

[109] **Michael German:** Yes, I understand that.

[110] This question relates to clause 35 of the Bill, which will place an obligation on schools in England to ensure that pupils are advised on apprenticeships, which probably will not be applied in Wales. Given that you have mirrored so much of the content of the Bill for expedience, speed and because it is much easier to do the same as is being done in England, why, in this case, have you chosen not to do what is being done in England and not to have advice given by Careers Wales?

[111] **John Griffiths:** We may be straying into policy matters again, but, as you rightly said earlier, Mike, it is not always the case that there is, or should be, identical provision for Wales and England. Sometimes that makes eminently good sense, as with regard to apprenticeship content, but sometimes it does not. We are in a different position in Wales as there are different statutory requirements in Wales on Careers Wales to provide independent advice in our schools to work up plans for learners with regard to their future options. So, we are quite happy that that system in Wales ensures impartial advice that addresses apprenticeship options adequately and provides the necessary advice. We value apprenticeships and we think that our young people should be made aware of them and understand the value of the apprenticeship option so that they can make an informed choice. Requirements on Careers Wales ensure that that happens.

[112] The other aspect in Wales is the development of learning coaches within the 14-19 learning provision and our own Proposed Learning and Skills (Wales) Measure 2009. Those learning coaches are tasked with providing support and advice on a rounded basis, factoring in vocational as well as academic routes and possibilities. That would include apprenticeships. So, in short, we think that we already adequately cater for the need to raise awareness and the possibilities that apprenticeship routes offer.

[113] **Janet Ryder:** Thank you. Alun, you have question 14.

[114] **Alun Davies:** The right to request time to train is something that you have consulted upon and it has also been consulted upon in England and Scotland. I understand that, since employment law is not a devolved subject, the legislation in this area will be common to the

whole of Great Britain. However, I sense that it will be implemented differently in each of the three countries. Could you perhaps outline how you see that right being implemented in Wales?

[115] **John Griffiths:** The Bill creates powers for the Secretary of State to make regulations for England and Wales in relation to those provisions for time off. That reflects the fact that these clauses are concerned with employment matters that are not devolved. The implementation of the policy is currently planned for 2010. Until then, officials here will work very closely with officials in the Department for Innovation, Universities and Skills so that, throughout the implementation phase, we can ensure that Welsh stakeholders are fully consulted and that the impact that they perceive that this will have upon them is taken into account. So, we will ensure that there will be a proper process in Wales and that the impact on the ground in Wales is factored into what eventually emerges. The process will be effective.

[116] **Alun Davies:** Minister, we agree that employment law is not devolved in Wales or Scotland, so the right would be a common right throughout those different countries. However, the way in which that right will be exercised will differ because skills and training are devolved subjects. Are you confident that the interface for those seeking to exercise that right, and the ability of your Government to deliver that right, is in place? Does your Government have sufficient powers to deliver that policy in practice?

[117] **John Griffiths:** I know that it is stating the obvious to say that it is not devolved, but it is not, so it is a matter for the Westminster Government.

[118] **Alun Davies:** The delivery is devolved, is it not?

[119] **John Griffiths:** It is a matter for the Westminster Government to formulate that right, which applies, as you said, across the UK. However, we are concerned with implementation, and that is why, in the lead-up to 2010, we want to go through this consultation process with stakeholders in Wales. When it is completed, that exercise will shape implementation here.

[120] **Janet Ryder:** Finally, Deputy Minister, were powers sought for Welsh Ministers, as well as for the Secretary of State, to make consequential and transitional provision under clause 251?

[121] **John Griffiths:** For each policy area where Welsh Ministers are seeking powers, we consider that question of whether the power to make consequential and transitional provision is required. We have not identified any instances where that would be required with this legislation. We do not believe that there is a need for a corresponding provision for Welsh Ministers in clause 251.

[122] **Janet Ryder:** So you are satisfied with the way that the Bill has been written and drafted.

[123] **John Griffiths:** Yes.

[124] **Janet Ryder:** I see that Members do not have any further questions on this. I thank the Deputy Minister for coming along and answering questions. A transcript will be made available to you for correction before it is finally published. If any subsequent issues arise that you consider pertinent to the development of this legislation, we would be grateful for a note.

[125] **John Griffiths:** Okay. Thank you.

[126] **Janet Ryder:** Do Members want to discuss the responses that we had from the Deputy Minister?

[127] **Michael German:** We will have a draft report, will we not?

[128] **Janet Ryder:** Yes, and we can discuss that at a later meeting if Members prefer to do that. I see that you do. We will move on.

4.49 p.m.

Mesur Arfaethedig ynghylch Plant a Theuluoedd (Cymru) The Proposed Children and Families (Wales) Measure

[129] **Janet Ryder:** Joanest, I understand that you have prepared a paper on this, highlighting areas of possible interest to the committee, which we might want to look into. Could you give us some information on that?

[130] **Ms Jackson:** This is an initial paper on the Proposed Children and Families (Wales) Measure, which sets out where the proposed delegated powers are to be found. This is probably the most wide-ranging proposed Measure put before the Assembly to date, and certainly for this committee to consider. A considerable number of its provisions give Welsh Ministers the power to make subordinate legislation. There are 25 regulation-making powers, and four Order-making powers. The majority of the regulation-making powers are found in Part 2 of the proposed Measure, which relates to child minding and day care provision. That is not unexpected, as this is intended to regulate the regime for child minding. However, there are some powers that tie in with policies on the eradication of child poverty and the new proposals for integrated family support teams and the miscellaneous matters in Part 4. As I have said, the types of powers are outlined. In the past, the committee has taken evidence from the Minister in charge of a Government proposed Measure. You may wish to consider doing that in respect of this proposed Measure, taking into account that there are three Cabinet members involved in this proposed Measure. Dr Brian Gibbons is leading on the proposed Measure, but Jane Hutt and Gwenda Thomas also have considerable input into it. I will leave it to you to decide how you want to take that forward.

4.50 p.m.

[131] **Janet Ryder:** As Joanest has outlined, this particular proposed Measure not only touches on three different portfolios in the Cabinet, but has very wide-reaching implications. It will bring a lot of lawmaking ability into the Assembly, and the question is how that will be scrutinised and at what point this committee feels that it needs to feed into that. If we decide to scrutinise the Ministers, we would then have to decide to scrutinise one or all of them, or one and then others if we felt it necessary. How would Members like to proceed?

[132] **Michael German:** I recall, Chair, that when we had Brian Gibbons here, the Counsel General and Leader of the House came along with him, riding shotgun, because they thought that there might be a need for him to answer questions. I think that it is perfectly reasonable for you to request the lead Minister to attend and leave it to him to decide whether to have one, two, three or more Ministers come along to answer questions. It is their call, not ours, with regard to scrutinising the issues. We would need to be quite clear on the issues that we would want to scrutinise, but I think that we should let them decide.

[133] **Janet Ryder:** I think that the situation might be slightly different from when the Counsel General and Leader of the House came here, in that he was looking at the legal framework behind it all, whereas in this case there could be areas that feed into two policy areas. Mike has suggested that we primarily invite Brian Gibbons, as the lead Minister on this, to attend and put it to him that there may be questions that are relevant to the other two Cabinet members and that it is up to him to decide whether to answer the questions on their

behalf or invite them along with him.

[134] **Michael German:** Or officials, of course.

[135] **Janet Ryder:** Yes, or officials. Are there any comments from Members on that?

[136] **Alun Davies:** I think that that sounds like a sensible way of progressing this.

[137] **Janet Ryder:** We can certainly do that. If we feel, at the end of that session, that we need to invite other Ministers to attend, we could do so. So, initially, we will invite Brian Gibbons here to give evidence on that piece of legislation.

[138] **Michael German:** I have another question, which is about a process issue, that is, the negative and affirmative procedure. Will we be able to scrutinise that particular choice? When you have subordinate legislation it is appropriate to know which procedure has been chosen and why.

[139] **Ms Jackson:** I do not see why you should not ask those questions. At present, all of the regulation-making powers are to follow the negative procedure and the two Orders are to follow the affirmative procedure. It is certainly something that you can question. I think that it is very much part of the remit to consider whether the choice of procedure is appropriate as well as whether it is appropriate to delegate the power.

[140] **Janet Ryder:** Are you satisfied with that answer?

[141] **Michael German:** Yes, thank you.

4.53 p.m.

**Mesur Arfaethedig Ynghylch Llywodraeth Leol (Cymru) 200-: yr Wybodaeth
Ddiweddaraf
Proposed Local Government (Wales) Measure 200-: Update**

[142] **Janet Ryder:** This is a positive item as it is an update on a piece of legislation on which we have already scrutinised the Ministers. It is a piece of legislation to which Mike has just made reference. I understand that Joanest will inform us about this.

[143] **Ms Jackson:** I was always brought up to say that self praise was no recommendation but, in this case, it certainly is a recommendation. You will recall the three recommendations made by the committee following its scrutiny of the Proposed Local Government (Wales) Measure. I am pleased to say that at Stage 2 the Government brought forward two amendments that took forward the recommendations made by the committee and that there was some very full praise of this committee's work by Dr Brian Gibbons in that committee, which I have quoted for you in the report.

[144] **Janet Ryder:** Are Members satisfied with the response? [*Laughter.*] I think that it proves the worth of our work.

4.54 p.m.

**Cynnig Trefniadol
Procedural Motion**

[145] **Janet Ryder:** At this point we need to resolve to go into private session so that we

can discuss the final report on the inquiry into the scrutiny of subordinate legislation and delegated powers in private. I move that

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

[146] I see that the committee is in agreement.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 4.55 p.m.

The public part of the meeting ended at 4.55 p.m.