



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

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

**Dydd Mawrth, 15 Gorffennaf 2008
Tuesday, 15 July 2008**

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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

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

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

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

Dechreuodd y cyfarfod am 8.46 a.m.
The meeting began at 8.46 a.m.

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

[1] **David Lloyd:** Croeso i gyfarfod diweddaraf Pwyllgor Is-ddeddfwriaeth y Cynulliad, a'n cyfarfod olaf cyn toriad yr haf. Croesawaf fy nghyd-Aelodau, swyddogion a'r dorf sy'n llifo i mewn i oriel y cyhoedd.

David Lloyd: Welcome to the latest meeting of the Assembly's Subordinate Legislation Committee, and our last meeting before the summer recess. I welcome fellow Members, officials and the crowd flooding into the public gallery.

[2] Os bydd argyfwng, bydd y tywyswyr yn ein harwain at yr allanfa agosaf. Gellir defnyddio clustffonau i glywed y cyfieithiad ar y pryd ac i addasu lefel y sain. Rhaid diffodd ffonau symudol yn llwyr. Mae cyfieithiad ar y pryd o'r Gymraeg i'r Saesneg ar gael ar sianel 1, a gellir clywed cyfraniadau yn yr iaith wreiddiol ar sianel 0. Ni chafwyd unrhyw ymddiheuriadau.

If there is an emergency, the ushers will lead us to the nearest exit. Headsets can be used to receive the simultaneous translation and to adjust the volume. Mobile phones must be completely switched off. A simultaneous translation from Welsh to English is available on channel 1, and contributions can be heard in the original language on channel 0. No apologies have been received.

8.46 a.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 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
Instruments Subject to Annulment Pursuant to a Resolution of the Assembly
(the Negative Procedure)**

- [3] **David Lloyd:** Bu Joanest yn craffu ar SLC175, Rheoliadau Deunyddiau ac Eitemau Plastig mewn Cyffyrddiad â Bwyd (Cymru) (Rhif 2) 2008, ac SLC176, Rheoliadau Deddf Gofal Plant 2006 (Darparu Gwybodaeth) (Cymru) (Diwygio) 2008. Mae'r adroddiadau ger ein bron. Joanest, a oes gen ti rywbeth i'w ychwanegu?
- David Lloyd:** Joanest has been scrutinising SLC175, the Plastic Materials and Articles in Contact with Food (Wales) (No. 2) Regulations 2008, and SLC176, the Childcare Act 2006 (Provision of Information) (Wales) (Amendment) Regulations 2008. The reports are before us. Joanest, do you wish to add anything?
- [4] **Ms Jackson:** Yr wyf ond am dynnu sylw at y ffaith bod y rheoliadau yn SLC176 yn cywiro pwyntiau a godwyd gan y pwyllgor yn y cyfarfod ym mis Chwefror.
- Ms Jackson:** I just want to draw attention to the fact that the regulations in SLC176 amend points raised by the committee in the meeting in February.
- [5] **David Lloyd:** Diolch yn fawr. Felly, mae rhywun yn gwrandao ar yr hyn y mae'r pwyllgor yn ei ddweud. A yw pawb yn hapus i dderbyn y rheoliadau hynny?
- David Lloyd:** Thank you. So, someone at least is listening to what this committee has to say. Is everyone happy to pass those regulations?
- [6] **Eleanor Burnham:** A yw'r gweithdrefnau hyn yn negyddol oherwydd ein bod wedi craffu arnynt yn ddigonol?
- Eleanor Burnham:** Are these procedures negative because we have scrutinised them enough?
- [7] **Ms Jackson:** Mae'r weithdrefn negyddol i fod i ymwneud ag SLC175, ac mae hefyd i fod i gael ei defnyddio ar gyfer SLC176—
- Ms Jackson:** The negative procedure is supposed to deal with SLC175, and it is also supposed to be used for SLC176—
- [8] **Eleanor Burnham:** Codaf y pwynt am fy mod yn siŵr bod pobl am wybod pam ydym yn defnyddio'r weithdrefn negyddol yn lle'r weithdrefn gadarnhaol.
- Eleanor Burnham:** I raise the point because I am sure that people wonder why we use the negative procedure rather than the affirmative procedure.
- [9] **David Lloyd:** Call iawn, Eleanor, os caf ddweud.
- David Lloyd:** Very sensible, Eleanor, if I may say so.
- [10] Bu Gwyn yn craffu ar SLC178, Rheoliadau Addysg (Datgymhwyso Cwricwlwm Cenedlaethol Cymru yng Nghyfnod Allweddol 1) (Cymru) 2008, SLC179, Rheoliadau Addysg (y Diwrnod Ysgol a'r Flwyddyn Ysgol) (Cymru) (Diwygio) 2008, ac SLC180, Gorchymyn Addysg (Cwricwlwm Cenedlaethol) (Targedau Cyrhaeddiad a Rhaglenni Astudio) (Cymru) (Diwygio) 2008. Gwyn, a oes gen ti rywbeth i'w nodi yn ychwanegol at yr
- Gwyn has been scrutinising SLC178, the Education (Disapplication of the National Curriculum for Wales at Key Stage 1) (Wales) Regulations 2008, SLC179, the Education (School Day and School Year) (Wales) (Amendment) Regulations 2008, and SLC180, the Education (National Curriculum) (Attainment Targets and Programmes of Study) (Wales) (Amendment) Order 2008. Gwyn, do you have anything to add to the reports that are before us?

adroddiadau sydd gerbron?

[11] **Mr Griffiths:** Yr wyf ond am nodi y cawsom gyfle i edrych ar y rheoliadau ar ffurf ddrafft cyn iddynt gael eu gwneud, ac felly yr oedd hynny yn help i sicrhau nad oedd gwallau ynddynt. Dylid nodi bod SLC180 hefyd yn cywiro gwallau a nodwyd gan y pwyllgor ar achlysur blaenorol.

Mr Griffiths: I just want to note that we had an opportunity to look at the regulations in draft format before they were made, so that assisted in ensuring that they did not contain errors. It should be noted that SLC180 also amends errors previously identified by the committee.

[12] **David Lloyd:** Diolch yn fawr, Gwyn. A oes unrhyw sylw?

David Lloyd: Thank you, Gwyn. Are there any comments?

[13] **Eleanor Burnham:** Mae gennyf bwynt cyflym. Gan nad yw'r cyfnod sylfaen yn cael ei weithredu yn awr, hyd y deallaf, beth mae hyn yn ei olygu? Oherwydd diffyg arian, dim ond un neu ddau o enghreifftiau sydd ar draws Cymru o'r cyfnod sylfaen yn cael ei weithredu. Gwn mai mater polisi ac nid mater gweithredol yw hyn, ond yr wyf yn gofyn o ran y rheoliadau hyn.

Eleanor Burnham: I have a brief point. As the foundation phase is not being implemented now, as I understand it, what does that mean? Due to a lack of funding, we have only one or two examples across Wales of the foundation phase being implemented. I know that this is a policy and not an operational matter, but I am asking in the context of these regulations.

[14] **Mr Griffiths:** SLC177 yw'r rheoliadau sy'n ymwneud â'r cam hwnnw, ond—

Mr Griffiths: SLC177 are the regulations that deal with that stage, but—

8.50 a.m.

[15] **Eleanor Burnham:** Ai ffordd o ddelio â hyn yw'r rheoliadau hyn?

Eleanor Burnham: Are these regulations a way to deal with that?

[16] **Mr Griffiths:** Ie, ond nid yw hyn yn fater ariannol; mater sy'n ymwneud â'r rheoliadau ydyw.

Mr Griffiths: Yes, but this is not a funding matter; it is a matter related to the regulations.

[17] **David Lloyd:** Rhaid cael y rheoliadau gerbron cyn i ni allu gweithredu dim byd—ni ellir rhoi'r cert o flaen y ceffyl. Felly, a yw pawb yn hapus i basio'r rhain? Gwelaf eich bod.

David Lloyd: We must have regulations before us before anything can be implemented—you cannot put the cart before the horse. Therefore, is everyone content to pass those? I see that you are.

8.50 a.m.

Offerynnau y bydd y Cynulliad yn cael ei Wahodd i Dalu Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2, ac Offerynnau sy'n Agored i gael eu Dirymu yn unol â phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
Instruments in Respect of which the Assembly is invited to Pay Special Attention under Standing Order No. 15.2, and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (the Negative Procedure)

[18] **David Lloyd:** Bu Gwyn yn craffu ar SLC177, Gorchymyn Addysg (y Cwricwlwm Cenedlaethol) (y Cyfnod Sylfaen) (Cymru)

David Lloyd: Gwyn has been scrutinising SLC177, the Education (National Curriculum) (Foundation Stage) (Wales)

2008.

Order 2008.

[19] **Mr Griffiths:** Mae gwall bychan yn y testun Cymraeg, nad yw'n effeithiol felly. Mae'r Llywodraeth wedi derbyn y pwynt, ac mae'n bwriadu gwneud deddfwriaeth i gywiro hyn o fewn chwe mis, gan obeithio gwneud hynny yn gynt, os oes modd.

Mr Griffiths: There is a small error in the Welsh text, which is therefore not effective. The Government has accepted the point, and intends to make regulations to correct this within six months, and hopes to do so before then, if possible.

[20] **David Lloyd:** Ond y cyngor yw pasio hwn fel ag y mae, a bydd y Llywodraeth yn diwygio, neu'n cywiro, o fewn y chwe mis, onid e?

David Lloyd: But the advice is that this be passed as it is, and that the Government will amend, or correct, it within six months, is it not?

[21] **Mr Griffiths:** Ie.

Mr Griffiths: Yes.

[22] **David Lloyd:** A yw pawb yn hapus â hynny? Gwelaf eich bod.

David Lloyd: Is everyone content with that? I see that you are.

8.51 a.m.

Monitro Canlyniad Adroddiadau'r Pwyllgor ar Is-ddeddfwriaeth o dan Reolau Sefydlog Rhifau 15.2 i 15.6

Monitoring the Outcome of the Committee's Reports on Subordinate Legislation under Standing Orders Nos. 15.2 to 15.6

[23] **David Lloyd:** Fel y dywedodd Joanest, bu i'r Llywodraeth ymateb i sylwadau'r pwyllgor eisoes. Mae'r eitem hon ar gyfer trafod sut ydym yn monitro canlyniad adroddiadau'r pwyllgor ar is-ddeddfwriaeth o dan Reolau Sefydlog Rhifau 15.2 i 15.6.

David Lloyd: As Joanest mentioned, the Government has already responded to the committee's comments. This item is to discuss how we monitor the outcomes of committee reports on subordinate legislation under Standing Orders Nos. 15.2 to 15.6.

[24] Yn ystod y Cynulliad cyntaf a'r ail, cofiwch fod y pwyllgor a oedd yn delio ag is-ddeddfwriaeth yn cyhoeddi adroddiad blynyddol gan gynnwys gwybodaeth am y camau a gymerwyd gan Lywodraeth Cynulliad Cymru o ran unrhyw ddeddfwriaeth gan y Cynulliad yn ystod y blynyddoedd hynny. Yn y trydydd Cynulliad, nid yw'n ofynnol i bwyllgorau gyhoeddi adroddiad blynyddol, felly ni chaiff adroddiad blynyddol ei gyhoeddi gennym. Fodd bynnag, efallai y bydd y pwyllgor am adolygu canlyniad ei adroddiadau yn flynyddol er mwyn monitro effeithiolrwydd ei waith craffu, a hynny ar ddiwedd pob blwyddyn Cynulliad, cyn toriad yr haf.

You will recall that, during the first and second Assemblies, the committee dealing with subordinate legislation published an annual report, which included information about the actions taken by the Welsh Assembly Government in respect of any Assembly legislation during those years. In the third Assembly, committees are not required to publish annual reports, so an annual report will not be published. However, the committee may wish to review the outcome of its reports annually to monitor the effectiveness of its scrutiny work, and that could be done at the end of each Assembly year, before the summer recess.

[25] Er gwybodaeth, bu'r Pwyllgor Is-ddeddfwriaeth yn craffu ar ryw 180 o offerynnau statudol yn ystod y flwyddyn ddiwethaf, a bu iddo gyflwyno adroddiad ar

For your information, the Subordinate Legislation Committee has scrutinised some 180 statutory instruments over the past year, and submitted a report on more than 50 of

fwy na 50 ohonynt. Yr ydym wedi cyflwyno adroddiadau, a bu'r Llywodraeth yn adrodd yn ôl, ond nid ydym wedi cwblhau'r cylch gyda phob un o'r adroddiadau hyn.

[26] Felly, er mwyn hwyluso'r gwaith o fonitro canlyniadau adroddiadau'r pwyllgor hwn, lle bo'r camau heb eu cymryd eto—neu lle nad ydym yn ymwybodol eu bod wedi'u cymryd—awgrymaf fy mod, yn Gadeirydd, yn ysgrifennu at y Cwnsler Cyffredinol i ofyn am yr wybodaeth ddiweddaraf am y camau y bwriedir eu cymryd, a amlinellir yn ymatebion y Llywodraeth i adroddiadau'r pwyllgor. Hynny yw, byddwn yn gofyn am awgrym mwy penodol o'r adeg y mae'r Llywodraeth yn bwriadu cwblhau'r camau hynny.

[27] Felly, yr ydym yn awgrymu dau bwynt i chi gyntuno arnynt, gobeithio. Yn gyntaf, mae angen cytuno y dylai'r pwyllgor hwn, mewn egwyddor, adolygu canlyniadau ei adroddiadau ar offerynnau statudol yn flynyddol. Yn ail, dylai'r Cadeirydd ysgrifennu at y Cwnsler Cyffredinol i ofyn ynghylch hwyluso'r arfer monitro, ac i ddarparu gwybodaeth lle nad yw'r wybodaeth gennym, i ni alluogi i'r monitro ddigwydd. A yw pawb yn cytuno â'r ddau bwynt hwnnw?

[28] **Alun Davies:** Cytunaf â'r ddau bwynt, a chytunaf â nod yr adroddiad hefyd. Fodd bynnag, pan ydym yn adrodd yn ôl, a allwn sicrhau bod thema yn cael ei nodi yn ystod y flwyddyn? Felly, pan ydych, yn gynghorwyr cyfreithiol, yn dod â gwallau atom, er enghraifft, byddem yn cael gweld pam ydym yn trafod pa offeryn bynnag, neu beth bynnag yr ydym yn ei drafod, fel ein bod yn gweld dros flwyddyn, a thros flynyddoedd, a oes patrymau ac a oes themâu gwahanol yn codi flwyddyn ar ôl blwyddyn.

[29] Cawsom drafodaeth rai misoedd yn ôl am y sefyllfa o ran iaith, er enghraifft. Byddai'n hwylus pe bai hynny'n rhan o'r adroddiad blynyddol. Hefyd, pob tro y mae pethau yn dod yn ôl oddi wrth y Llywodraeth, credaf y dylem restru'r rhain, i sicrhau, fel y dywedaso, Gadeirydd, fod y Llywodraeth yn ymateb i'r hyn yr ydym yn ei ddweud.

them. We have submitted reports, and the Government has been reporting back, but we have not completed the cycle with every one of these reports.

Therefore, to facilitate the work of monitoring the outcomes of this committee's reports, where steps have not yet been taken—or we are not aware that steps have been taken—I suggest that I, as Chair, write to the Counsel General to request the latest information about the steps that are intended to be taken, and which are outlined in the Government's responses to the committee's reports. That is, we will ask for a more specific indication of when the Government intends to complete these steps.

Therefore, we are suggesting two points for your agreement, hopefully. First, we need to agree that this committee should, in principle, review the outcomes of its reports on statutory instruments annually. The second point is that the Chair should write to the Counsel General to ask about facilitating the monitoring exercise, and to provide information where we do not have that information, so that we can allow monitoring to take place. Is everyone agreed on those two points?

Alun Davies: I agree with those two points, and I also agree with the aim of the report. However, when we report back, can we ensure that a theme is identified during the year? Therefore, when you, as legal advisers, bring errors to our attention, for example, we should see why we are discussing the instrument, or whatever we are discussing, so that we can see over a year, or several years, whether a pattern is emerging, and whether different themes emerge year after year.

We had a discussion some months ago on the position regarding language, for example. It would be useful if that formed part of the annual report. I also believe that, every time things come back from the Government, we should list these, to ensure, as you said, Chair, that the Government responds to what we are saying.

[30] **Eleanor Burnham:** Byddai'n ddiddorol i'r cyhoedd sy'n gwylio ac i academyddion pe baem yn nodi faint o ddefnydd a wneir o'r weithdrefn negyddol hon. Yr wyf yn siŵr bod cymhariaeth rhyngom â lleoedd eraill fel yr Alban o ran sut mae'n datblygu.

Eleanor Burnham: It would be interesting for the watching public and academics if we were to note how much use is made here of the negative procedure. I am sure that there is a comparison between us and other places, such as Scotland, in terms of how this is developing.

[31] **David Lloyd:** Mae hwnnw'n rheswm digon teg dros gasglu'r wybodaeth honno. A oes sylw arall? Gwelaf nad oes a bod pawb yn hapus â'r ffordd ymlaen. Diolch yn fawr am eich sylwadau.

David Lloyd: That is a good enough reason for gathering that information. Are there any other comments? I see that there are none and that everyone is content with that way forward. Thank you for your comments.

8.55 a.m.

Unrhyw Fater Arall Any Other Business

[32] **David Lloyd:** Nid oes mater arall i'w godi gennyf, ac, wrth edrych o gwmpas, gwelaf nad oes mater arall i'w godi gan neb arall ychwaith.

David Lloyd: I have no other business, and, as I look around the table, I see that no-one else seems to have any other business either.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[33] **David Lloyd:** Dyddiad y cyfarfod nesaf yw 23 Medi. Mae hynny i'w gadarnhau, ond rhowch hynny yn eich dyddiaduron. Ar hyn o bryd, bydd yn cychwyn am 8.45 a.m., ond gall yr amser a'r dyddiad newid. Mwynhewch yr haf wrth ichi weithio'n galed yn eich etholaethau. Diolch i chi, a diolch i'r cyfieithwyr.

David Lloyd: The date of the next meeting is 23 September, although that has yet to be confirmed, but note it in your diaries. At the moment, it is intended that it will start at 8.45 a.m., but the time and the date could change. Enjoy the summer as you work hard in your constituencies. Thank you, and thanks to the interpreters.

*Daeth y cyfarfod i ben am 8.56 a.m.
The meeting ended at 8.56 a.m.*