

# Y Pwyllgor Is-ddeddfwriaeth

## The Subordinate Legislation Committee

Dydd Llun, 11 Mai 2009

Monday, 11 May 2009

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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

Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
David Melding	Ceidwadwyr Cymreig (yn dirprwyo ar ran Mark Isherwood) Welsh Conservatives (substitute for Mark Isherwood)
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Joyce Watson	Llafur Labour

## Erail yn bresennol

### Others in attendance

Tracey Breheny	Pennaeth yr Uned Tlodi Plant, Cynulliad Cenedlaethol Cymru Head of the Child Poverty Unit, Welsh Assembly Government
Donna Davies	Pennaeth y Gangen Plant yn Gyntaf, Cynulliad Cenedlaethol Cymru Head of Children First Branch, Welsh Assembly Government
Brian Gibbons	Aelod Cynulliad, Llafur (Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol) Assembly Member, Labour (Minister for Social Justice and Local Government)
Michael Lubienski	Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Legal Services, Welsh Assembly Government
Jo Trott	Yr Adran Plant, Addysg, Dysgu Gydol Oes a Sgiliau The Department for Children, Education, Lifelong Learning and Skills

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

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

"Dechreuodd y cyfarfod am 4.00 p.m.  
The meeting began at 4.00 p.m."

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

**Janet Ryder:** I welcome Members, officials and members of the public. In an emergency, ushers will indicate the nearest safe exit. Headsets are available for translation and amplification, should people require them. We have received apologies from Mark Isherwood —David Melding is substituting for him; welcome back to the committee, David. We have also received apologies from Alun Davies.

4.01 p.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 (Negative Procedure)

**Janet Ryder:** Joanest has reviewed these items, but she cannot be here today, so Gwyn will report on SLC279, the Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order 2009 and SLC280, the Planning (Listed Buildings and Conservation Areas) (Amendment) (Wales) Regulations 2009. He has also, in his own right, looked at SLC281, the Housing Renewal Grants (Amendment) (Wales) Regulations 2009. Gwyn, is there anything that you would like to draw to the committee's attention with regard to any of those instruments?

**Mr Griffiths:** No, there is nothing.

**Janet Ryder:** Are Members content with those items? I see that you are. That leaves us with SLC282, the Products of Animal Origin (Third Country Imports) (Wales) (Amendment) (No. 2) Regulations 2009. Gwyn, is there anything on that issue?

**Mr Griffiths:** No, there is nothing.

**Janet Ryder:** Is there anything that Members would like to raise? I see that there is not.

4.02 p.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 (Negative Procedure)**

**Janet Ryder:** I believe that there is something that we need to look at, Gwyn, in relation to SLC283, the Purity Criteria for Colours, Sweeteners and Miscellaneous Food Additives (Wales) Regulations 2009.

**Mr Griffiths:** Oes. Mae un pwynt wedi'i nodi, sef bod cyfeiriad at gyfarwydddeb Ewropeaidd yn wahanol yn y fersiynau Cymraeg a Saesneg. Rhif yn unig sy'n wahanol, ond wrth gwrs mae'r rhif cywir yn angenrheidiol mewn cyfeiriad at ddeddfwriaeth arall. Mae'r Llywodraeth wedi derbyn bod angen cywiro hyn, ac mae'n dweud y bydd yn gwneud hynny cyn toriad yr haf. Gan fod y gyfarwydddeb y cyfeirir ati yn y Gymraeg yn gwbl amherthnasol, mae'n amlwg y Saesneg sydd yn gywir. Yn sgil hynny, yr ydym yn argymhell derbyn sylw'r Llywodraeth.

**Mr Griffiths:** Yes. There is one point that has been noted, namely that a reference to a European directive is different in the Welsh and English versions. It is just a number that is different, but of course the right number is vital when there is a reference to other legislation. The Government has accepted that that needs to be corrected, and has said that it will do so before the summer recess. As the directive that is referred to in Welsh is completely unrelated, it is clear that it is the English version that is correct. Therefore, we recommend accepting what the Government has said.

**Janet Ryder:** Are Members content with that? I see that they are.

4.03 p.m.

## **Mesur Arfaethedig Comisiynydd Safonau Cynulliad Cenedlaethol Cymru 200—**

### **Proposed National Assembly for Wales Commissioner for Standards Measure 200—**

**Janet Ryder:** Gwyn, would you like to start on this item?

<p><b>Mr Griffiths:</b> Nodyn er gwybodaeth sydd yma. Mae'n amhriodol i'r Mesur arfaethedig hwn, gan ei fod yn Fesur pwyllgor, roi pwerau is-ddeddfwriaeth i'r Llywodraeth. Yn sgîl hynny, nid oes pwerau is-ddeddfwriaeth yn y Mesur arfaethedig; mae'r cyfan ar ei wyneb. Fel y gwelwch o baragraff 3 y papur byr hwn, mae'r dyddiadau cychwyn hyd yn oed wedi'u pennu yn unol â'r drefn sydd yn y Mesur arfaethedig. Felly, nid oes dim yma inni graffu arno. Nid yw'n briodol rhoi pwerau i Weinidogion, ac nid oes neb arall y gallwn roi pwerau iddynt. Yn sgîl hynny, yr ydym yn argymhell nad yw'r pwyllgor hwn yn craffu ar y Mesur arfaethedig, a'i fod yn nodi'r papur yn unig.</p>	<p><b>Mr Griffiths:</b> This is just a note for information. It is inappropriate for the proposed Measure, as it as a committee Measure, to give secondary legislative powers to the Government. Therefore, there are no subordinate legislation powers in the proposed Measure; everything is on the face of the proposed Measure. As you can see from paragraph 3 of this short paper, even the commencement dates are in accordance with what is contained in the proposed Measure. So, there is nothing here for us to scrutinise. It is not appropriate to give powers to Ministers, and there is no-one else to whom we can give powers. Therefore, we recommend that the committee does not scrutinise this proposed Measure, and that we should only note it.</p>
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**Janet Ryder:** So, there are no powers in this for us to scrutinise. Do Members have any comments on the proposed Measure? I see that Members are content.

4.05 p.m.

## Ystyried y Mesur Arfaethedig ynghylch Plant a Theuluoedd (Cymru) Consideration of Proposed Children and Families (Wales) Measure

<p><b>Janet Ryder:</b> I will now invite the Minister and officials to the table, as we agreed last week.</p>
<p>We have the option of taking a break for five minutes until the Minister arrives. Alternatively, we could go into private session now, complete that item, and restart the public meeting when the Minister arrives. What do Members wish to do?</p>
<p><b>David Melding:</b> I would be happy to go into private session if, in your judgment, we are likely to be able to deal with that item fairly quickly.</p>
<p><b>Janet Ryder:</b> We could certainly deal with item 6. There are two items to deal with in private session. One is to make a summary of and discuss the evidence that we are about to take with the Minister, which we obviously cannot do now. The other item is the consideration of the draft report on the Apprenticeships, Skills, Children and Learning Bill.</p>
<p><b>David Melding:</b> Let us do that.</p>
<p><b>Janet Ryder:</b> Yes, we could do that very quickly.</p>

4.08 p.m.

## Cynnig Trefniadol Procedural Motion

<p><b>Janet Ryder:</b> I move that</p>
<p>"the committee resolves to exclude the public from the meeting in accordance with Standing Order No. 10.37(vi)."</p>
<p>I see that there are no objections.</p>

"Derbyniwyd y cynnig.  
Motion agreed."

"Daeth rhan gyhoeddus y cyfarfod i ben am 4.08 p.m.  
The public part of the meeting ended at 4.08 p.m."

"Ailymgynullodd y pwyllgor yn gyhoeddus am 4.12 p.m.  
The committee reconvened in public at 4.12 p.m."

**Janet Ryder:** I welcome the Minister for Social Justice and Local Government, Dr Brian Gibbons. It is the second time that he has given evidence to this committee, but is on a totally different subject this time. We appreciate your attendance; I appreciate that Monday is a Cabinet day, and is busy for you, so thank you for attending.

I remind Members that the Proposed Children and Families (Wales) Measure contains a number of provisions that confer upon Welsh Ministers a power to make legislation in relation to certain functions. The power in each case is to be exercised by Welsh Ministers by statutory instrument. At our last meeting, on 27 April, Members agreed that we wanted to scrutinise the proposed Measure, and although the powers under the proposed Measure may be used by a number of different Ministers, we agreed that we would invite Dr Gibbons to give evidence because he is the lead Minister. The purpose of the meeting is to take oral evidence in connection with the Proposed Children and Families (Wales) Measure. I welcome you to the committee and ask you, Minister, to introduce the officers that you have with you.

**Brian Gibbons:** Tracey Breheny is head of our child poverty unit. Michael Lubienski is the legal lead officer. Donna Davies is responsible for children's services and policy at the Department for Health and Social Services. Jo Trott is from the Department of Children, Education, Lifelong Learning and Skills.

**Janet Ryder:** Thank you, and welcome to the committee. I am sure that you are aware of the format—there will be questions from Members, and supplementary questions if they want. We will try to go through the proposed Measure systematically. I will start by asking you some questions on the scope of the proposed Measure because it will require Welsh authorities to prepare and publish a strategy for contributing to the eradication of child poverty in Wales. That strategy must contain objectives chosen by the authorities themselves together with objectives specified in regulations. Is it appropriate to specify objectives in regulations?

**Brian Gibbons:** On that last point and in those circumstances, we would expect that to be very much a reserved power, which would hopefully not be in regular use. We would envisage those powers being used if a Welsh authority chose not to set objectives for reasons best known to itself or if it were doing so inadequately or incomprehensibly. So, that is very much a reserved power. The proposed Measure requires local authorities to set objectives against all the broad aims outlined in section 1, but we would not expect other authorities, for example the fire authorities, to address all of the broad aims. They would pick out objectives that were specific to what you would reasonably expect a fire service to relate to its area of activity. So, it will not be common practice. I would not expect it to be routine practice for us to set objectives for Welsh authorities in relation to this proposed Measure.

**Janet Ryder:** Just to clarify: under this proposed Measure, you expect the authorities to put forward the strategy themselves, including the appropriate objectives that they have identified. On exceptions, and the reference that you just made to fire authorities, do they relate to the sub-section that states that objectives may be specified for a Welsh authority?

**Brian Gibbons:** Mike may be able to explain this, but the sub-section is a reserved power for when authorities fail to comply with what is required by this proposed Measure. So rather than a body having no objectives, this reserved power will give Welsh Ministers the opportunity to set its objectives.

**Janet Ryder:** So, different objectives could be set for different authorities.

**Brian Gibbons:** Yes, clearly so.

**Janet Ryder:** Is that appropriate given that it could lead to variation across Wales?

**Brian Gibbons:** Section 12 shows the range of authorities covered by this, which is considerable; some of those authorities will have different functions from others. So, there will be variation, but I think that that is the only way forward.

**Janet Ryder:** I accept what you are saying, but to clarify: if you were just thinking about local authorities, you would not expect a variation to appear in their plans.

**Brian Gibbons:** All local authorities will have to have objectives against the broad aims as set out in section 1. Precisely the content of every objective could potentially vary depending on what part of Wales you are in. For example, we know that there is a greater risk of child poverty among ethnic minorities, particularly in Pakistani and Bangladeshi communities. So, you would expect the objectives of a local authority with a high number of ethnic minority communities to reflect that. However, another local authority, with a different socio-demographic profile, might choose different objectives. I do not know whether Mike would like to clarify that.

4.20 p.m.

**Mr Lubienski:** Building on what the Minister has said, the essence is that authorities choose their own objectives, but there is scope—as the question has outlined—for objectives to be set for authorities. There is also scope for different objectives to be set in authorities of a particular class. It would be an unusual use of the power and it is difficult to think of circumstances in which it might arise; it might be that objectives might be set for only a certain number of local authorities, either grouped regionally or according to certain characteristics, but one anticipates that that would be a more unusual use of the power.

**David Melding:** May I follow up on that? I am still a little confused about what the Minister said originally and then what the official said. Is this a reserved power to stop authorities from being in dereliction of their duty and not using this legislation or is it to alter objectives that you do not much agree with?

**Brian Gibbons:** It is a reserved power, so the first scenario is very much at the front of our minds—in other words, an authority might be in dereliction of its duty to set objectives and so forth. However, authorities could conceivably set objectives that, on scrutiny or review, would not be fit for purpose. So, there could be some circumstances in which that could also happen. However, that would not be routine business and we do not see the Assembly Government, every couple of years, in line with the strategy, double guessing a local authority or Welsh authorities's objectives. That is not the purpose of this.

**Janet Ryder:** Are you satisfied with that, David?

**David Melding:** Yes.

**Janet Ryder:** Minister, are you happy that the affirmative procedure is the appropriate procedure for this?

**Brian Gibbons:** There are only four areas in the proposed Measure in which the affirmative process is used and if you look at those four areas, they clearly establish what the proposed Measure is about. Setting objectives and broad aims is at the heart of what the proposed Measure is about. Using the affirmative procedure for the objectives is very much at the heart of what we are trying to achieve with the proposed Measure.

**Janet Ryder:** Finally, should consultation with the authorities, subject to the regulations, be required?

**Brian Gibbons:** It is standard practice that consultation takes place for all regulations, except the most trivial. It is the norm that we, as an Assembly Government, have always used and anything of substance will be consulted upon. It is not useful to put that explicitly into the proposed Measure, but that is clearly our intent.

**Janet Ryder:** We will move on to Mike German, who has the next set of questions.

**Michael German:** Before I probe that issue about substance, can you clarify that you are the lead Minister and therefore have taken charge of the powers in the proposed Measure and the powers that are required in the proposed Measure?

**Brian Gibbons:** No, I am the lead Minister in bringing this proposed Measure through the legislative process in the National Assembly. The other Ministers who have portfolio responsibility for these areas will be the Ministers who will deal with those areas. So, for example, the proposals on regulation and inspection will remain with the Department for Health and Social Services and the integrated family support teams will remain with the Department for Children, Education, Lifelong Learning and Skills—

**Michael German:** For absolute clarity, it could be that each department or Minister, in their own right, have determined what powers they want to administrate, which has been conglomerated into a document that has become the proposed Measure. Was that the process, rather than some Minister or other taking an overall look at the whole issue and seeing whether this all fits together within an overarching challenge? That is what I am really asking about.

**Brian Gibbons:** Where we want to go is fairly clearly set out in the 'One Wales' agreement in terms of trying to address issues of child poverty and of multiple disadvantage, and also consolidating and streamlining the legislation covering vulnerable children. We are bringing this all together. Equally, we know that the Flying Start programme, for example, and, probably more urgently, the Cymorth programme, are at present the key instruments that we use to tackle disadvantage and poverty among children and that the funding for them will be moving over into the revenue support grant from 2011, I think. So, clearly, we need to have a legislative framework in place to allow that to happen.

Some of the areas covered in this have been subject to consideration previously, because we required legal competence in order to move forward. We could not move forward until we had secured that legal competence.

**Michael German:** All that I was asking, really, was whether there was a Minister in charge of making sure and understanding that all of these competences and powers that are required fit together. That was the question. From what you said, it was down to each individual Minister.

Moving on to the fitness and purpose of this, given that there has been an equivalent proposal in England, will this proposal be sufficiently legislatively different from that in England? Perhaps you could identify the legislative route that you have taken that is different from the ones taken in England.

**Brian Gibbons:** We have not seen the final form of what is being proposed in England. We have had some dialogue with Westminster Ministers in this regard and the approach that Westminster is taking is very much in line with the approach that we have taken. Although we do not know the final version, at this stage, Westminster is very much focusing on income, which is, essentially, a non-devolved matter, but it is also looking at the contributory factors to disadvantage and proposing measures in Westminster to tackle those elements that contribute to improving life chances and so forth. That is very much the approach that we have developed. In some respects, it provides us with reassurance, although we have developed our approach over a period of time, that the approach that Westminster has taken very much mirrors the approach that we have taken here. There are areas of devolved competence involved here, and we have been in extensive discussions at a political and official level to make sure that Westminster understands where the margins in terms of devolved responsibilities impinge on what is being done in Westminster.

**Michael German:** I am grateful for that reply, but given that there is a child poverty Bill going through Parliament at present, and the contents of that Bill are known, is it likely that your proposed Measure will be sufficiently different in its approach for people to be able to say, 'Wales will be doing things in an entirely different way', or are you suggesting, as you did earlier, that Westminster is following the pattern that you have established in this proposed Measure?

**Brian Gibbons:** Yes, I think that Westminster is following, if you like. At the Westminster end, the work is still in progress. We do not know the final form of the Bill; it has not been introduced yet. Clearly, we are not involved in writing the Bill, so we cannot give you a definitive statement. However, I have absolutely no doubt that there will be sufficiently distinct features of the proposed Measure to justify us taking a separate road to England. It has not been suggested, but, conceivably, we could say, 'Let's abandon this Measure' and proceed to lump all our concerns under the UK Bill. As we understand the current thinking of the UK Government, if we did that, I do not think that it would be fit for purpose—it would not achieve what this proposed Measure is trying to achieve, particularly in areas such as the inspection and regulation of child minders and carers, the integrated family support teams, participation and play. With regard to many aspects of this proposed Measure, we would have to do something separately in any case.

4.30 p.m.

**Michael German:** Would it be fair to say, given the level of knowledge that you currently have about what Parliament is doing, that the powers you are deriving from this proposed Measure will be significantly different from the ones that UK Ministers are taking in England?

**Brian Gibbons:** Yes, but it is not just that. The foundation phase, for example, is something that is different here in Wales, so how does that fit in? How you set about addressing key elements in relation to child poverty and disadvantage will, operationally, be different in Wales from in England, so if we tried to ride under the same UK Bill, we would struggle to capture the variation that exists—not just between ourselves and Westminster, but between us and Scotland and Northern Ireland—under it. I am happy that there is a real justification for this, even if you just look at the pure child poverty provisions in Part 1. There is plenty of scope to justify a separate approach, but we are not in competition with Westminster; part of our discussion with Westminster on this Bill is about how we can collaborate and complement that legislation, because there are opportunities there as well.

**Michael German:** The overarching point that I am making is that it is right that we should have a proposed Measure, but if its provisions are to be significantly the same as those of a Bill, then extra powers should not have been taken. However, I think that you have given us sufficient indication that you are seeking different levels of powers in this proposed Measure than you expect UK Ministers to do in the Bill.

**Janet Ryder:** Are you satisfied with those answers, Mike?

**Michael German:** Yes.

**Janet Ryder:** In that case we will move on to Joyce, who has the next set of questions.

**Joyce Watson:** Good afternoon. A number of provisions in the proposed Measure give Welsh Ministers regulation-making powers that they can use to prescribe functions. Does this achieve the correct balance between the powers on the face of the proposed Measure and the powers given to Welsh Ministers to make regulations?

**Brian Gibbons:** The answer is 'yes'. If you read the proposed Measure, you get an understanding of the overall principles, the thrust of policy, and the direction of travel—you get a feel for what we are trying to achieve. You get a good understanding of the principles, and the overall national context and framework in Wales. Beneath that, you obviously need to fill in the details, and, hopefully, we have the balance right in terms of the detail that will come through the regulations. However, anyone reading the proposed Measure will get a feel for where we are going and what it is intended to achieve.

**Joyce Watson:** You have more or less answered this question, but are you satisfied that there are not powers that could have been delegated to Welsh Ministers that have instead been placed on the face of the proposed Measure?

**Brian Gibbons:** This is always a challenge. Perhaps Mike Lubienski will want to say a few words, but we have tried to get the balance right, making the legislative framework sufficiently all-encompassing without curtailing the process. The purpose of the regulations is to allow further negotiation, discussion and dialogue to take place before determining the detail of how the policy will be implemented. It gives us flexibility to adjust the detail as circumstances change, even though the overall context of the Measure will not have changed. As it stands, the proposed Measure is big and complex. If we were to start to try to cover in the proposed Measure every eventuality that the regulations will, and put those in the primary legislation, we would be struggling big time to make sense of it all.

**Mr Lubienski:** The one thing that I would add to what the Minister has said on this issue is that there is a balance to be struck. One hopes that, in instructing the draftsmen in the drafting of the proposed Measure, the correct balance has been struck, and one is particularly conscious of the need to allow flexibility and not to include so much detail in the proposed Measure that any subsequent slight adjustments or amendments require a return to primary legislation. The possibility of finding opportunities to do that in future proposed Measures going through the Assembly may be limited; it will not be possible to amend it at the drop of a hat. Having the details set out in regulations will allow an opportunity for Welsh Ministers, as a Government, to be far more responsive to the requirements of the various sectors affected by the provisions in the proposed Measure.

**David Melding:** In response to an earlier question from the Chair, you said that you intend to consult the various stakeholders on the regulations that you will bring in, and presumably on any substantive amending regulations that you might bring in in future. However, I cannot quite understand why you feel that you should not be under a duty to consult. Why is that?

**Brian Gibbons:** Are you referring to a general duty to consult, or are you suggesting that, wherever regulations are outlined in the proposed Measure, there should be a paragraph stating that we will consult on the regulations?

**David Melding:** Our legal adviser will tell me if I am wrong, but I think that the general position over the past 20 years or so has been that there is a duty to consult on regulations; they have the force of law, and it is written into primary legislation that the Minister who has the delegated powers to make regulations must consult. You have said that you will consult but that you do not think you should be under a duty to do so. I do not understand why, unless I have read it wrongly, you want to depart from standard practice.

**Brian Gibbons:** No; I think that that is exactly what I said to the Chair in answer to her question. It is the Assembly Government's standard practice to consult on all regulations, except for the most minute and trivial. That is the standard practice and procedure, which—

**David Melding:** So why is it not included in the proposed Measure that you have this duty?

**Brian Gibbons:** I think that you have answered your question; it is not included because it is standard practice, as you said, going back 20 years.

**David Melding:** So it is just the case that it is so established as a legal principle that you do not think that it needs to be included in the proposed Measure itself?

**Brian Gibbons:** Yes. Perhaps Michael can indicate whether there is any variation in that.

**Mr Lubienski:** One other point that I would make is that, if the proposed Measure required there to be consultation on every occasion that regulations were made, that would entail a requirement to consult on even the most minor technical amendments, which might be an unduly cumbersome or inflexible approach. Something as minor as an incorrect reference to a section number—

**David Melding:** I know that, but this has been a legal problem for years, which draftsmen get around, so why are you taking a different approach?

**Brian Gibbons:** As I understand it, there is not a statutory requirement set out in pieces of primary legislation, or even in our own Measures, to consult on regulations in the way that you seem to be suggesting. If I understand your question, you seem to be saying that it is somehow quite exceptional that we are not stating in the proposed Measure itself that there will be a statutory duty to consult on regulations. I think that this process is the norm and that to include a statutory duty in the way that you are suggesting would be the exception.

**David Melding:** I think that we need to take legal advice on that.

**Brian Gibbons:** I do not know whether Michael would agree with me on that.

4.40 p.m.

**Mr Lubienski:** I am not sure that I can quite make an authoritative statement that it is not standard legislative practice for there to be a statutory requirement in Bills or Measures to consult, but I do not think that it is invariable practice, and I would say that a statutory requirement to consult is more the exception than the norm. I am happy to take up the issue with the committee's legal adviser if it would be helpful to have some dialogue—

**David Melding:** That is helpful. You have just told us that the norm is to put it on the face of the law, in our case, a Measure, so there is a statutory requirement to consult.

**Mr Lubienski:** Sorry, I—

**David Melding:** The Minister has said that the Welsh Assembly Government considers there to be a general requirement on it to consult, and so that covers this particular case, but we think that perhaps you still should hard-wire it into the proposed Measure.

**Janet Ryder:** Would you like to clarify what you just said, Mr Lubienski?

**Mr Lubienski:** I do not know whether I expressed myself clearly enough.

**David Melding:** I apologise if we are at cross purposes. Have another go.

**Mr Lubienski:** My understanding is that there is no uniform practice of including a requirement to consult in relation to every regulation-making power.

**David Melding:** Sorry, I misunderstood what you said. Moving on to guidance, what is your intention, Minister, with regard to consulting with key stakeholders in issuing guidance?

**Brian Gibbons:** Again, it would be inconceivable to attempt to produce guidance without consulting key stakeholders and other well informed experts.

**David Melding:** Thanks. That is clear enough. This is a very important piece of legislation, so what timescales do you envisage for the publication of guidance and regulations for the consultation that you will be doing on it? The length of time will indicate whether the guidance and regulations that you are putting forward are genuine drafts for fundamental consideration, or whether this will come in fairly quickly and it will not be such an interactive process unless there is something major that people want to sound alarm bells on. What type of timetable do you envisage for the principal regulations?

**Brian Gibbons:** Much of what is in Part 1 would come into effect within a few months of the proposed Measure going through and getting Royal Approval. In relation to inspection and regulation, we would expect there to be a timetable of about six, nine or 12 months, and a timetable of about six months with regard to the integrated family support teams. Part 4 covers things like play and participation, and we want to get that guidance in place in line with the transition of the Cymorth funding into the revenue support grant, which will take place in 2011. So, that would need to be in place by 2011 at the very latest.

**David Melding:** So, if I have understood you correctly, you intend to issue the regulations under Part 1 as law immediately.

**Brian Gibbons:** I am not saying that the regulations would be fully in place. Mike might be able to add something on the changes in Part 1.

**Mr Lubienski:** Part 1 can come into force without regulations being made. There is the possibility of making regulations to specify more particularly the issues in relation to the child poverty measures under section 1(2). However, the provisions would be operative even without those regulations being made.

**David Melding:** I still do not understand. Presumably, the strategies that are to be prepared will be the key, and you will consult on how those strategies can be fit for purpose, are you not?

**Brian Gibbons:** For most of the strategies, the key documents will be the children and young people's plans. The cycles run over three years. We are already in one cycle, which will be finishing in 2011. So, we would expect all the key local authorities, local health boards and so on to be revisiting and revising their children and young people's plans by 2011. Clearly, we will have to have the regulations in place to allow that process to happen well in advance of 2011, as 2011 will be too late, because we would expect that process to start in or around 2010. As soon as this gets Royal Approval, we expect to be getting on with developing guidance, to be able to inform the next revision of the children and young people's plans.

**David Melding:** Do you expect to do that in two months?

**Brian Gibbons:** Yes, we will be starting, because there is also a duty in the proposed Measure for the Assembly Government to set its own strategy by 2010.

**David Melding:** I am terribly confused now. The official said that it is possible to issue guidance and directions under Part 1, but you are saying that most of it is already in the existing strategies and therefore it is a sort of re-enactment. Do you expect new work to be done for which guidance and regulations are going to have to be issued?

**Brian Gibbons:** Yes, very much so.

**David Melding:** So, in that case, the official who said that we might not have significant regulations under Part 1 did not capture your expectation.

**Brian Gibbons:** There will need to be regulations. As I understand it, the purpose of having the broad aims and of setting the objectives is to complement what is currently in the children and young people's plans, and particularly their seventh theme on addressing poverty. So, those plans will have to be revised by 2011 under the Children Act 2004. We will need to have the necessary regulations and guidance in place to allow the relevant authorities that are currently signed up to include the new statutory duties that will flow from the proposed Measure in their children and young people's plan by 2011.

**David Melding:** That I understand. It is still hugely significant strategic work; otherwise, why have legislative activity just to beef up what is already there? What I am curious about is why you are going to go through a pretty frantic consultation on the strategic framework and the regulations and guidance that underpin it. It will be barely two months.

**Brian Gibbons:** No. The work will not be completed within two months. I may have misunderstood your question; I thought that you were asking when the proposed Measure would trigger activity, and what sort of timescales we would need to be working towards to give effect to the proposed Measure. Part 1 is about the work on the children and young people's plans, and, once we get approval to go ahead with it, we need to start doing that work. Part 2 is about—

**David Melding:** May I just stop you there? I may have got it wrong. Within two months you will be issuing the regulations for consultation. Is that right?

**Brian Gibbons:** I would not think that the work will be completed in two months.

**David Melding:** That is helpful. So, when, in two or three months, or whatever it takes you—

**Brian Gibbons:** It will be a longer timescale.

**David Melding:** When you then issue the regulations and guidance, how long a consultation period do you envisage, from your publishing those and sending them to the relevant authorities, for those authorities to interact with you?

4.50 p.m.

**Brian Gibbons:** Government standard practice is to spend at least 12 weeks in consultation, and sometimes, depending on the circumstances, it may even be a bit longer. However, a lot of work is already going on, discussing the implications for all elements. So, I do not think that, two months after we start working on this legislation, people will be waking up and saying, 'My goodness, this is a big surprise; I never thought that anyone would ask me about this'. There is an ongoing dialogue and debate about all these issues. You should not forget that they already exist, and Part 1 relates to the children and young people's plan. A corpus of work has already been done. However, this greatly increases the ambition of the child poverty element of the children and young people's plan.

**David Melding:** I am reasonably reassured.

**Janet Ryder:** We will move on to Mike's questions, because I believe that they are about a similar area.

**Michael German:** Yes, a very similar area. However, I will take a slightly different tack from the previous questioner. Let us start with the broad aims, Minister. You will know that the Welsh Local Government Association has said that it regards them as being not easily lent to a definitive list of objectives. So, are your broad aims amendable? Do you think that, over time, you could amend them? If so, why have you chosen the affirmative procedure?

**Brian Gibbons:** The broad aims are based on evidence or current best practice, so we would expect them to be fairly resilient to stand the test of time. Having said that, circumstances will change. I suppose that the one circumstance that could change pretty quickly is the UK Bill, once enacted. The list in section 1(2) is fairly evidence based, so I do not think that this will be changed every six or 12 months. However, it would be rash to assume that this is the last word and wisdom on addressing child poverty, not least because we are in the middle of a recession.

**Janet Ryder:** May I ask a question, then, Minister? In your answer to an earlier question, you said that you think that we are setting a different agenda and a different way of tackling child poverty in Wales and, therefore, the UK Bill currently going through Parliament would not necessarily have that much of an impact or does not take that different a stance. However, you seem to be saying now that the UK Bill might—depending on what comes out in it—alter the aims and operations here.

**Brian Gibbons:** I do not think that they are contradictory. As I said, the style and the way of working between Wales and England, or even Scotland and Northern Ireland, will probably be significantly different, so we are anxious to have autonomy in the devolved areas of competence to develop our way of delivering this agenda. They will, presumably, do it in a different way in England.

One aspect would be promoting getting people into work. In Wales, we have schemes such as Genesis 2 and Want2Work, which England does not have. As we develop our strategy in Wales, it will reflect the tools, the cultures and the political values that we have in Wales in a way that will not necessarily be mirrored over the border in England. So, in that sense, it is important that we have maximum flexibility to develop policy in the devolved areas in line with our needs. That is not to say that something could not emerge from the UK Bill that would merit our reflecting on what is proposed. If it seemed to be something novel that we had not considered, we would certainly look at it and consider including it in the broad aims. Having said that, I do not want to make it even more complicated than it seems.

However, if you look at section 1(3) and (4), which focus on relevant income groups, Westminster's view on that will be important, as it refers to issues such as income measures. The ability to determine incomes will be driven by the taxation and benefits system of the Westminster Government. Setting income levels in Wales while being indifferent to what is going on and to the main levers for determining such things would be foolish. So, the UK Bill will be important for us, particularly in areas such as section 1(3) and (4). We are trying to give us the maximum flexibility to do this our own way in Wales and to complement what is going on at a Westminster level. We hope that there will be active dialogue between us and Westminster as we have a shared common objective to tackle child poverty. Tracey might like to say something on that.

**Janet Ryder:** I should let Mike come back on this, because I interrupted his question.

**Michael German:** You have answered my question on whether this can be amended, but I have not had an answer on why the affirmative procedure is most appropriate.

**Brian Gibbons:** We think that the broad aims, as outlined here, are the scaffolding on which this proposed Measure goes forward. So, if we were to determine this scaffolding by changing the aims, we would effectively be changing the primary legislation, because these aims are on the face of the proposed Measure. If we were to change what was on the face of the proposed Measure, that would be a sufficiently important step to justify using the affirmative procedure.

**Michael German:** I wish to touch on something that you said earlier in relation to section 1(3) and (4) on the median income figures that you have used, namely 60 and 70 per cent. Given what you have just said, are we likely to see the same figures in the UK legislation or are they ones that you have chosen and that Westminster is following? What is the rationale for those?

**Brian Gibbons:** No, the 60 and 70 per cent figures have been well established for the last four or five years. Those are the benchmarks that we have been using. Tracey may be able to give you more detail on those. The relative low income, namely the 60 per cent of median income, has been pretty much a standard for at least five years. Some further thought has been given to things like material deprivation. Again, without knowing the final shape of the UK Bill, I would expect a key area for consultation on the UK Bill to be the criteria for success and the targets for measuring success and failure—targets such as 60 per cent of median income and targets relating to absolute poverty and material deprivation. There will inevitably be a discussion on that in the UK Bill, when it is published.

**Michael German:** Given what you have said—that the tools for this are largely UK tools—I assume that you have consulted with your Westminster colleagues on that and that we are likely to see these figures of 60 and 70 per cent in the UK Government's Bill.

**Brian Gibbons:** I understand that these figures are very much in the public domain, but if, for some reason, the UK Government's Bill was changed at the last minute, then we would want the flexibility to be able to amend the proposed Measure.

5.00 p.m.

**Michael German:** Turning to the issue of cost, among the powers in this proposed Measure is the power to require local authorities to provide free childcare in certain circumstances. Will that not have significant financial implications for local authorities?

**Brian Gibbons:** The key purpose of these sections is to provide a legal framework so that, when the money goes over to the revenue support grant, not only will the purposes of the funding currently available under Cymorth be served, but the local authorities will have flexibility in how they use that money, as they will not be tied to the special grant framework under hypothecation. Equally, when the money goes into the RSG, there will still be a statutory duty to deliver a number of the key objectives that Cymorth was charged with addressing in the first instance. So, the Cymorth money will be there to deliver against these particular criteria.

**Michael German:** As with any budget line, should the requirements be altered significantly as a result of the powers in this proposed Measure, you have no guarantee that the resource will be altered accordingly. You might alter the requirements, which you will have the power to do under this proposed Measure, but you might not be able to offer extra financing. That is the issue that local authorities are asking about, along with whether there is any protection for them in ensuring that they would have the required funding—we are not talking necessarily about it being under just this Government; we are talking about future Governments, too—to be able to deal with that.

**Brian Gibbons:** I understand that, but certainly—

**Michael German:** I know that, but I am looking for the powers.

**Brian Gibbons:** If you look at the explanatory memorandum and the regulatory impact assessment associated with this particular proposed Measure, you will see that they are explicit about the reasoning and the rationale behind these proposed powers. The objective is to maintain momentum in tackling child poverty by ensuring that certain key functions continue to be delivered to improve the wellbeing and life chances of children, while at the same time allowing the Cymorth money to go into the RSG. Potentially, in the future, the same situation could apply to Flying Start. We do not have any plans for Flying Start, but once the £50 million plus goes over to the revenue support grant, that will be the resource that will be available to local authorities to enable them to deliver according to these statutory duties, with the difference that the RSG will give them the financial flexibility that they have been asking for vis-à-vis the use of the £50 million plus that is in Cymorth.

**Michael German:** Okay. I take what you say, but let us move on to another issue, concerning the nature of regulation versus the specifics of how this proposed Measure has been drafted. Part 2 of your proposed Measure has a proposed regime for the regulation of day care and child minding. Much of the relevant detail is set out in regulations, and the majority of the regulation-making powers—some 16 of them—are to be found in Part 2. If you remember, the NHS Redress (Wales) Measure 2008 was criticised for being what you called 'scaffolding'. Could this proposed Measure be equally criticised for being too scaffold-like in its structure, without detailing enough of what is actually going to happen in the proposed Measure itself? I am talking about Part 2.

**Brian Gibbons:** I cannot claim to be an expert on the NHS redress Measure, so I am not in a position to make the comparison that you are asking for. However, a lot of what is contained in Part 2 is a consolidation of what already exists. Perhaps Michael or Donna can elaborate on the extent to which that is the case.

A fair amount of what is in Part 2 consolidates what is currently happening. The new bits that bring consistency and flexibility across the inspection regime, such as covering certain exemptions for child minding, are pretty clear cut—I do not think that people will have difficulty understanding their purpose. I cannot comment on the NHS redress Measure as it stands, but Part 2 is a consolidation of existing reality, plus some refinement to make it more consistent and fit for purpose. So, anyone who works in the sector reading this will have a clear picture of what is required of them. The regulations will fill in the detail, but I do not think that anyone reading it will say, 'I do not have a clue what that's all about'. That level of knowledge will be there, and is there even as we speak.

**Mr Lubienski:** The two reference points for the drafting of Part 2 were the existing provisions in Part 10(a) of the Children Act 2004, which governs the regulation of child minding and day care, and also the provisions in the Childcare Act 2006 that deal with the equivalent English provision, which was updated in 2006. The structure, in terms of the balance between regulation and what is on the face of the proposed Measure, is very similar—I could not swear that it is identical in every regard, but the balance is broadly very similar. The only notable difference is in relation to the fact that there is an Order-making power for Welsh Ministers to set out those things that will be exceptions to the general requirement that that type of activity requires a person to register, to exclude activities such as babysitting and nannies, which are currently excluded. That was seen as a potential weakness of the existing arrangements under Part 10(a) in relation to child minding and daycare, as against various other registered social care settings such as care homes or children's homes. Under the current law, there is no ability to vary the exceptions to the requirement to register, so it is an inflexibility that the new provisions in the proposed Measure correct.

**Michael German:** Evidence has been provided by the family courts committee of the Magistrates' Association—I assume that you are familiar with that evidence—although I am unclear of whether this is a consolidation of previous legislation. The evidence referred to a number of instances of powers currently exercised in England by justices of the peace or the family courts being exercised by Ministers; the evidence refers to sections 29, 35 and 39. Is there a rationale for taking powers that are exercised by the courts in England and giving them to Ministers, because that is pretty unusual, is it not?

**Mr Lubienski:** This is a very technical question. Section 29 is one of three amendments to the enforcement powers of the regulator. The first of those amendments is to enable the regulator to impose conditions on registration by written notice, rather than having to apply to magistrates for an order, which is the current position. Its intention is to bring the regulator's position in relation to child minding and day care in line with the amendments that have already been made in relation to those settings in Wales that are regulated under parts of the Care Standards Act 2000.

5.10 p.m.

So, it brings up the situation in this sector to the same level as others in Wales. The other issue is fixed penalty notices; it gives the regulator the ability to issue fixed penalty notices and there is a fairly long chain of Government commissions and reviews setting out the desire and rationale for increasing the flexibility available to regulators and increasing the tools at their disposal to deal with different sorts of enforcement situations in a flexible and efficient way, and, in the case of fixed penalty notices, to avoid the need to go to court and instigate criminal proceedings and situations in which it is appropriate.

**Michael German:** Chair, since this is a matter of considerable precedent for this committee, would it be advisable for us to receive general advice on this sort of issue and in particular on this? I do not feel that I am capable of making a judgment on a report to the Assembly on this particular matter, but it is a concern that has been raised by the courts. Therefore, I wonder whether we could—

**Janet Ryder:** Perhaps we can pick that up in the discussion at the end. Are you satisfied with those answers, Mike?

**Michael German:** Yes, I am happy with them, but I do not feel that I am competent to make a judgment.

**Brian Gibbons:** What is being proposed is new for child minders and childcare, but it is not novel in relation to children's homes or older people's homes, where this process operates at the moment. So, it is not something that has never been thought of before or not part of the practice in other sectors. However, we are trying to create uniformity, because the Care and Social Services Inspectorate Wales will inspect this, in the main, and it will be working to a single regime across the whole sector. This particular sector, at the moment, is out of step, or, alternatively, the other side is out of step with it. Equally, the concept of fixed-penalties is not novel. It has been proposed, even if it is not in operation, in England and it is an option—

**Mr Lubienski:** The law has been made for Wales in relation to other settings, but is not yet implemented or brought into force. The plan is that it will be brought into force by October 2010.

**Janet Ryder:** We will have a discussion on this and as to how we want to proceed with our report at the end. Perhaps we need to return to this matter in that discussion. I thank the Minister for the information that he has given on this point and perhaps we will want to write to him for further clarification as a result of our deliberations at the end, but we will come back to that when we discuss the whole evidence session, looking ahead to the committee report that might be drawn up. I think that you also have questions on this issue, Joyce.

**Joyce Watson:** I think that question 10 has been covered, from what I have heard, so I will move on to question 11, which is again under Part 2. Section 32 of the proposed Measure provides that regulations may provide for circumstances when a person is to be disqualified from registration as a child minder or day care provider and it sets out the circumstances that may be included in such regulations. Are you satisfied that such broad discretion should confer on Welsh Ministers in respect of the content of regulations? Should the proposed Measure specify at least some of the more serious circumstances?

**Brian Gibbons:** My understanding is that section 32 mirrors the current situation, so it is a roll over part of the consolidation. In addition, it is obviously a matter of opinion, but in the long list under section 32(3), there is considerable detail. Therefore, I think that the concern has been addressed because it is pretty much what happens at the minute in part, and section 32(3) and the various subsections go into considerable detail in relation to the circumstances in which people may find themselves disqualified.

**Joyce Watson:** Section 34 of the proposed Measure gives new powers to Welsh Ministers to make regulations in relation to inspection of child minding and day care. What are the timescales for bringing these regulations into force, and will there be additional resource for the relevant inspectorates to undertake the new duties?

**Brian Gibbons:** Again, I think that we are going back to what David Melding discussed. We expect to have the necessary regulations in place and for them to come into force six to 12 months' time. Is that reasonable, Donna, in respect of the regulations?

**Ms Davies:** In what context?

**Brian Gibbons:** In the context of the inspection regime.

**Ms Davies:** Yes; I think so. It is something that I would like to clarify with the lawyer, but my understanding of section 34 is that this is something that currently stands in terms of the inspection. It is an existing arrangement therefore, when we commence the proposed Measure there will be a period of transition about how we would move across to the current regulations, which is under the Children Act 2004 at present. The inspection regime is functioning now in this area under the Care Standards Act 2000 and the Children Act 2004.

**Brian Gibbons:** Part of the difficulty is that some of the inspection regimes are under one Act, and some of the inspection regimes for CSSIW are under a different Act. There has been a significant number of amendments, particularly to the Children Act inspection regime. For the additional flexibilities that this proposed Measure is trying to capture, in many respects it is easier to rewrite all of this section in this proposed Measure rather than continually to try to tweak what is in the current set of legislation in this regard.

**Janet Ryder:** So, are you satisfied, Minister, that this will clarify the situation?

<p><b>Brian Gibbons:</b> I think that the answer has to be 'yes'.</p>
<p><b>Janet Ryder:</b> If you are content with those answers, Joyce, we will move on to David's questions. I know that we are moving back into the realms of fixed penalties and so forth—</p>
<p><b>David Melding:</b> Let us look at section 39. I wonder why you think that it is necessary for Welsh Ministers to have these powers to prescribe fixed penalty offences and notices.</p>
<p><b>Brian Gibbons:</b> At present, my understanding is that you do not want every minor technical breach to end up in court, which is the only way of enforcing this at present. For the more technical aspects of the enforcement regime, it is much more proportionate, reasonable and flexible to provide the option of a fixed penalty regime. Again, that is not to say that every single breach, regardless, would be subject to a fixed penalty. There would be a sense of judgment as to when it would be appropriate to do that. There must be breaches of the current practice where it does not make sense to go to court but you feel that some action is needed, and that fills a gap, as well as being more efficient for everyone. Not going to court is more efficient for the inspectorate and for the sector.</p>
<p><b>David Melding:</b> Why do you want the regime to follow your regulations rather than the official magistrates' court sentencing guidelines?</p>
<p><b>Brian Gibbons:</b> As I understand it, although I am not an expert on magistrates, the nature of that guideline is that the magistrate has flexibility to impose a minimal fine to the maximum permitted by the tier. Therefore, the magistrates judge it. The whole point of a fixed penalty is that it is a fixed penalty. The proprietor of the home, or the provider, has a choice to make; but clearly, if they accept that they have breached the regulations, then they can say that they are prepared to take a fixed penalty as punishment rather than risking a fine of anything from zero to £5,000, in addition to the cost of going to court, and the inspectorate's costs.</p>
<p>5.20 p.m.</p>
<p><b>David Melding:</b> You have partly touched on this, but fixed penalties would be used in areas that are fairly de minimus and technical. Would there be any more substantial examples where someone could just admit the offence and pay up?</p>
<p><b>Brian Gibbons:</b> No. I do not know whether we can give examples of what we have in mind, if that would be helpful, but serious breaches of statutory requirements would not be acceptable. They would have to go to court, and could not be subject to a fixed penalty. Again, that would be an area where there would be regulation and discussion about the detail, so the situations covered by the fixed penalty will be subject to a separate, detailed consultation process, and people will be able to see whether it is fair and proportionate. I do not know whether Michael might be able to give some examples.</p>
<p><b>Mr Lubienski:</b> From a common sense point of view, and without wanting to pre-empt the consultation, the kind of offences that will lend themselves to fixed penalties are those where the proof is relatively mechanistic—that is, things to do with records or checks to show that staff are being vetted correctly. The kind of offences that depend on more qualitative judgments about the standards of care, and so on, are not those where a provider will be able to say 'It's a fair cop, and I accept a fixed penalty'. Those are issues that will go into the mix in deciding which offences are to be designated and the correct level of penalty to apply.</p>
<p><b>David Melding:</b> Poor record-keeping could be a major offence—do you intend to capture that sort of offence? You would expect that to be dealt with, probably, in court, if it has that weight of seriousness about it.</p>
<p><b>Mr Lubienski:</b> That is right, and even with fixed penalty offences, the inspectorate will be able to decide not to offer a fixed penalty, if it needs to be aired in court.</p>
<p><b>David Melding:</b> Finally—although I do not want to labour this point, because I can see your direction of travel—do you accept that the kind of offences that you can create by regulation will necessarily be fairly minor? You would expect any major change to criminal law to be on the face of the proposed Measure, would you not?</p>
<p><b>Brian Gibbons:</b> Yes.</p>

**Janet Ryder:** To finish with the integrated family support teams, sections 50 and 51 of the proposed Measure appear to imply that regulations would be prescriptive in relation to spending and the provision of services. Is it not difficult for stakeholders to comment on the provisions in relation to these teams, because so much of the work around these teams will be found in secondary legislation?

**Brian Gibbons:** Again, the development of these integrated family support teams is very much an evidence-based approach, based, for example, on the Option 2 scheme here in Cardiff, the independently validated work with OnTrack in the Rhondda and Maesteg, and the evaluated early parental intervention programme that is running in north Wales and elsewhere. This is very much an evidence-based approach to addressing families with multiple disadvantage, and while the point that you make about the specifics may be true, people who are dealing with this area of work will have more than an understanding of the type of experienced professionals that will be involved in delivering the work of the IFS team. Also, the IFS team will be rolled out on a pioneer basis—in other words, there will be three pioneer centres, starting this particular way of dealing with multiple disadvantage, concentrating on substance misuse in the first place. On the basis of that experience, the integrated family support teams will be rolled out to more areas of work, covering a wider range of activities. So, we need to have that flexibility rather than having to make primary legislation at every step change in the IFST programme.

**Janet Ryder:** Do you not think that the structure and functions should be set in regulations? Are you happy to see variation perhaps developing across Wales?

**Brian Gibbons:** The regulations will be prescriptive. There is an evidence base for what works and, very often, the lack of programme fidelity, when people just go and do their own thing after you have set up a scheme based on certain evidence, undermines the whole point of it. So, there is going to be a significant element of prescription with regard to the integrated family support teams, but that will be based on evidence from the evaluated projects that have already been mentioned. So, we do not want there to be limitless flexibility for the integrated support teams, because that would mean that the evidence that we have accumulated to get to this point could just be ignored.

**Janet Ryder:** In section 52(1), the proposed Measure provides that:

'A local authority must ensure that an integrated family support team includes prescribed persons.'

'Prescribed' is defined in section 63 to mean prescribed in regulations. So, the composition of IFSTs includes prescribed persons. Should a list of those prescribed persons be included on the face of the proposed Measure?

**Ms Davies:** No, because we want flexibility to be able to consult further about the types of professionals that that could refer to. The Minister said that a lot of this information is well tested. As part of other evidence and documents that we have published, we have given information on the types of people that we envisage being in the regulations, such as clinical psychologists, social workers, and specialists in the mental health sector. The types of professionals in the team will depend upon the circumstances of how we roll the IFST programme out to other areas, such as those of mental health and learning disabilities. The team and the professionals on it would need to evolve in terms of those core requirements. So, this allows us, through the regulations, to get the core team, but it also allows the flexibility for local determination and for the local authorities to co-opt the youth offending teams. They may want to be more innovative and creative, but the guidance will set out some of those arrangements.

**Janet Ryder:** Will you consult on changes?

**Ms Davies:** With the main consultation that we have done, there have been two years of extensive development work in this area, and we have consulted on things such as care pathways and the types of people who should be involved but, because it is evolving and progressive, putting that on the face of the proposed Measure would be highly dangerous.

We are currently selecting pioneer areas. The intention is to develop the first set of regulations and guidance to go live with them, but, as we roll this out across Wales in the longer term, we will consult more widely. We are testing it, and there is the flexibility for us to modify it if things are not quite right.

**Janet Ryder:** Can you clarify why the negative procedure is being used for these regulations? Is it the case that Welsh Ministers will not consult fully on any amendment to provisions in relation to the sufficiency of play opportunities? Section 60 relates to play and the necessity for local authorities to assess play opportunities.

5.30 p.m.

**Brian Gibbons:** On play and participation, there has been considerable ongoing consultation and discussion. It is very much part of a journey that we are on at the moment. We would bring forward the statutory duties very much in a work-in-hand context. A considerable amount of activity has already gone on to get us to where we are. We would not say that we are at the final destination, but the proposed Measure will require that this good practice will be there on a statutory basis, so that all children in Wales—not each individual child, but children in a generic sense—can expect to be consulted and to have the play evaluations undertaken.

In relation to why it is the negative procedure, some of the elements that are being proposed in respect of guidance and direction will, obviously, be detailed. For example, it would not be appropriate—at least I do not think so—for the criteria for undertaking an assessment of play provision in an area to be on the face of a proposed Measure. That would be too detailed and technical to be included on the face of a proposed Measure.

**David Melding:** We are not asking about that. You have used affirmative procedures elsewhere, so why are you looking at using the negative procedure in that area?

**Brian Gibbons:** There are only four areas in the proposed Measure that are subject to the affirmative procedure.

**David Melding:** The fifth is not.

**Brian Gibbons:** Sorry, I—

**Michael German:** The point that is being made is that section 60 could be determined as being an area that is not technical or procedural, but a matter of principle. Therefore, the affirmative procedure could have been used for section 60, as it has been for sections 1(7), 2(5), 12(2) and so on. Could you describe why you have chosen the negative rather than the affirmative procedure?

**Brian Gibbons:** My understanding of what section 60 will do is that it will, for example, provide regulations to give direction in relation to how the play assessment will be undertaken, and so on. That is fairly detailed work, and it is work that is going on; it is not a static, end destination at which we have arrived. The detail of how we will do that is still evolving. As the issue of how best to do it is very much an operational matter and a matter of technical detail, I do not think that affirmative procedure would be appropriate. It does not really affect the overall framework of the proposed Measure. It is very much about how the proposed Measure is delivered in an operational sense, which is more of a technical and detailed issue. Those are the criteria that we have tried to adopt.

**Michael German:** I have a small point about that. In section 60(2), the word 'may' appears, and it says 'regulations may include provision about'. That means that regulations may also include provisions that are not listed in section 60(2).

**Brian Gibbons:** Sorry, where are you now?

**Michael German:** Regulations in section 60(2) are listed as (a), (b), (c), (d) and (e). The word 'may' in section 60(2) means that you may include provisions that are not listed in those.

**Brian Gibbons:** Where are you are going back to?

**David Melding:** Section 60.

**Brian Gibbons:** Okay, I follow.

**Michael German:** Does 'may' mean 'must'?

<p><b>Brian Gibbons:</b> I see the point that you are making. I will look to Mike.</p>
<p><b>Mr Lubienski:</b> It is drafted as such because paragraphs (a), (b), (c), (d) and (e) are the five matters that one would expect regulations to deal with, but that does not necessarily exclude regulations from being made about anything else. Those are the principal five things about play assessments, and paragraph (a) is probably the most important matter that the regulations will deal with.</p>
<p><b>Janet Ryder:</b> Are you satisfied with that answer, Mike?</p>
<p><b>Michael German:</b> I am not necessarily satisfied, but I understand it.</p>
<p><b>David Melding:</b> We have collected the evidence. ["Laughter."]</p>
<p><b>Janet Ryder:</b> I would like to ask a question regarding section 60 in particular. What consideration was given to the proposed Measure put forward by Dr Dai Lloyd on consulting on the disposal of playing fields when this proposed Measure was being drawn up? Was any connection made with that proposed Measure at all?</p>
<p><b>Brian Gibbons:</b> Sorry, do you mean was Dai Lloyd consulted?</p>
<p><b>Janet Ryder:</b> As a committee is considering a proposed Measure on the disposal of play areas, which would seem to impact directly on this, I wondered how the process worked when you have two related proposed Measures put forward together. Were they considered jointly? Was the other proposed Measure considered at the same time as this?</p>
<p><b>Brian Gibbons:</b> I cannot speak for officials, but when I looked at section 60, I was conscious of the existence of Dai Lloyd's proposed Measure. When I looked at the original draft of this, I considered whether this would provide comfort to someone who was concerned about that issue, as Dai is. I thought that this would provide reassurance for him that local authorities would be under a statutory duty to carry out assessments and so on, and that they would have to respond to the requirements of the assessments. There is a caveat that it will be done in so far as it is reasonably practicable, but there is also an expectation that they would respond to what the play assessments threw up. So, from Dai's point of view, this would be something that would support the aspiration or intention of his particular piece of legislation. I cannot speak for others, but when I went through this, I was conscious of what Dai was proposing.</p>
<p><b>Janet Ryder:</b> My question is from a process point of view. You have two proposed Measures working in the same direction and I wondered what connection, if any, had been made between them.</p>
<p><b>Brian Gibbons:</b> I do not know whether officials spoke to Dai or not, but I was certainly conscious of it when I looked at this proposed Measure to see whether or not I was satisfied with it.</p>
<p><b>Ms Trott:</b> We are in touch with the officials who are handling that part of the policy. I am not absolutely familiar with the technicalities of that proposed Measure, but I think that it deals with a much more specific and focused issue around impact assessments and disposals of specific areas. So, the two did not seem to conflict in any way.</p>
<p><b>Janet Ryder:</b> They do not conflict, but you did not consider combining them in any way. Was no consideration given to combining them?</p>
<p><b>Brian Gibbons:</b> Certainly not from my point of view. However, having been involved with Dai's proposed Measure, I think that this would give him comfort rather than being a source of concern. It will provide him with reassurance and comfort, not least because this is going to be put on a statutory footing.</p>

**Janet Ryder:** Minister, I appreciate that you have spent a long time answering some very detailed questions and we have put you through quite a grilling for nearly an hour and a half this afternoon. Thank you very much for your time. I would like to ask you one last question on something that we have discussed twice during your answers to questions, and it is in relation to the Bill that is being developed. When you talked about it, you talked about the possibility that it might put forward an issue that had not been considered in Wales that you might then take on board. You also stated that it could deal with issues that are non-devolved and that you hoped that there would be consultation. At what point would that consultation take place? Would that be a working dialogue as the Bill is being developed in the UK, as well as the work that is going on here? Will you be involved in both processes? Given that it is a UK-wide Bill, how will the needs of Wales be reflected in that Westminster legislation?

**Brian Gibbons:** Tracey might want to go into more detail, but there is a four nations forum on child poverty.

5.40 p.m.

**Ms Breheny:** As the Minister said, on an official level, we have the four nations forum on child poverty, which meets every quarter. As the Bill consultation was developed, we worked closely with officials in the UK child poverty unit at the beginning of this year to try to ensure that its provisions, as they affect Wales, fit with our proposed Measure.

On the areas and the broad aims that you asked about earlier, we were quite comforted when we looked at the areas being considered at the UK level. The building blocks that they have identified are employment and financial support for parents, which will clearly affect devolved and non-devolved areas, community regeneration and housing, early years investment, and health and social services support. There was quite a good read-across on the broad aims that we had already developed for the proposed Measure. So, the challenge is to ensure that our strategy in Wales complements the strategy that we understand will be in place at the UK level, and we are having discussions to ensure that.

**Brian Gibbons:** I have met Stephen Timms, the lead Minister on this. We have also corresponded just to be clear about where we stand on the relevant issues and to ensure that the Welsh dimension is respected, because we are all pushing this together. This is exciting—if that is not over-egging the pudding—because, for the first time, there will be a UK statutory duty to tackle child poverty. There will be a statutory duty at the Welsh Assembly Government level through the proposed Measure, and there will be a statutory duty on bodies through the Children Act 2004 to tackle child poverty. So, there will be a statutory duty on Government at all levels, from top to bottom, to work together. That is encouraging and exciting and we want to go in that direction.

**Janet Ryder:** There are no further questions. Thank you for your time, Minister, and for the way in which you have answered our questions this afternoon.

## Cynnig Trefniadol Procedural Motion

**Janet Ryder:** At this point, I wish Members to resolve to go into private session to consider item 5.2. 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)."

I see that the committee is in agreement.

"Derbyniwyd y cynnig. "

"Motion agreed."

"Daeth rhan gyhoeddus y cyfarfod i ben am 5.43 p.m.  
The public part of the meeting ended at 5.43 p.m."