



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

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

Dydd Mawrth, 25 Medi 2007

Tuesday, 25 September 2007

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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
Andrew R.T. Davies	Ceidwadwyr Cymreig Welsh Conservatives
Paul Davies	Ceidwadwyr Cymreig Welsh Conservatives
Irene James	Llafur Labour
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Sandy Mewies	Llafur Labour
Janet Ryder	Plaid Cymru The Party of Wales
Karen Sinclair	Llafur Labour

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

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

Dechreuodd y cyfarfod am 8.16 a.m.
The meeting began at 8.16 a.m.

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

[1] **David Lloyd:** Bore da i chi i gyd. Mae'n amser inni ddechrau cyfarfod diweddaraf Pwyllgor Is-ddeddfwriaeth y Cynulliad. Yn ogystal â chroesawu fy nghyd-Aelodau, croesawaf swyddogion a'r cyhoedd i'r cyfarfod.

David Lloyd: Good morning to you all. It is time for us to start the latest meeting of the Assembly's Sub-legislation Committee. In addition to welcoming my fellow Members, I welcome officials and the public to the meeting.

[2] Os bydd argyfwng, bydd y tywyswyr yn eich arwain at yr allanfa agosaf. Gellir defnyddio'r clustffonau i gael cyfieithiad ar y pryd ac i addasu lefel y sain. Gall y tywyswyr ddangos i'r cyhoedd sut i'w defnyddio. Rhaid diffodd ffonau symudol yn llwyr. Mae'r cyfieithiad ar y pryd o'r Gymraeg i'r Saesneg

If there is an emergency, the ushers will lead you to the nearest exit. You can use the headsets to get a simultaneous translation and to alter the sound level. The ushers can show the public how to use them. Mobile phones must be switched off completely. Simultaneous translation from Welsh to

ar gael ar sianel 1. Gellir clywed cyfraniadau yn yr iaith wreiddiol ar sianel 0. Mae modd cynyddu'r sain ar sianel 0.

English is available on channel 1. You can hear contributions in the original language on channel 0. You can also amplify the sound on channel 0.

[3] Mae Alun Davies wedi anfon ei ymddiheuriadau. A oes ymddiheuriadau eraill? Gwelaf nad oes.

Alun Davies has sent his apologies. Are there any other apologies? I see that there are none.

8.18 a.m.

Offerynnau na Chafodd y Cynulliad ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2

Instruments in Respect of which the Assembly is Not Invited to Pay Special Attention under Standing Order No. 15.2

[4] **David Lloyd:** Mae hwn yn ymwneud ag offerynnau statudol ac offerynnau statudol drafft na chyflwynir adroddiad arnynt o dan Reol Sefydlog Rhif 15.2. Bydd Gwyn yn dechrau ar SLC38 ac SLC40. A oes gennych rywbeth i'w ychwanegu at y diffyg adroddiad?

David Lloyd: This deals with statutory instruments and draft statutory instruments that are not reported on under Standing Order No. 15.2. Gwyn will commence on SL38 and SLC40. Do you have anything to add to the lack of a report?

[5] **Mr Griffiths:** Nac oes.

Mr Griffiths: No.

[6] **David Lloyd:** Diolch. Joanest sydd â gorchwyl SLC42 ac SLC43.

David Lloyd: Thank you. Joanest is dealing with SLC42 and SLC43.

[7] **Ms Jackson:** Nid oes gennyf ddim byd i'w ychwanegu.

Ms Jackson: I have nothing to add.

[8] **David Lloyd:** Diolch. Symudwn ymlaen, felly.

David Lloyd: Thank you. We will, therefore, move on.

8.18 a.m.

Offerynnau y Gwahoddir y Cynulliad i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2

Instruments in Respect of which the Assembly is Invited to Pay Special Attention under Standing Order No. 15.2

[9] **David Lloyd:** Yr eitem hon yw is-ddeddfwriaeth i'w hystyried. Offerynnau statudol ac offerynnau statudol drafft ydynt, hynny yw, offerynnau y cyflwynir adroddiad arnynt o dan Reol Sefydlog Rhif 15.2, offerynnau sy'n agored i gael eu dirymu yn unol â phenderfyniad gan y Cynulliad, sef y weithdrefn negyddol. Bydd Gwyn yn adrodd ar SLC31, SLC33 ac SLC37. Dogfen SLC31 yw Rheoliadau Tiroedd Comin (Cofrestru Meysydd Tref neu Bentref) (Trefniadau Interim) (Cymru) 2007, SLC33 yw

David Lloyd: This item is on sub-legislation for consideration. These are statutory instruments and draft statutory instruments, that is, instruments reported on under Standing Order No. 15.2, instruments subject to annulment, pursuant to a resolution of the Assembly, namely the negative procedure. Gwyn will report on SLC31, SLC33 and SLC37. The SLC31 document is the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007, SLC33 is the Non-

Gorchymyn Ardrethu Annomestig (Rhyddhad Ardrethi i Fusnesau Bach) (Cymru) (Diwygio) 2007, ac SLC37 yw Rheoliadau Milheintiau a Sgîl-gynhyrchion Anifeiliaid (Ffioedd) (Cymru) 2007.

domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2007, and SLC37 is the Zoonoses and Animal By-products (Fees) (Wales) Regulations 2007.

[10] **Mr Griffiths:** Cyfeirïaf yn gyntaf at y rheoliadau tiroedd comin. Fel y gwelwch, mae un frawddeg ychwanegol yn y testun Cymraeg sy'n cyflwyno gwybodaeth ond nid oes ganddi unrhyw effaith gyfreithiol. Mae ymateb y Llywodraeth wedi ei nodi yn ail baragraff yr adroddiad a chytunaf â'r Llywodraeth nad oes angen cywiro ar hyn o bryd.

Mr Griffiths: I will refer first to the common land regulations. As you will see, there is an additional sentence in the Welsh text that provides information but which has no legal consequence. The Government's response to this is noted in the second paragraph of the report and I agree with the Government that there is no need for correction at present.

8.20 a.m.

[11] **David Lloyd:** Diolch, Gwyn. A yw pawb yn hapus gyda hynny?

David Lloyd: Thank you, Gwyn. Is everyone content with that?

[12] **Eleanor Burnham:** Nid oeddem yma ar 6 Medi a sylwaf fod hwn wedi dod i rym ers y dyddiad hwnnw. A allwch chi ein hatgoffa beth sy'n digwydd gydag is-ddeddfwriaeth pan nad ydym yn bresennol? A yw'n cael ei basio neu a yw'n dod o'n blaenau ni i gael ei hystyried?

Eleanor Burnham: We were not here on 6 September and I notice that this has since come into force. Can you remind us what happens to subordinate legislation when we are not here? Is it passed or does it come before this committee for consideration?

[13] **David Lloyd:** Mae'r gwaith yn mynd yn ei flaen ond yr ydym yn gallu anghytuno â phenderfyniadau. Gwyn, a allwch chi ymhelaethu ar hynny?

David Lloyd: The work continues but we can disagree with decisions. Gwyn, can you expand on that?

[14] **Mr Griffiths:** Golyga'r drefn newydd fod is-ddeddfwriaeth yn cael ei wneud gan Weinidogion. Felly, maent yn gallu gwneud is-ddeddfwriaeth yn ystod y toriadau, a daw'r ddeddfwriaeth i'r pwyllgor hwn o fewn 20 diwrnod gwaith iddo gael ei osod.

Mr Griffiths: The new system means that subordinate legislation is made by Ministers. Therefore, they can make subordinate legislation during recess, and the legislation then comes to this committee within 20 working days of its being laid.

[15] **Eleanor Burnham:** Yr oeddwn am grybwyll y pwynt hwnnw gan ein bod yn dechrau ar drefn newydd. Credaf ei fod yn bwynt pwysig.

Eleanor Burnham: I wanted to raise that point because we are working in a new system. I think that it is an important point.

[16] **David Lloyd:** A oes gennych bwyntiau i'w nodi ar y ddau arall, Gwyn? Cymerwn SLC33 yn gyntaf.

David Lloyd: Do you have any points to note on the other two, Gwyn? We will start with SLC33.

[17] **Mr Griffiths:** Oes. Ar y Gorchymyn ardrethu annomestig, gwelwch fy mod wedi gwneud pwynt yn destun adroddiad, yn unol â Rheol Sefydlog Rhif 15.2, ynghylch ôl-

Mr Griffiths: Yes. On the non-domestic rating Order, you will see that I have included a reporting point, in accordance with Standing Order No. 15.2, on

weithredu, ond, fel y gwelwch, nodyn er gwybodaeth ydyw yn hytrach na chwyn. Er hynny, mae'n enghraifft ddiddorol o'r math o Orchymyn y gellid gwneud adroddiad arno o dan y Rheol Sefydlog hon.

[18] **David Lloyd:** Diolch, Gwyn. A yw pawb yn hapus i basio hwn fel ag y mae? Gwelaf eich bod.

[19] Felly, awn ymlaen i SLC37, sef rheoliadau milheintiau a sgil-gynhyrchion anifeiliaid.

[20] **Mr Griffiths:** Mae gan hwn eto amryw of fân groesgyfeiriadau anghywir. Ers paratoi'r adroddiad drafft, cefais ymateb ar ran y Gweinidog, a darllenaf yr ymateb ichi fel eich bod yn ymwybodol o'r hyn sydd gan y Gweinidog i'w ddweud ynghylch y sylwadau.

'The Welsh Assembly Government agrees with the points identified under Standing Order 15.2. The Government is of the view that whilst the legislation is technically defective, the courts would be prepared to interpret the legislation so as to give effect to the Government's intention. The same error occurs in the corresponding legislation for England. The Government is of the view that amending legislation is desirable and will take the opportunity to amend the legislation before February 2008 when the legislation will be amended to extend the charging powers to cover activities in relation to the laying flock national control plan'.

[21] Felly, mae'n fwriad gan y Llywodraeth i gyflwyno is-ddeddfwriaeth bellach i gywiro hyn cyn mis Chwefror 2008.

[22] **David Lloyd:** Diolch, Gwyn. A oes unrhyw sylwadau?

[23] **Janet Ryder:** Purely for the purpose of information, if courts are supposed to be independent, how can the Government assume that they will find according to how it thinks that this law is supposed to be interpreted?

[24] **Mr Griffiths:** The courts have the power to take into account the surrounding circumstances where there is a degree of ambiguity. In this case, they were clearly ambiguous because I identified that as a problem. I was also able to work out what the intention was from the legislation and what made sense, so I was able to say what the correct paragraph numbering should be. So, the court, in the same way, could look at the legislation, realise that it did not work and then try to give effect to it in a way that it could work. However, clearly it needs to be resolved by the Government.

[25] **Karen Sinclair:** What we have effectively said is that the changes will happen at the time that other changes are happening. If other changes did not happen in the spring, would this just sit defectively for years or would the Government say that it needed to change it? It looks as if it is saying, 'We will change it, but only when it is convenient because we are doing other things'.

retrospective effect, but, as you can see, it is only reported for information rather than as a criticism. However, it is an interesting example of the kind of Order on which we could report under this Standing Order.

David Lloyd: Thank you, Gwyn. Is everyone happy to pass this Order as it stands? I see that you are.

Therefore, we will now move on to SLC37, which is the zoonoses and animal by-products regulations.

Mr Griffiths: This again has many minor incorrect cross-references. Since preparing the draft report, I received a response on behalf of the Minister, and I will read out that response so that you are aware of what the Minister has to say in response to the comments.

Therefore, the Government intends to bring forward further subordinate legislation to correct this before February 2008.

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

[26] **Mr Griffiths:** It is worded in the following way:

‘The Government will take the opportunity to amend the legislation before February 2008 when the legislation will be amended for other purposes’.

[27] So, it sounds as if it will do it earlier than that rather than waiting for the next batch of legislation.

[28] **Karen Sinclair:** I am sorry, I misunderstood.

[29] **Janet Ryder:** Is there any way that we can track those amendments now that you have drawn that to our attention and we have raised concerns?

[30] **Mr Griffiths:** That is something that the support staff of the committee will keep an eye out for.

[31] **Janet Ryder:** So, we will get a report back on that?

[32] **Mr Griffiths:** Yes. Similarly, the Joint Committee on Statutory Instruments at Westminster keeps a note of reporting issues and chases up whether they have been dealt with. It is the sort of exercise that could be carried out during the summer recess next year and then a report could be prepared for this time next year on any outstanding matters that have not been resolved.

[33] **David Lloyd:** Diolch yn fawr, Glyn. A oes unrhyw sylwadau eraill? Gwelaf nad oes. Cymeraf ein bod yn cymeradwyo'r rheoliadau hynny gan dalu sylw i'r hyn a ddywedodd Gwyn.

David Lloyd: Thank you very much, Glyn. Are there any further comments? I see that there are none. I take it that we are happy to pass those regulations having taken into account Gwyn's comments.

[34] Mae'r rheoliadau nesaf o dan ofal Joanest. SLC39, sef Rheoliadau Aseu Effeithiau Amgylcheddol a Chynefinoedd Naturiol (Echdynnu Mwynau drwy Dreillio Gwely'r Môr) (Cymru) 2007 ac SLC41, sef the Import and Export Restrictions (Foot-and-Mouth Disease) (No. 3) (Wales) Regulations 2007. Gwnaed y rheoliadau yn Saesneg yn unig.

The next regulations are under Joanest's care. These are SLC39, the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007, and SLC41, the Import and Export Restrictions (Foot-and-Mouth Disease) (No. 3) (Wales) Regulations 2007

[35] **Ms Jackson:** Regarding SLC39, the Government has accepted the minor drafting points and will be taking action to deal with this. The foot and mouth disease Order is reported to be technically accurate as it is made in English only.

[36] **David Lloyd:** Diolch, Joanest. Yr ydym wedi cael y drafodaeth o'r blaen ynglŷn â'r rheoliadau sydd angen eu gwneud ar fyrder yn y Saesneg yn unig. Cymeraf, felly, ein bod yn cymeradwyo'r rheoliadau hyn gyda'r sylwadau. Diolch yn fawr.

David Lloyd: Thank you, Joanest. We have had the discussion previously about regulations that need to be made at short notice in English only. I take it, therefore, that we pass the regulations with the comments. Thank you very much.

8.27 a.m.

**Mesur Arfaethedig ynghylch Gwneud Iawn am Gamweddau'r GIG (Cymru)
2007**

Proposed NHS Redress (Wales) Measure 2007

[37] **David Lloyd:** O dan Rheol Sefydlog Rhif 15.6(ii), caiff y pwyllgor ystyried a chyflwyno adroddiad ar:

‘Ba mor briodol yw darpariaethau mewn Mesurau Cynulliad arfaethedig ac mewn Mesurau ar gyfer Deddfau Senedd y Deyrnas Unedig sy'n rhoi pwerau i wneud is-ddeddfwriaeth i Weinidogion Cymru, Prif Weinidog Cymru, neu'r Cwnsler Cyffredinol’.

[38] Mae heddiw, felly, yn ddiwrnod hanesyddol. Dyma'r Mesur drafft cyntaf gerbron y Cynulliad a'r tro cyntaf i'r pwyllgor hwn ystyried deddfwriaeth o dan Rheol Sefydlog Rhif 15.6(ii). Mesur Arfaethedig ynghylch Gwneud Iawn am Gamweddau'r GIG (Cymru) 2007 ydyw. Bydd Aelodau yn cofio'r drafodaeth yn y Cynulliad cyn toriad yr haf. Y bwriad yw caniatáu iawn i gael ei ddarparu heb ddwyn achos sifil. O gofio'r drafodaeth yn y Siambr cyn yr haf, cofiwch hefyd fod cytundeb yn fras gyda'r syniad o gyflymu'r broses o sicrhau ymddiheuriad neu/ ac iawndal mewn achosion llai heb ymyrraeth—neu cymorth, fyddai rhai pobl yn dweud—cyfreithwyr. Dyna yw'r bwriad yn fras. Yn naturiol, mae'r Mesur gerbron, i fod i roi manylion ar y ffordd yr oedd y bwriad bras i'w gwblhau.

[39] Mae Joanest wedi paratoi adroddiad, sydd wedi ei ddsbarthu i chi fel Aelodau. Cyn i mi ofyn i Joanest gwneud ei sylwadau, mae hi'n deg i nodi fod Aelodau hefyd wedi derbyn ymateb Cymru Yfory i'r ymgynghoriad ar y Mesur Arfaethedig ynghylch Gwneud Iawn am Gamweddau'r GIG (Cymru) 2007. Byddwch wedi darllen hynny hefyd. Mae'n codi'r un math o gwestiynau ag y mae Joanest yn codi yn ei phapur hi. Cawn drafodaeth ar y ffordd ymlaen wedi adroddiad Joanest. Mae hi hefyd yn deg i nodi y bydd Pwyllgor Mesurau, sy'n cyfarfod yn yr adeilad hwn, hefyd yn craffu ar y Mesur hwn o ran materion polisi, diben y pwyllgor hwn yw

David Lloyd: Under Standing Order No. 15.6(ii), the committee can consider presenting a report on:

‘The appropriateness of provisions in proposed Assembly Measures and in Bills for Acts of the United Kingdom Parliament that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General’.

Today is, therefore, an historic day. This is the first draft Measure before the Assembly and the first time that this committee has considered legislation under Standing Order No. 15.6(ii). It is the Proposed NHS Redress (Wales) Measure 2007. Members will recall the discussion in the Assembly before the summer recess. The intention is to provide redress without bringing a civil case. Remembering the discussion in the Chamber before the summer, you will recall that broad agreement on the issue of speeding up the process and ensuring that an apology and/ or compensation in lesser cases without intervention from—or the aid of, as some people would say—solicitors. That is the broad intention. Naturally, this Measure is before us and will give details on that broad intention to complete it.

Joanest has prepared a report, which has been distributed to Members. Before I ask Joanest to make her remarks, it is fair to note that Members have also received the response of Tomorrow's Wales to the consultation on the Proposed NHS Redress (Wales) Measure 2007. You will also have read that. It raises similar questions to those raised by Joanest in her paper. We will have a discussion on the way forward following Joanest's report. It is also fair to note that the Measures Committee, which meets in this building, will also scrutinise this Measure in terms of its policy issues, and the purpose of this committee is to look at the Measure from a legislative viewpoint. That is enough from

craffu ar y Mesur o safbwynt deddfwriaeth. me.
Dyna ddigon wrthyf.

8.30 a.m.

[40] **Ms Jackson:** As outlined in the Chair's introduction, we are here to consider the appropriateness of the powers delegated to the Welsh Ministers in this proposed Measure. I think that it is important to stress that the Measure itself contains no substantive provisions. It gives overall power to the Welsh Ministers to make subordinate legislation that will effectively create and put in place the new NHS redress regime. That main power is set out in section 1 of the proposed Measure.

[41] I do not intend to go through this section by section, because that is briefly set out in the report. The important thing is to concentrate on the powers given to the Welsh Ministers in the Measure, which are powers to make Orders and regulations, to be exercised by statutory instrument. In the main, the powers are to be exercised by the negative procedure, but there are three exceptions. First, there is the commencement provision, which will not be subject to any Assembly procedure. Secondly, there are the powers to amend primary legislation for consequential points, to make the legislation work effectively—that would be dealt with in an instrument subject to the affirmative resolution. More importantly, the first set of regulations, which will put the scheme in place, are to be made by affirmative resolution, but I would stress that the Measure provides for any amendment to those regulations to be made under the negative procedure.

[42] As the Chair mentioned in his introduction, this proposed Measure is one that makes:

‘Provision for and in connection with the provision of redress without recourse to civil proceedings in circumstances in which, under the law of England and Wales, qualifying liability in tort arises in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales’.

[43] The qualifying services to which this relates are not defined in the Measure. They are to be set out in regulations. Contrast this with the situation in England, where the NHS Redress Act 2006 sets out on the face of the Act the qualifying services, which are basically those provided in hospitals, subject to some additions that the Secretary of State could provide for in regulations. A point to note is that the NHS Redress Act for England does not allow primary services to be included as qualifying services. The way that the Measure is drafted, Welsh Ministers could make regulations to include primary services at some point, and I think that that was outlined in the explanatory memorandum laid at the same time as the proposed Measure, and probably in the Plenary debate.

[44] The other point to note is that regulations made by the Welsh Ministers will provide for redress for actions, omissions or consequences where liability arises as the result of the actions of healthcare professionals. That is the case in England, but, in Wales, the Welsh Ministers could also provide for the actions, and so on, of other persons to be included. Again, as the Chair mentioned, the idea is to bring low-level claims into the ambit of the redress scheme. However, the Measure itself does not provide for an upper limit on compensation. That, again, is something that would be dealt with in regulations; there is no requirement to set an upper limit, but there are limitations if an upper limit is included in the regulations.

[45] I have briefly mentioned the power to amend primary legislation—may I please correct a typo in paragraph 4.10 of the report? It should say that this is ‘not’ a power granted to the Secretary of State. Perhaps I should report myself for this error. There is also a power to amend subordinate legislation, and that would be exercisable by an instrument made under

the negative procedure.

[46] To go back to what I said at the outset, this is a Measure that contains no substantive provisions. It is an enabling Measure and, as such, would be debated as an enabling Measure, with possibly no information for Assembly Members as to exactly how the powers would be exercised. Given that this is the first proposed Measure under our new legislative powers, and the first occasion on which you, as a committee, will consider the appropriateness of powers and, later, the first time that the Assembly considers a full debate on a Measure, the views that you are going to take in respect of delegation in this instance will obviously be of note. It could be taken as an important precedent. That is all that I want to say for the moment, but, of course, I am happy to take questions.

[47] **David Lloyd:** Diolch yn fawr, **David Lloyd:** Thank you, Joanest, for an excellent introduction.

[48] **Eleanor Burnham:** Yr wyf eisiau **Eleanor Burnham:** I just want to confirm Joanest's comments, so that I am clear on this. Is this a preparatory Measure that will pave the way for a more detailed Measure?

[49] **Ms Jackson:** Na. Mesur yw hwn **Ms Jackson:** No. This is a Measure that gives Ministers the powers to implement the new system, and to see how the new system would work.

[50] **Eleanor Burnham:** Felly, yr ydym **Eleanor Burnham:** So, we are giving the Minister powers that have not been available in the past, and we will debate this issue in Plenary.

[51] **Ms Jackson:** Byddwch, yn y pen **Ms Jackson:** Yes, eventually.

[52] **Eleanor Burnham:** Pa bryd y **Eleanor Burnham:** When would we do that? Is that for the Minister to decide?

[53] **Ms Jackson:** Na, mae amserlen **Ms Jackson:** No, there is a fairly broad timetable. The Stage 1 Measure committee is currently meeting, and a second committee will then be established to consider the Measure line by line, more or less. It will then go to Plenary.

[54] **Eleanor Burnham:** Felly, ar ôl inni **Eleanor Burnham:** So, once we have passed this, it will go to the Measure committee that will scrutinise the policies in detail and on how to drive them forward.

[55] **Ms Jackson:** Mae'r polisi yn cael ei **Ms Jackson:** The policy is currently being considered by the Stage 1 committee.

[56] **Sandy Mewies:** Joanest, I am not sure whether I am clear on this, but I think that there is a wide scope of powers here. This is really an enabling Measure, and it is very broad.

The broad, original bit will be dealt with through the affirmative procedure. You said that, in England, the Act sets out the services covered, but, here in Wales, we are not setting out the case for opticians, dentists, and so on. Will that go through a negative procedure?

[57] **Ms Jackson:** Yes. The first set of regulations will be considered under the affirmative procedure. As the Measure is drafted, amending regulations—for example, if a decision was taken to include primary medical services, dental services, ophthalmology or anything to do with pharmacy—would go through the negative procedure. The Act in England is structured slightly differently, in that it provides the power for the Secretary of State to make a scheme. The first scheme is made under the affirmative resolution procedure in Parliament, but if it seems that a new scheme is being considered at any time, that will also be considered under the affirmative procedure, even though any minor amendments would probably go under the negative procedure.

8.40 a.m.

[58] **Sandy Mewies:** That is what I thought. I am supposing that the negative procedure for amendments would be in reaction to something that has occurred, or is it laid in place? If it is in reaction to something, how quickly could it be enabled?

[59] **Ms Jackson:** Any amending regulations would be the result of a policy decision made by the Government, and the negative procedure would flow from that. Perhaps I should also have mentioned the fact that there is no statutory requirement in the Measure for consultation—either on the original scheme or with proposed amendments. I know that consultation will probably be undertaken, but there is no requirement to consult.

[60] **Janet Ryder:** You have outlined several concerns. I am sure that we all want to see this Measures go through, but if we were to pass this now without going into any more depth, we would be passing powers to the Minister without knowing the definition of those powers. There are other things in the Measure that I would like to know more about, such as at what level will compensation be set and how the Minister intends to operate it. It is difficult because, in some areas, you are straying into areas of policy, and it is the Measure committee's job to look into those. However, we are going to look at the powers that we are handing over to the Minister, and there are no clear definitions of those. Before we pass this over, I would be happier if we were to invite the Minister to tell us in more detail what the intention is and how she would outline these powers.

[61] **David Lloyd:** Thank you, Janet. I will bear that in mind.

[62] **Karen Sinclair:** We must not lose sight of the fact that this is quite an exciting move forward. The NHS Redress (Wales) Measure is going to make things so much easier for a lot of people who just want an apology without dragging themselves through the courts to re-live awful events. Joanest said that there had not been any consultation, but that is not strictly true—there was a consultation in 2003 on the recommendations of 'Making Amends', so this has been explored. I am not totally averse to Janet's suggestion that we bring the Minister here to talk to us about it on the grounds that, as this is a new way of working for us, it might be a good opportunity and part of the learning curve for us. However, we should not lose sight of the fact that this is quite exciting.

[63] On the idea that not everything is specified in the Measure, there may be elements that need to be brought into this in future that we have not even thought of yet. They would be brought in only to allow redress; people can still go through the courts if they wish. People can choose to take that route, but this will make it easier to access compensation for more things. We should bear that in mind. If the committee's feeling is that we should bring the Minister in to talk about this, I am happy to go with that, but not because of a negative

response on my part.

[64] Joaneest, did you write your report before you read the views of Tomorrow's Wales?

[65] **Ms Jackson:** Yes.

[66] **Karen Sinclair:** It is a fair question.

[67] **Ms Jackson:** I drafted it, and then I received from the clerk to the Stage 1 Measure committee a copy of the response, which they received from Cymru Yfory. I was then told that the clerk to this committee had received the same response. I read it and thought that someone was bound to think that I was in cahoots with the archbishop. *[Laughter.]* To come back on the point about consultation, I do not think that I said that there had not been consultation, but simply that there is no requirement to consult on the making of the regulations.

[68] **Karen Sinclair:** The only other point that I would make is that we have been working towards separation for a long time. We were joyous about the separation, and now we are questioning its implications. We cannot have our cake and eat it.

[69] **Janet Ryder:** I totally agree with Karen about the possibility of what the Measure can give people, by making it much easier for people who simply want an apology or who have a low-level claim; it is to be welcomed. I do not think that we are in any way saying that we do not want these powers. As a committee that has to pass these powers, we have to be clear in our minds. We may want to ask other people, as well as the Minister, so that we are clear that we can answer all the arguments that might be put to us as to why we have passed this. This committee now has the power to invite people to give us evidence, and this would be a very good case on which to expand those powers a little bit for this committee.

[70] **Karen Sinclair:** There has been a great deal of talk about the fact that anything new will go through the negative procedure. Documents will be laid, and there can be a request for it to go to Plenary anyway, and we can obviously vote it down. We cannot amend it, and I think that that is right and proper, because any amendment at that late stage in Plenary would be quite a dangerous way of making legislation. There is an awful lot of scrutiny and line-by-line work that goes on prior to that, and I would hate to think that we would almost revert back to on-the-hoof amendments during the final stages. This is really serious stuff. So, do not forget, Chair, that negative procedure does not mean that it cannot go forward for discussion, and, theoretically, it could be voted down.

[71] **David Lloyd:** Diolch, Karen. Yr wyf yn edrych am y ffordd ymlaen. Joaneest, wyt ti eisiau crynhoi unrhyw sylwadau cyn i ni drafod y ffordd ymlaen gyda'r Mesur hwn? **David Lloyd:** Thanks, Karen. I am looking for a way forward. Joaneest, do you wish to summarise any comments before we discuss the way forward with this Measure?

[72] **Ms Jackson:** I think that we have covered the main points, which were to deal with the procedures and the breadth of the powers confirmed. To assist you, Chair, I have just received copies of all the consultations received so far from the Stage 1 committee, and if you were minded to invite any evidence, a way forward might be for me and the clerk, in consultation with the Chair, to look at these and perhaps think who might be the most appropriate people, given the remit of this committee. Bear in mind that any consultations may have covered the legislative side and the principle. I understand that the Stage 1 committee has set up a series of evidence sessions, so we would not want to overburden witnesses. It might be an opportunity to do some co-working with that committee.

[73] **David Lloyd:** Diolch i'r Aelodau am **David Lloyd:** I thank Members for their

eu sylwadau ac i Joanest am ei hadroddiad. Credaf ei bod yn bwysig pwysleisio, fel y gwnes ar y dechrau, ein bod wedi cael y drafodaeth hon yn y Cyfarfod Llawn cyn yr haf, ac yr oedd cytundeb, fel y dywedodd Karen, ei bod yn beth da parhau â hyn. Yn sgîl hynny, diben y pwyllgor hwn yw craffu ar yr adrannau deddfwriaethol a sicrhau bod y craffu'r gorau y gallai fod. Credaf fy mod yn cytuno gyda'r syniadau sydd gerbron i gael rhagor o dystiolaeth gan dystion eraill.

comments and Joanest for her report. I think that it is important to emphasise, as I did at the beginning, that we had this discussion in Plenary before the recess, and there was agreement, as Karen said, that it was a positive move to proceed with this. In that regard, the purpose of this committee is to scrutinise the legislative sections and to ensure that the scrutiny is as good as it can be. I think that I agree with the ideas that have been put forward to receive more evidence from other witnesses.

[74] Yn y lle cyntaf, hoffwn i'r Gweinidog esbonio sut y byddai'n trafod y manylion a pha ganllawiau sydd, ac i roi diffiniad o beth yw achosion llai. Yr wyf hefyd yn fodlon cydsynio â syniad Joanest y dylid cael cyfarfod rhwng clerc y pwyllgor hwn a chlerc pwyllgor y Mesur, sydd yn edrych ar faterion polisi'r Mesur hwn, er mwyn cael gafael ar dystion eraill o'r ochr ddeddfwriaethol. Fel y dywedodd Joanest, nid ydym eisiau ailadrodd gwaith pwyllgor y Mesur, sy'n craffu ar faterion polisi. Materion deddfwriaethol sydd gerbron yma. Mae'n rhaid i ni nodi sylwadau Joanest. Yr wyf yn fodlon cytuno â'r syniad y cawn ragor o dystiolaeth gerbron ynghylch sut y bydd y Mesur hwn yn gweithio o ran materion craffu, a hynny drwy wahodd y Gweinidog ac unrhyw fudiadau eraill o fudd. Cytunwn ar hynny rhwng y ddau bwyllgor.

First, I would like the Minister to explain how she would go about discussing the details and what guidelines there are, and to define what constitutes a minor case. I am also happy to agree with Joanest's suggestion that a meeting be held between the clerk of this committee and the clerk of the Measure committee, which is considering the policy issues of this Measure, in order to specify other witnesses from the legislative side. As Joanest mentioned, we do not want to repeat the work done by the Measure committee, which is scrutinising policy issues. We are discussing legislative issues here. We must note the comments made by Joanest. I am willing to agree to the idea that we take more evidence about how this Measure will work in terms of scrutiny issues, and will do so by inviting the Minister and any other organisations worth inviting. We will agree on that between the two committees.

8.50 a.m.

[75] **Eleanor Burnham:** Gwn na allwn gymharu'r hyn a wnawn yma gyda lleoedd eraill yn y byd, gan fod hyn yn unigryw a braidd yn gymhleth. Yr wyf yn meddwl yr hoffwn ei ddiffinio fel nofio mewn cwstard. A fyddwn yn cael amserlen, oherwydd mae'n rhaid inni feddwl faint o amser fydd gennym? Yr wyf yn cydfynd bod angen siarad â'r Gweinidog er mwyn gwybod pa ffordd mae hi'n meddwl y bydd pethau yn datblygu, ond, ar y llaw arall, mae'n rhaid inni gofio y bydd gennym lawer mwy o waith ac yr wyf yn teimlo y bydd angen amserlen neu strategaeth i symleiddio neu gwblhau'r gwaith cyn gynted â phosibl.

Eleanor Burnham: I know that we cannot compare what we do here with other places in the world, as this is unique and rather complicated. I think that I would like to define it as swimming in custard. Will we have a timetable, because we must consider how much time we will have? I agree that we need to talk with the Minister to find out about how she thinks that things will develop, but, on the other hand, we must remember that we will have much more work and I feel that a timetable or strategy will be needed to simplify or to complete the work as soon as possible.

[76] **David Lloyd:** Fy mwriad wrth graffu

David Lloyd: My intention in scrutinising

a chael tystion yma oedd ein bod yn cwblhau'r dasg cyn gynted â phosibl—mewn mater o rai wythnosau yn unig, ac yn bendant cyn y toriad am hanner tymor. Fel y mae Karen a Janet wedi crybwyll eisoes, mae cytundeb trawsbleidiol bod y Mesur hwn, yn fras, yn beth da. Yr ydym wedi cael y drafodaeth hon ac yr ydym wedi cytuno ei fod yn beth da—trafod y manylion yr ydym yn awr o ran sut yn union y bydd yn gweithredu. Felly, nid wyf yn bwriadu inni dreulio misoedd yn craffu, ond wythnosau yn unig, ac yr wyf yn disgwyl atebion cyn inni dorri am yr hanner tymor fan bellaf, a chyn hynny, gobeithio. Felly, a ydym yn cytuno ar y ffordd ymlaen? Trefnwn fod y Gweinidog yn dod ger bron y pwyllgor hwn i roi tystiolaeth, ac unrhyw fudiadau eraill a fydd yn cydweithio â'r pwyllgor Mesur, sydd hefyd yn craffu ar y pwnc hwn. Felly, bydd cydweithio rhwng y pwyllgor hwn a phwyllgor Cyfnod 1 y Mesur.

and having witnesses here was that we would complete the task as soon as possible—in a matter of a few weeks, and certainly before the half-term recess. As Karen and Janet have already mentioned, there is cross-party agreement that this Measure is generally a good thing. We have had this discussion and we agree that it is a good thing—we are now discussing the details of how exactly it will be implemented. So, I do not intend to spend months on the scrutiny, but a matter of weeks, and I expect answers before we break for the half-term recess at the latest, and before then, hopefully. So, are we in agreement on the way forward? We will arrange that the Minister comes before this committee to give evidence, and any other organisations that will be working jointly with the Measures committee, which will also be scrutinising this subject. So, there will be co-operation between this committee and the Stage 1 Measure committee.

[77] **Karen Sinclair:** Are we talking about taking evidence from external bodies on this?

[78] **David Lloyd:** Potentially, yes.

[79] **Karen Sinclair:** I am slightly confused by that, because the consultation on 'Making Amends' happened in 2003, so all you are talking about is taking evidence about merits, and not about—

[80] **David Lloyd:** It would be about the legislation, and the details of legislation. So, it would be only those bodies that have something to say about the details of legislation.

[81] **Karen Sinclair:** That is okay. I was not clear about that.

[82] **David Lloyd:** Felly, i gadarnhau, trefnwn hynny dros y pythefnos neu dair wythnos nesaf. Bydd cyflwyniadau ger bron a phobl yn dwyn tystiolaeth, a bydd cyfle i gwestiynu yn y cyfarfodydd nesaf. Fel y gwyddoch, mae'r pwyllgor hwn yn cyfarfod bob bore dydd Mawrth a byddwn yn defnyddio'r amser yn fuddiol. A oes unrhyw sylwadau eraill?

David Lloyd: So, to confirm, we will arrange that over the next fortnight or three weeks. There will be presentations and people giving evidence, and there will be an opportunity to question them in the next meetings. As you know, this committee meets every Tuesday morning and we will use the time beneficially. Are there any other comments?

[83] **Sandy Mewies:** I am quite happy with that. However, I am concerned that we should not lose sight of this committee's emphasis on the legislation, rather than on policy issues. I am a bit worried that we seem to be overlapping slightly. The other thing is, where will it stop? We can have people coming to committee all the time—after every weekly meeting we might have someone else because of the publicity generated or whatever, saying 'I think this or that'. So, strangely enough, I agree with Eleanor that we need to have some sort of timetable for what is happening in this committee. Otherwise, this could go on endlessly. The job must be done properly, but our job must be done properly and it is not our job to do another committee's job. So, if we are to go forward in this way—and I am quite happy to do

so—it must be extremely focused.

[84] **David Lloyd:** Thank you, Sandy. My intention is to be extremely focused and nothing I do takes a long time anyway. [*Laughter.*] But that is another story.

[85] **Mr Griffiths:** To reassure Sandy, I will read out the relevant provision in the Standing Order:

‘The Committee may also consider and report on ... the appropriateness of provisions in proposed Assembly Measures ... that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General’.

[86] So, that is the focus of this committee’s consideration.

[87] **David Lloyd:** It is purely from the legal point of view.

[88] **Sandy Mewies:** Thank you, Chair.

[89] **David Lloyd:** I think that we have aired that quite sufficiently and we have a clear way forward.

8.55 a.m.

Unrhyw Fater Arall Any Other Business

[90] **David Lloyd:** A oes unrhyw fater **David Lloyd:** Is there any other business? I arall? Gwelaf nad oes. see that there is not.

8.55 a.m.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[91] **David Lloyd:** Dyddiad y cyfarfod **David Lloyd:** The next meeting will be held nesaf fydd dydd Mawrth, 2 Hydref am 8.15 on Tuesday, 2 October at 8.15 a.m. I thank a.m.. Diolch i chi am eich presenoldeb, a you for your attendance, and the interpreters. diolch i’r cyfieithwyr.

*Daeth y cyfarfod i ben am 8.55 a.m.
The meeting ended at 8.55 a.m.*