



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

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

**Dydd Mawrth, 10 Mawrth 2009  
Tuesday, 10 March 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. Mae hon yn fersiwn ddrafft o'r cofnod. Cyhoeddir fersiwn derfynol ymhen pum diwrnod gwaith.

These proceedings are reported in the language in which they were spoken in the committee. In addition, an English translation of Welsh speeches is included. This is a draft version of the record. The final version will be published within five working days.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Alun Davies	Llafur Labour
Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Joyce Watson	Llafur Labour

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

Kate Cassidy	Pennaeth Is-adran Materion Cyfansoddiadol a Rheoli Deddfwriaeth Head of Constitutional Affairs and Legislation Management Division
David Fletcher	Pennaeth Is-adran Cyllid Llywodraeth Leol Head of Local Government Finance Division
Dr Brian Gibbons	Aelod Cynulliad, Llafur (Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol) Assembly Member, Labour (The Minister for Social Justice and Local Government)
Paul Harrison	Is-adran Cyllid Llywodraeth Leol Local Government Finance Division
Emma Howell	Adran Gwasanaethau Cyfreithiol Legal Services Department
Carwyn Jones	Aelod Cynulliad, Llafur (Cwnsler Cyffredinol ac Arweinydd y Tŷ) Assembly Member, Labour (Counsel General and Leader of the House)

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

Bethan Davies	Clerc Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy 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] **Janet Ryder:** We have a lot of business this morning. I welcome everybody to the meeting—Members and officers. In an emergency, the ushers will indicate the nearest safe exit. Headsets are available for translation, and the ushers will explain how to use them. I

remind everyone to switch off all mobile phones and electronic devices. Interpretation is available on channel 1 of the headphones, and amplification is available on channel 0. There are no apologies; everyone is here.

8.17 a.m.

**Offerynnau Drafft y Bydd y Cynulliad yn Cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reolau Sefydlog Rhif 15.2, ac Offerynnau Drafft sy'n Agored i Gael eu Cymeradwyo yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Gadarnhaol)**

**Draft Instruments in Respect of which the Assembly is Invited to Pay Special Attention under Standing Order No. 15.2, and Draft Instruments Subject to Approval Pursuant to a Resolution of the Assembly (Affirmative Procedure)**

[2] **Janet Ryder:** We were to discuss SLC252 under this item, but it has been withdrawn. Gwyn, would you like to give us an explanation?

[3] **Mr Griffiths:** Fel y gwelsoch yn yr adroddiad drafft, yr oedd un gwall sylfaenol yn y rheoliadau hyn. Cafwyd trafodaeth bellach rhwng swyddogion y pwyllgor hwn a swyddogion y Llywodraeth, a chytunwyd mai'r ffordd addas i ddelio â hwn, gan ei fod yn offeryn sydd heb ei wneud ac sydd yn mynd drwy'r broses gadarnhaol, fyddai i'r Llywodraeth dynnu'r drafft yn ôl, ei gywiro a'i ailosod. Gallwn ddod ag ef yn ôl i'r pwyllgor yr wythnos nesaf, ynghyd â'r adroddiad drafft wedi'i ddiwygio. Wedyn gall y Gorchymyn fynd gerbron y Cyfarfod Llawn i'w gadarnhau erbyn y dyddiad yr oedd y Llywodraeth wedi'i ragweld yn y lle cyntaf.

**Mr Griffiths:** As you saw in the draft report, there was one fundamental error in these regulations. Further discussion was held between the officials of this committee and Government officials, and it was agreed that the appropriate way of dealing with this, as it is an instrument that has not been made and which is going through the affirmative procedure, would be for the Government to withdraw the draft, correct it and lay it again. We can bring it to committee next week, along with the revised draft report. Then the Order can go to Plenary to be confirmed by the date originally foreseen by the Government.

[4] **Janet Ryder:** So, it is on the agenda, but it has been withdrawn. Therefore, there is nothing to discuss on that.

8.18 a.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)**

[5] **Janet Ryder:** I will go through these first, and then Gwyn will make some comments. There is SLC251, the European Fisheries Fund (Grants) (Wales) Regulations 2009; SLC253, the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2009; SLC254, the Animals and Animal Products (Import and Export) (Wales) (Amendment) Regulations 2009, which appears on your list but has also been withdrawn; and SLC256, the Plant Health (Import Inspection Fees) (Wales) (Amendment) Regulations 2009. Gwyn, do you have any comment to make on those?

[6] **Mr Griffiths:** Yr unig un yr wyf am wneud sylwadau arno yw'r rheoliadau anifeiliaid a chynhyrchion anifeiliaid. Yr ydym wedi cael cais gan y Llywodraeth i ohirio ein hystyriaeth o'r rheoliadau hyn. Mae pwynt y byddwn wedi'i godi ynglŷn ag iaith y rheoliadau. Mae'r Llywodraeth am wneud ychydig bach mwy o ymchwil cyn rhoi ymateb llawn inni, felly, gofynnaf ichi ohirio'r rheiny hefyd tan yr wythnos nesaf.

**Mr Griffiths:** The only one that I would like to comment on is the animals and animal products regulations. We have received a request from the Government to defer our consideration of these regulations. There is a point that I would have raised about the language of the regulations. The Government wants to do a little more research before giving us a full response, so I ask you to defer those also until next week.

8.19 a.m.

### **Ystyried y Mesur Atodiadau Ardrethi Busnes Consideration of the Business Rate Supplements Bill**

[7] **Janet Ryder:** I now invite the Minister for Social Justice and Local Government, Dr Brian Gibbons, and the Counsel General and Leader of the House, Carwyn Jones, to give evidence. They are supported by David Fletcher, Paul Harrison, Emma Howell and Kate Cassidy. Thank you for coming along.

[8] I am sure that Members will remember that this is the first Bill of this nature that we are looking at—the Business Rate Supplements Bill. We decided in January to begin utilising the new remit under Standing Order No. 15.6, that the committee may consider and report on:

[9] ‘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’.

[10] We start our scrutiny of the Business Rate Supplements Bill paying particular attention to the issues connected with the transfer of powers to Welsh Ministers. We want to look at how powers have been transferred, but we would also like to look in particular at how your department, Dr Gibbons, has interfaced with Westminster. We want to understand a little more about the process of how these bills are worked out at Westminster, the involvement of the Assembly Government in them, the implications for the Assembly, and the powers that are set out in the Bill.

[11] We have a number of questions, and it will be for you to decide who is the most appropriate person to answer them. I will start by referring to the letter that we wrote requesting further information on this Bill. We asked about the affirmative and negative powers chosen in the delegated powers memorandum. We have been given to understand, through conversations with the clerks at Westminster, and through the delegated powers memorandum, that these powers will be produced prior to or upon the Bill's introduction to the House of Lords. Through conversations with the clerks in London, we were given to understand that the memorandum should be published at the same time as the Bill, irrespective of its introduction in whichever house. That is why we can see a bit of a gap in the timescales that are set out for the passage of the Bill, and in the response that we have had from you. What explanation, if any, has been provided by UK Ministers to the Minister or to the Leader of the House as to why the delegated powers memorandum was not published at the same time as the Bill on 4 December 2008?

[12] **Carwyn Jones:** I can answer that. It has not been the practice until recently to publish the delegated powers memorandum at the same time as the Bill. I understand that the

committee has now been sent a copy of that memorandum, but I can inform the committee that the guidance has changed very recently so that the delegated powers memorandum will be made available upon the introduction of bills in the future. That has not previously been the practice, but we are informed by the UK Government that it will be the practice in the future.

[13] **Janet Ryder:** You will understand the difficulty that that poses for the committee. If you want to start scrutinising these powers at an early stage, we need to have that information as early as possible. Can you confirm that, from now on, those memorandums will be published at the same stage as the Bill, and will be made available?

[14] **Carwyn Jones:** That is the guidance that has been issued by the UK Government.

[15] **Janet Ryder:** We move on to Alun for the next set of questions.

[16] **Alun Davies:** Dr Gibbons, in paragraph 7 of your correspondence to the committee, dated 18 February, you state that Assembly Government officials worked closely with their Whitehall counterparts from an early stage on these proposals. Could you put some flesh on that and explain to us at what stage that work commenced and describe how it took place?

[17] **Brian Gibbons:** I think that officials will be able to give you more information on that. It is probably worth making the point that, although all pieces of legislation need to have some sort of standard process for responding to them, there are pieces of legislation that, in some respects, are incidental to the policies and priorities of the Assembly Government. This is an example of something that was driven very much by imperatives in Westminster. On the other hand, in terms of what is going on at the moment, there is the Bill on child poverty, which will be very relevant for us, and we will therefore be engaged in a very active dialogue on it, on an almost line-by-line basis. However, with this Bill, a great deal of the discussion would take place between officials and lawyers in Westminster and us. Then, depending on what was emerging from those discussions, officials would give me a submission outlining what is proposed and roughly what their response would be to the main items in that piece of legislation. That is essentially what happened in this case. Perhaps Dave or Emma might be able to explain more, depending on the extent to which you want to get under the bonnet in looking at this.

[18] **Janet Ryder:** It is this committee's remit to get really under the bonnet, I am afraid.

[19] **Mr Fletcher:** You can look at this in various ways. There are counterparts in the Department of Communities and Local Government that we have constant contact with. Looking at how this particular Bill came about—and I can speak only about this Bill—the Lyons review made recommendations for this sort of change. There was also an initiative in London for Crossrail; the prime function of this Bill was to help the funding of Crossrail. My counterpart, who used to deal with business rates in DCLG, was a lady called Gill Rendall, who went over to take the Crossrail project forward. As officials, we have quadrilateral meetings with Northern Ireland, Scotland and England. We hold them in each of the areas—we have one coming up on 29 April—and we talk about these issues. We try to pick out the issues that will affect all of us. Although this was a specific project on Crossrail, it was obvious that we would want comparable powers in Wales for local authorities, if they so wished and had a suitable project. Therefore, we immediately started to talk about those issues.

[20] Once the Bill is in motion, there are areas on which the lawyers would be talking. Emma, for example, would be talking to Mark Bennett—there is a very good relationship there. There is also the relationship with the Bill manager, which was originally Polly Haynes and then Alex. We keep in touch with them constantly, and we are back and forth on the

phone. Basically, it is a relationship of trust that you maintain over time. You do not get that many Bills on local taxation; there may be one every couple of years or even less frequently. You probably remember the 2003 Bill, because you were on the committee for it then, as was Mr German. It is about ensuring that we are in contact with our counterparts, that we know what is on the horizon and that we work together to ensure that, as officials, we can feed the Minister information on everything he needs to do in relation to the Bill.

[21] **Alun Davies:** You seem to be saying that this was not legislation that you were particularly seeking, but that, as it was happening at a UK level, you thought that he would seek the powers to implement it in Wales. With regard to how that happens, the powers that you have sought are broadly commensurate with Secretary of State powers in England, from my reading. Have you sought any legislative competence powers?

[22] **Brian Gibbons:** No.

[23] **Alun Davies:** Is there a reason for that?

8.30 a.m.

[24] **Brian Gibbons continued:** This Bill was very much driven by a Westminster agenda, and it did not seem to have an immediate resonance with any of the policies or priorities of the Welsh Assembly Government. Having said that, there would be policies or proposals from the Welsh Assembly Government in relation to which it would be regularly trawling for legislative opportunities in Westminster. I think Carwyn, in his previous presentation, referred to looking into the wagons to see whether there was an opportunity for us to jump aboard to get legislative competence or powers delegated to us that would allow us to bring policy areas forward. In this instance, there were no policy objectives that, in a generic sense, readily fitted into the Bill.

[25] **Alun Davies:** I appreciate that, Minister. However, I would take an approach based on good governance. If you have executive responsibility for an area, quite often it makes sense for the National Assembly to have the legislative competence, so that you have an opportunity to amend the statutory basis of the programme that you are responsible for managing.

[26] **Brian Gibbons:** We will have some competence in the regulations that underpin this, and we will have the opportunity to use the subordinate legislation to fashion this piece of legislation to suit the Welsh context. I think that Dave touched on that earlier. If local authorities in Wales find that there is a project to which this legislation could be relevant, we have the regulations under this piece of legislation to do something. While it would not be as massive as the London Crossrail project, this could be fashioned to suit a project that would be more likely to be relevant to us in Wales. So it gives us the legislative competence and the opportunities to fashion this to suit a Welsh context.

[27] **Alun Davies:** I appreciate that, Minister. Given that it is driven by Westminster to address the specific issue of Crossrail, it would appear to me that it would make more sense to have additional powers to be able to amend the legislation in some way to make it more relevant to a Welsh context. It would appear to me that if the Assembly does not have legislative competence in that area, it would be more difficult to achieve that objective.

[28] **Brian Gibbons:** Emma and Dave are listening, so they can chip in if they want to. Are you asking whether we have sought framework powers under this legislation?

[29] **Alun Davies:** Yes.

[30] **Brian Gibbons:** No. I do not know whether Emma wondered whether that would be suitable, but it is not something that I have considered.

[31] **Mr Fletcher:** In relation to framework powers, when a Bill such as this one is going through quite quickly, you look at it and at the wider issues to see whether framework powers are required. Some Members on this committee would remember that business rates are an extremely technical area, with various caveats in the Local Government Finance Act 1988 that overlap with the Government of Wales Act 2006. The Assembly does not have national tax-raising powers. So, if you were to amend it to say, for example, that the Assembly would like to have powers to raise a national rate for projects that it runs centrally, that would probably not be allowed as it would be seen as national, not local, taxation.

[32] In relation to the Bill, as officials we sit back and see what we think is required in relation to the powers for Wales. When the Bill originally came out, on the face of the White Paper there was a £50,000 rateable value threshold. In Wales, that threshold would wipe out about 95 per cent of businesses. So, initially, we thought that it was not useful to us. We looked at it in the context of what powers local authorities would want in relation to this policy. We did not think that framework powers would be suitable. You may have a different view, but we have looked at it and discussed it. We tried to get secure powers within regulations to ensure that we had sufficient comfort to provide for local authorities, if local authorities wished to do this. What we are saying to local authorities is that if they have an economic development project that they cannot get off the ground, and they want to fund it through this route, we will give them powers to enable them to do so. We have tried to do that by using a light touch in relation to secondary legislation powers, rather than going for a framework power, which may be difficult to secure anyway.

[33] **Alun Davies:** Finally, Minister, can you envisage a scenario in which the legislation is not commenced by Welsh Ministers?

[34] **Brian Gibbons:** Not ever? I think that I have indicated in the letter—it is in paragraph 6—that we would hope to commence the provisions of the Act at the beginning of the financial year in April 2011. That is to give the new valuation system a chance to settle in during 2010. It would seem to be an appropriate time so as not to confuse or conflate the consequences of this with revaluation and so on.

[35] **Janet Ryder:** Thank you. We will move on to Joyce Watson for the next set of questions.

[36] **Joyce Watson:** Good morning, both. I think that it is the first time that I have been in a meeting at which there are two members of the Cabinet giving evidence. I am going to ask some questions around the negative and the affirmative procedures and why one was used as opposed to the other. Under clauses 9, 12, 12(1), 17, 21, 22 and 28 the negative procedure is proposed while, on the other hand, under clauses 3(4), 5(5) and 15(4) the affirmative procedure is proposed. Can you explain why those procedures were used in those instances?

[37] **Carwyn Jones:** We cannot answer on behalf of the UK Government or the UK Parliament as to what their reasoning was, but I can give you some indication as to what our reasoning is when we look at this question in the context of our legislation. Where legislation is relatively uncontroversial or technical in nature, it is inevitable that we will look to use the negative procedure because, in the normal course of events, the regulations will be made by the appropriate Minister and would not be challenged. There is, of course, the provision to challenge any regulation under our Standing Orders in the Assembly.

[38] Where there are other and perhaps unusual factors surrounding any delegated legislation—for example, the legislation might significantly affect people's rights or duties or



might have constitutional significance, or there might be little discretion for a Minister in how the delegated legislation is to be implemented—we would look at the affirmative procedure. I will just use a practical example from our context: where a Measure provides us with the bare bones of what is intended and the regulations make up the flesh, as it were, we would consider looking at the affirmative procedure. Members will be aware of the debate that took place around the NHS Redress (Wales) Measure 2008, which was a similar piece of legislation, whereby the Measure itself was effectively a framework around which the delegated legislation then hung.

[39] **Brian Gibbons:** I think that Emma would like to say something on that.

[40] **Ms Howell:** I would add that, in the context of this UK Bill, the division between the affirmative and negative procedure was proposed by my Whitehall counterpart. That does not bar us from having a different view, but, in this instance, we agreed with the division for the reasons that the Counsel General set out, with the rule of thumb being the level of scrutiny that the subordinate legislation designated for the affirmative procedure would attract and the possibly routine nature of the subordinate legislation designated for the negative procedure that would flow from this Bill. For example, on the rateable value condition, if a threshold is going to be changed year in, year out, it would seem to be common sense to do that legislation via the negative procedure because of the level of scrutiny that it would attract each time. They are the rules of thumb, but it has to be done on a case-by-case basis.

[41] **Janet Ryder:** Are you satisfied with those answers, Joyce?

[42] **Joyce Watson:** Yes, that is fine.

[43] **Janet Ryder:** We will move on to Mark Isherwood for the next set of questions.

[44] **Mark Isherwood:** I refer you to clause 28, which enables Welsh Ministers to make supplementary, incidental or consequential provisions by regulation. In what circumstances would Welsh Ministers make regulations under clause 28 and in what circumstances would UK Ministers and the Secretary of State make regulations in respect of Wales?

8.40 a.m.

[45] **Brian Gibbons:** I think that David has started to explain that, and he is best placed to give you a more detailed response on what is behind that. The point is clearly to use the regulations to make this particular Bill—or Act, once it is enacted—fit for purpose for Wales's particular circumstances, rather than there being just the broad intention to drive a railway across London.

[46] **Mr Fletcher:** Whenever any Bill is enacted, in the fullness of time, technical tweaks may be required. These tweaks are generally very technical—and Emma is a bit of an expert on clause 28. One would therefore anticipate that these technical tweaks would not require that much scrutiny, as it were. I will pass you over to Emma, as she has a bit more experience of clause 28 than me.

[47] **Ms Howell:** As David touched on, clause 28 is seen as a technical provision of the kind that appears in most Bills, if not all. We have equivalent Welsh Ministers' powers for the substantive subordinate legislation flowing from this Bill, and clause 28 gives the power to make consequential provisions. In this Bill, it is something of a *de minimis* subject because, in the trawl of primary legislation at the time of enactment, only three Bills were recognised as requiring any 'tweaking', to use David's term. However, clause 28 is required in case something comes up after enactment that may have been missed.

[48] The Welsh Ministers are afforded the concurrent power here, and there is precedent value for that, so it is not unusual. That was seen as being more than sufficient in that, if clause 28 is to be used for consequential provisions, most likely in the field of subordinate legislation, it is normal custom and practice for the Secretary of State to make regulations for England while we make them for Wales. That power allows us the flexibility to prepare our own regulations, but it also allows us to have one set of subordinate legislation to deal with a technical point that fits all, and so made by the Secretary of State for England and Wales, if that were ever decided. That is the theory behind the drafting of this Bill.

[49] **Mark Isherwood:** That is fine.

[50] **Michael German:** I have a supplementary question on that. Emma just mentioned that it is 'custom and practice' for there to be concurrent powers for the Welsh Ministers to make regulations rather than Ministers in London. Is that custom and practice recorded anywhere in a document, code or guidance of any sort, or is it simply good value for money that you know, in the back of your head, is there?

[51] **Ms Howell:** That is my experience, from my practice. As for its status, there is devolution guidance note 9, prepared by the Ministry of Justice, and there is also the concordat with the devolved administrations. I could not comment officially on that point, however.

[52] **Michael German:** Just to be clear, you do not know whether any custom and practice has been codified in any way?

[53] **Ms Howell:** It has not been codified; it is my experience of custom and practice in that respect.

[54] **Janet Ryder:** I think that the Counsel General would like to come in at this point.

[55] **Carwyn Jones:** It should be clear on the face of an Act who has the delegated powers in England and in Wales.

[56] **Michael German:** Yes, but the question that I asked was about the process. It is the custom and practice for this to happen normally. I know that each Bill is dealt with in its own way, but, if that is the case, is that guidance available to the drafters of UK Bills in any way? Is it written down anywhere?

[57] **Carwyn Jones:** We have devolution guidance note 9, which governs the relationship between the UK Government and the Welsh Assembly Government in this regard, but it is very much the case that, where a Bill provides for new delegated legislation that affects devolved areas, Welsh Ministers are inevitably named on the face of the Bill as the body responsible for implementing the delegated legislation in Wales. There is not usually a difficulty with that. So, a guidance note is in place, but the Bill itself, which becomes an Act, makes it clear who exercises the right to implement—or not—delegated legislation in England and Wales separately.

[58] **Michael German:** I would like to look at devolution guidance note 9. Perhaps the committee could do that at a subsequent stage. I know that we have a note on concurrent powers from Gwyn and his team, and we could examine that as part of the ongoing scrutiny of that issue.

[59] **Janet Ryder:** Could the Counsel General provide a note on that?

[60] **Carwyn Jones:** Yes, I can provide the information that the committee requires.

[61] **Janet Ryder:** Thank you. We will certainly pick that issue up again.

[62] **Mark Isherwood:** The Minister wrote to the committee stating that local authorities should not use revenues from business rate supplements to substitute their own resources or to support projects that they would have undertaken anyway. How does the Bill ensure that Welsh Ministers will regulate that provision effectively?

[63] **Brian Gibbons:** Perhaps Emma or Dave can pick up on the detail, but Schedule 2 to the Bill deals with the process behind that.

[64] **Mr Fletcher:** We have powers to regulate on that; we can add to the list of ‘not allowable’, but that would go through due process. We would consult and go through due process in regulation before we did any of that. So, I cannot say at this stage what the feeling is out there until we have gone through the process of using those powers, by consulting with the public and stakeholders to ensure that they are comfortable with what we are doing. The basic remit of this process is that it is for economic development, and there are certain categories within the Bill that are not allowable. However, we can extend those if we see fit, although I do not know what they are at the moment because we have not really gone down that route.

[65] **Mark Isherwood:** That goes back to the original legislation on the national lottery, in which similar phraseology was used that lottery funding should not be used for projects that are already funded through mainstream public service provision. In that case, it evolved into something broader. Could this also evolve into something broader?

[66] **Mr Fletcher:** No. The aim of this policy is to create a project that would not be undertaken unless these revenues were sought and received. The projects are for economic development within the local authority, and authorities must send a prospectus to the ratepayers who will pay this levy to ensure that they are onside. If more than a third of a project is funded from this revenue stream, they must have a ballot for that. If it is below that, they can just have a prospectus and get the feelings of the ratepayers on it. So, the project is specific for economic development, but we can add to the list. We can say that something is not particularly suitable, and exclude it. The Minister has powers to do that. However, we do not know what the powers are yet because we are at the initial stages. When we go out to local authorities, business ratepayers and the public at large, they may suggest areas and we will look at them and decide with due process.

[67] **Brian Gibbons:** The prospectus outlines what the project will be, so you cannot develop projects under this unless you publish a prospectus, and that is the descriptor of what you propose.

[68] **Mr Fletcher:** This is very similar to the BIDs legislation that came through—

[69] **Brian Gibbons:** Do you want to say what that means?

[70] **Mr Fletcher:** I apologise. BIDs stands for business improvement districts. Some of you may be aware of that, but some of you may not be. In essence, the difference between a business improvement district, which came out of the Local Government Act 2003, was that it was set up by business for business. You would set up a company of sorts—and we have one in Swansea, which was set up by guarantee—to include representatives from business and the local authority, but the local authority does not own the business improvement district revenue. This project is very similar, and it came out of the Lyons review, which said that local authorities needed similar powers. All that this legislation does is shift it from being by business for business to being by local authorities for business. So, local authorities obtain

money from business, but they maintain the control. The local authority's policy must be in line with what it is doing, but the revenue stream must create this particular project. If it were able to be done without the revenue stream, the project should be carried out without the additional levy. So, that is the similarity.

8.50 a.m.

[71] We already have business improvement district regulations in Wales, and this is very similar. If you look at the business improvement district regulations in relation to the BID revenue account, you will see the similarity to the business rate supplemental revenue account that local authorities must set up.

[72] **Mark Isherwood:** What would happen if a project was already approved—

[73] **Janet Ryder:** I remind Members that we are not looking at the policy, but at the implications of the Bill for the powers of the Minister and at whether those powers will meet the set policy of the Government. We are not a subject committee. I just give that word of warning.

[74] **Mark Isherwood:** I am just trying to help the understanding. This is a hypothetical situation and I am not thinking of a specific body. If a project was approved—for example, it had already been given planning permission for development and so on—but, because of resource issues, it could not go ahead without this money, could this be used as a means to generate resource for that?

[75] **Janet Ryder:** Would you have the powers to achieve that?

[76] **Mr Fletcher:** You must look at it in light of whether the project would be undertaken under current revenue streams. There are questions that you could ask, because local authorities must supply services along certain lines. I will not give a complete answer on this, but the rule of thumb is that, if a project is not going to happen, but it could happen with these revenue streams, you could go out to consult and ballot businesses and they could have their say on whether they thought that it was worthwhile. If they did not think that it was worth the money, they would not pay for it. In those terms and by that rule of thumb, the answer is 'yes', but there are caveats to that, although I will not go into them at this stage.

[77] **Janet Ryder:** We will move on to Mike for the final set of questions.

[78] **Michael German:** To return to the questions that Alun Davies asked earlier about the equivalence of the powers of Welsh Ministers and UK Ministers under the Bill, I listened carefully to what David said in his answers, but, Minister and Counsel General, could you tell me what your Government's policy is in respect of powers? Whenever there is a UK Government Bill, do you gather the powers that are needed or required, or do you gather the powers that it is possible to have for Wales? In other words, are you gathering powers wherever possible for the Welsh Assembly Government, or are you gathering them only as required?

[79] **Carwyn Jones:** It depends on the Bill. First, where delegated powers are given to UK Ministers, we would want those powers delegated to Welsh Ministers in devolved areas. That has been the practice for many years. Secondly, we would then look to see whether there is legislative competence in a Bill that would be of benefit for us to get, and that would depend on what the Bill is about. We must be careful to ensure that the powers that we seek are relevant in the context of the Bill, but we would certainly look at a Bill as it passes through Parliament to see what powers we think would be useful for the Assembly Government to have in the future.

[80] **Michael German:** May I be absolutely clear on that? Wherever it is ‘needed or required’, the words that you used earlier, presumably means wherever the powers are needed or required for Welsh Assembly Government policy, as opposed to the powers that you just described, which you might need at some stage in the future? There is a big difference, is there not, between powers that might be needed or required at some stage in the future by some future Government here and those that are needed or required for current Welsh Assembly Government policy? Do you see a distinction in that respect?

[81] **Carwyn Jones:** From a legal point of view, we would first look to see what powers might be made available to us as a Government. Secondly, we would go on to see whether it was practical for us to have those powers, and whether we would realistically expect to take those powers forward in the future. It is not the case that we take a narrow approach at all times and across the board, saying that we want only those powers that fit with Government policy; it is not that narrow. With any piece of legislation going through Westminster, we would certainly look to see whether there are powers that we had not thought of obtaining in the past but that would be appropriate for us to obtain in the future, and at whether those powers should be devolved. That would be our approach across the board, although obviously not for this particular piece of legislation. It is difficult to offer a hard and fast rule, because it depends on what emerges during a Bill’s passage. For example, a published Bill might be very different from the final Act that is passed by both Houses of Parliament. During the passage of a Bill, we will examine at all stages whether there are new powers that have been proposed that we would wish to acquire for Wales.

[82] I know that the question has been asked before as to what approach we should take when a Bill is published. The approach that we take is, if, on the face of the Bill, there is something that we feel that would be appropriate for the Assembly to have as a power, we would look at that. As the Bill proceeds and fresh clauses are introduced, we continue to consider whether any of those clauses should be properly implemented by the Assembly rather than by Parliament when the Bill becomes an Act.

[83] **Michael German:** That is a fascinating exposé of Government policy, which we probably need to have on record. The Counsel General identified three steps: the powers that are available, whether they are practical, and, thirdly, which I think is the most interesting, you used two phrases, ‘realistically expect to have’, and ‘where appropriate’. I am always wary of the word ‘appropriate’, because it could mean a range of things. ‘Realistically expect to have’ could mean ones that you might get from Westminster, so, realistically, you might expect to get them if you asked for them, as opposed to those that you might ask for but have no hope of getting.

[84] That is crucial. For example, we have just talked about bids for legislation. I do not know whether you currently have the power to reduce business rates in order to promote economic development in areas of particular need. That could be a power that you might have opted for, but it really depends on the definition of ‘appropriate’, as compared with ‘realistically expect to have’. You have just given some very crucial definitions, and I would value some wider analysis of that, if possible.

[85] **Carwyn Jones:** The simple answer—

[86] **Janet Ryder:** I know that you would like to answer that question, but Dr Gibbons would like to come in.

[87] **Brian Gibbons:** I will let Carwyn finish.

[88] **Carwyn Jones:** The simple answer is that a power is potentially appropriate if it fits

within a field of the Government of Wales Act 2006.

[89] **Brian Gibbons:** This Bill is interesting because it very much came from left field, as far as we are concerned. We were not proposing to have a Crossrail link in Upper Cwm-twrch or somewhere like that. It came along, and although it was not something that was clearly our main political priority, you can see from the evidence that a fair amount of due diligence is paid and a fair amount of process goes into something that is not driven by immediate and pertinent Assembly Government policy. Therefore, a fair level of detail goes into even the most tangential piece of legislation that comes forward.

[90] Carwyn has explained the legal situation. However, if an opportunity comes forward in something that has a bigger political imperative in terms of policy, the engagement would be in addition to the amount of work that takes place on a routine basis to test all of this legislation from the devolution point of view and the opportunities that exist. There is a political context in which this legislation comes forward. In terms of our engagement with the Bill that has construction in it—I cannot remember the full title of it—which we are hoping to use to bring forward proposals on governance in local government, there is clear policy intent from our perspective. We are actively involved with that because we want to drive policy forward on the back of that. In the political context, it seems that a fairly intensive level of background work is done regardless of what goes on. If there is a current political imperative, we will do further work to explore in some detail what the opportunities are in that context.

[91] **Janet Ryder:** Would you like to respond, Counsel General?

[92] **Carwyn Jones:** It is worth emphasising, in case it is thought that the Government has some kind of self-imposed limit in terms of powers that it seeks, that the only limitation, from a legal point of view, is simply whether a particular power, obtained via an LCO or via framework powers, would fit within a field of the Government of Wales Act 2006. That is the limit.

9.00 a.m.

[93] **Janet Ryder:** I remind Members of time constraints, so please be brief, Mike.

[94] **Michael German:** I understand that. There are many interesting areas that we need to reflect on and come back to, with particular reference to the words 'realistically expect to have'. I have a question for David Fletcher on the quadrilateral meetings held on the range of powers available in upcoming Bills. Is there an item on the agenda noting what powers could be drawn down for the devolved administrations of Scotland, Northern Ireland and Wales, as a result of an upcoming Bill? Is that a standing item on the agenda or do you have to bring that to the table?

[95] **Mr Fletcher:** It is not a standing item on the agenda. As officials, on local taxation, we look at the forward agenda of each administration. For example, Scotland was high on the horizon when it decided that it would abandon the council tax system, on which it has now reversed its decision. Before that, we looked at Northern Ireland when it had spot valuations in place of council tax. Before 2005, we were under the spotlight because we were undertaking council tax revaluation in tandem with business rates revaluation. So, there is not a specific item on the agenda, but we consider what policies each administration will take forward, how we compare with them, whether we need to do something along those lines or whether we are quite happy to continue as we are. So, no, we do not include that item on the agenda, but it would trigger those sorts of discussions. If Scotland was going to get additional powers, we would look at those and consider whether we would need to go back to Ministers to ask whether they were the sort of powers that they would like.

[96] **Carwyn Jones:** It is worth emphasising that I would not like to give the impression that, whenever a Bill is presented to Parliament, we sit back and wait to see whether any powers emerge and then make our representations. It would not be the case that, on all occasions, we would look to see what powers might be granted to Scotland and then jump in to see what might be granted to Wales.

[97] On the point that Mike raised, a power that could be realistically expected to be devolved is one that fits within a field of the Government of Wales Act 2006. Working on that basis, there will be occasions when a Bill is presented to Parliament on which we see an opportunity to be proactive, for example, the Marine and Coastal Access Bill. The Government here did not sit back and wait to see what that Bill would provide; we were there at the beginning to see what it could provide as a vehicle for tidying up Welsh legislation. So, the approach will be different according to what is in a Bill.

[98] There will be occasions when the direction of a Bill is known at the beginning and we will be involved proactively from the beginning to ensure that the appropriate powers, namely those within Government of Wales Act 2006 fields, are devolved to us. There will be other occasions when a Bill, in the course of its passage through Parliament, will alter in such a way that it opens the door for appropriate powers to be devolved to the Assembly, for example, if new clauses are added to the Bill that change its nature. In those cases, we look to see whether powers should be devolved.

[99] There will also be occasions when a Bill is presented and it is not clear, during the course of its passage through Parliament, whether it will have an effect on Wales. Often, a Bill will go through when it is clear that there is no effect in terms of devolved powers. The most obvious example of that would be a licensing Bill, which is not a devolved area. We would not seek powers in that respect, because it would not be appropriate as it is not a field within the Government of Wales Act 2006. However, it is certainly not the case that we would wait to see what a Bill looked like as it was published. There have been many occasions, and the Marine and Coastal Access Bill is one example, when we have looked to ensure that we get framework powers if we have known from the beginning that there will be a Bill in a particular area.

[100] **Michael German:** Could I ask one quick question?

[101] **Janet Ryder:** Very briefly.

[102] **Michael German:** On the process that the Counsel General has just outlined, where is the locus of that process in Government? Is it in your department or is it with individual Ministers?

[103] **Carwyn Jones:** It is with individual Ministers.

[104] **Michael German:** So, we would have to ask each Minister separately?

[105] **Janet Ryder:** Given the time, we will have to draw this meeting to a close. Are Members content that their questions have been answered this morning? I see that you are. Would the Minister or the Counsel General like to add anything? I see not. Therefore, I thank you for coming along at this very early stage. Dr Gibbons used an analogy earlier about looking under the car bonnet. If I opened my car bonnet, not only would I not know what was happening under there, but whatever was happening would be covered so that you cannot see what is happening. The steps that we have taken this morning will, we hope, be the first steps for this committee in the process of opening up, not only for ourselves, but for other Assembly Members and the public how the devolution of power, the changes in power and the way that all of this legislation business works. So, thank you for your full answers and for

your time this morning. I am sure that we will see you on a number of occasions in the future. Thank you.

[106] Would Members like to make any initial comments? I know that time is pressing and Members have to go to other committees. If you would like to make any comments, please let the committee clerks know by Thursday at the latest so that they can start to draw up a draft report on this Bill.

[107] **Michael German:** This session has raised more questions that need an answer than we had ever thought of. I have raised three issues. The role of the Counsel General in the process and the fact that individual Ministers are left to identify what powers the National Assembly might have are pretty crucial points that we have just come across.

[108] **Janet Ryder:** It was a very useful session and was the very first session of its kind. We will draw up some initial draft recommendations and then see where we need to take that.

9.06 a.m.

**Mesur Arfaethedig Caeau Chwarae (Ymgysylltiad Cymunedau â  
Phenderfyniadau Gwaredu) (Cymru)—Ystyried yr Adroddiad Drafft  
Proposed Playing Fields (Community Involvement in Disposal Decisions)  
(Wales) Measure—Consideration of Draft Report**

[109] **Janet Ryder:** I draw your attention to the draft report. We have looked at this proposed Measure. The Member proposing this legislation is quite satisfied with the way in which it is proceeding. There is no further scrutiny of the delegated powers provisions in the proposed Measure. He is quite satisfied with this. As no further action is required, are Members content to note the report? I see that you are.

9.07 a.m.

**Unrhyw Fater Arall  
Any Other Business**

[110] **Janet Ryder:** There is no other business.

**Dyddiad y Cyfarfod Nesaf  
Date of the Next Meeting**

[111] **Janet Ryder:** The next meeting will be held on 17 March at 8.15 a.m.. Thank you for your attendance.

*Daeth y cyfarfod i ben am 9.07 a.m.  
The meeting ended at 9.07 a.m.*