



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

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

**Dydd Mawrth, 17 Mawrth 2009
Tuesday, 17 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.

These proceedings are reported in the language in which they were spoken in the committee. In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Alun Davies	Llafur Labour
Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Janet Ryder	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

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

Dechreuodd y cyfarfod am 8.30 a.m.
The meeting began at 8.30 a.m.

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

[1] **Janet Ryder:** I welcome Members, officials and any members of the public. In an emergency, ushers will indicate the nearest safe exit. Headsets are available for translation and amplification. I remind Members to switch off all mobile electronic devices. To receive the interpretation, use channel 1 on the headset and, to amplify the sound, use channel 0. Everyone is here this morning and we have received no apologies.

8.31 a.m.

Offerynnau y bydd y Cynulliad yn cael ei wahodd i roi sylw arbennig iddynt o dan Reolau Sefydlog 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 15.2, and Instruments subject to annulment pursuant to a resolution of the Assembly (the Negative Procedure)

[2] **Janet Ryder:** Joanest has something to tell us on SLC255, the Product of Animal Origin (Third Country Imports) (Wales) (Amendment) Regulations 2009.

[3] **Ms Jackson:** This is reported because of a discrepancy between the English and Welsh texts, as you will see from your report. The Government has indicated that it wishes to correct this on publication; however, because it refers to European legislation, we are of the opinion that that would not be an acceptable way of correcting the error and that it should be

corrected at the earliest opportunity. We have endeavoured to search for the regulation referred to in the Welsh text, and can find no reference to it. The nearest that we could find was a European decision of that date, which related to information technology matters, and was certainly nothing to do with products of animal origin. Hence, our advice is that the response is not acceptable and that the correction should be made as soon as possible.

[4] **Janet Ryder:** Do Members have any comments on that? What action would Members like to take arising from that? We can write to the Minister asking for that to be corrected before publication. Would Members be content with that? I see that you would.

8.33 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, Offerynnau drafft sy'n agored i gael eu cymeradwyo yn unol â phenderfyniad gan y Cynulliad (y Weithdrefn Gadarnhaol), ac Offerynnau sy'n agored i gael eu dirymu yn unol â phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
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[5] **Janet Ryder:** Joanest will now look at SLC252, the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (Wales) Regulations 2009.

[6] **Ms Jackson:** There is nothing to raise in respect of that.

[7] **Janet Ryder:** Do you have anything to say about SLC254, the Animals and Animal Products (Import and Export) (Wales) (Amendment) Regulations 2009?

[8] **Ms Jackson:** I understand that you deferred this matter for consideration from last week, so that we could endeavour to trace a reply from the Minister to a letter sent in July 2006, which related to the 2006 regulations having been made in English only. The response that we have had from the relevant Minister's office is that the letter forwarded to it in 2006 cannot be traced. However, these regulations before you are perfectly in order and should proceed. I therefore advise you to agree this report, and we will continue to chase the matter to see whether we can find anything. It concerned monolingual drafting and the resources available at the time for translation. Given that we have since developed an enhanced monitoring procedure for this committee, we hope to identify this sort of issue a lot more quickly and to be able to chase it up more quickly than we were able to a few years ago.

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

[10] Joanest was looking at SLC257, the National Health Service (Dental Charges, General Dental Services Contracts and Personal Dental Services Agreements) (Wales) (Amendment) Regulations 2009, and SLC258, the Non-domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (Wales) Regulations 2009. Is there any comment on either of those?

[11] **Ms Jackson:** There is nothing to comment about either of those.

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

[13] Gwyn has been looking at SLC261, the Learning Travel Information (Wales) Regulations 2009 and SLC262, the Changing of School Session Times (Wales) Regulations 2009. Is there anything to report on those, Gwyn?

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

[15] **Janet Ryder:** Diolch yn fawr. **Janet Ryder:** Thank you.

8.35 a.m.

**Ystyried y Mesur Atodiadau Ardrethi Busnes (Mesur Seneddol): Memorandwm
Pwerau Dirprwyedig
The Consideration of the Business Rate Supplements Bill: Delegated Powers
Memorandum**

[16] **Janet Ryder:** We had two Cabinet members in last week: the Counsel General and Leader of the House, and the Minister for Social Justice and Local Government. However, at that time, we had not seen the delegated powers memorandum. Gwyn, I believe that you have something to add on this.

[17] **Mr Griffiths:** Anfonwyd y **Mr Griffiths:** The delegated powers memorandum pwerau dirprwyedig at y memorandum was sent to the deputy clerk at dirprwy glerc am 8.05 a.m. fore Mawrth 8.05 a.m. last Tuesday, when we were all in diwethaf, pan oeddem i gyd yn y pwyllgor. committee. Therefore, it was not available to Felly, nid oedd ar gael i swyddogion nac i officials or to Members during the Aelodau yn ystod y drafodaeth. Mae ar gael discussion. It is available now. It is extremely erbyn hyn. Mae'n ddefnyddiol dros ben ac useful and it underlines the nature of our mae'n tanlinellu natur ein sgwrs yr wythnos discussion last week on the fact that it would diwethaf y byddai'n ddefnyddiol i'r pwyllgor be useful for the committee to have such a gael memorandwm ar gyfer pob Mesur memorandum for every Bill so that the seneddol er mwyn i'r pwerau sy'n cael eu powers delegated within them can be dirprwyo ynddynt gael eu hystyried. considered.

[18] Yn yr achos hwn, mae cyfeiriad at y In this case, there is reference to the fact that ffaith y byddai isafswm o £50,000 yn y rateable value in England would be a gwerth ardrethol yn Lloegr. Nid oes minimum of £50,000. There is no statement datganiad am y ffigur cyfatebol yng about the corresponding figure in Wales. Had Nghymru. Pe baem wedi cael y wybodaeth that information been available to us last honno yr wythnos diwethaf, byddai wedi bod week, it would have been possible for us to yn bosibl inni ofyn i'r Gweinidog a'r ask the Minister and the Counsel General Cwnsler Cyffredinol a oedd penderfyniad whether a decision had been taken on this. wedi'i wneud ar hyn. Mae gan Weinidogion Ministers have the right to set such a figure yr hawl i bennu ffigur o'r fath mewn by regulation, but it would have been useful rheoliadau, ond byddai wedi bod yn to know at the meeting whether the intention ddefnyddiol cael gwybod yn y cyfarfod a was to use the same figure as England or a oedd bwriad i ddefnyddio'r un ffigur â Lloegr different figure. Therefore, the committee neu un gwahanol. Felly, efallai y bydd y may want to write to the Minister to ask for pwyllgor am ysgrifennu at y Gweinidog i that information. ofyn am yr wybodaeth honno.

[19] Mae'n sicr ei bod yn ddefnyddiol It is certainly very useful for us to have these dros ben cael y memoranda hyn. memoranda. This was published, as we heard Cyhoeddwyd hwn, fel y clywsom yr wythnos last week, when the Bill was published at the

diwethaf, pan gyhoeddwyd y Mesur ar end of January. Unfortunately, the matter was ddiwedd mis Ionawr. Yn anffodus, ni not drawn to our attention until it was too thynnwyd y mater at ein sylw nes ei bod yn late, and therefore that meant that we did not rhy hwyr, a oedd yn golygu nad oedd have the information ready for our meeting gennym y wybodaeth ar gyfer ein cyfarfod yr last week. wythnos diwethaf.

[20] **Michael German:** I have a question on the language used in these memoranda. I find it somewhat confusing. Perhaps the committee could look at this as a general principle and at some of the issues that arise from it.

[21] I will start with paragraphs 31, 32, and 33 by way of example, all of which talk about empowering or enabling the Secretary of State 'and' the Welsh Ministers. The word 'and' could be taken to mean both together as opposed to independently of each other. Yet, paragraph 39 mentions the Secretary of State 'or' the Welsh Ministers. The word 'or' seems to be a much better way of phrasing this. I know that there is mention earlier of the Welsh Ministers acting for Wales and so on, which is a reasonable clarification, but it could be slightly ambiguous. There are many examples of the word 'and' appearing, and sometimes the word 'or' appears.

[22] Paragraph 42 talks about 'the Government' but does not tell you which one. I presume that the words 'in England' should have been added there, as they were in paragraph 58. The words 'in England' make it quite clear there that the Government envisages using these processes in England.

[23] Therefore, at best, this is somewhat sloppy, and I would value a view as to whether we should be clear in a memorandum of this sort about who these powers lie with and for which purposes, for the sake of absolute certainty. The word 'and' is confusing in that it relates to both sets of Ministers, and it therefore could be taken that you would require a decision by both. The word 'or' is used in some places, and that is a better word. It is freely used between the two. In addition, 'the Government' is loosely used in paragraph 42, while, in paragraph 58, 'the Government' is defined as being the Government in England.

8.40 a.m.

[24] My second question is about paragraph 2. It is not clear whether the provisions will be subject to affirmative procedure, requiring a vote of the whole Assembly, or to negative procedure. I am not clear whether paragraph 2 meant to indicate that where it refers to the provisions being

[25] 'subject to approval by resolution of each House'.

[26] I presume that it means that they will be subject to affirmative procedure.

[27] **Mr Griffiths:** That is the technical way of writing it.

[28] **Michael German:** Thank you; I have learned something already.

[29] **Janet Ryder:** Mark, do you wish to make a point on the same issue?

[30] **Mark Isherwood:** No, it is a different issue.

[31] **Janet Ryder:** In that case, we will deal with Mike's point first. Do we have any power to direct the language used in these or is this language given to us by Westminster? If that is the case, and instances such as this arise, is it something that this committee needs to

be mindful of and pay attention to?

[32] **Mr Griffiths:** This paper was prepared by the Westminster Government for the House of Lords Select Committee on Delegated Powers and Regulatory Reform. Therefore, any issue to do with the language would be a matter for that committee to raise. That does not prevent our raising informally with that committee the fact that we think that these things could be dealt with. However, that could perhaps be dealt with on an official-to-official basis rather than a formal view being expressed by the committee.

[33] **Janet Ryder:** We can certainly try doing it on an official-to-official basis first and see what response we get.

[34] **Michael German:** I am happy to start the ball rolling in that direction, but if no-one from the Welsh Assembly Government has picked it up and it is not clear—and clarity is what we are after—in the end, we ought to make that formal representation. There is nobody else to do that in the Assembly, is there?

[35] **Janet Ryder:** I do not think that there is, no. That is why it is so important that this committee sees these delegated powers memoranda. The first step is to see what response we get through officials. Perhaps we can have a discussion next week about what kind of response we get. The other issue is that, had we had this in front of us last week when Ministers were here, we might have asked further questions. Last week, we were not aware of the level being set, and we were, therefore, unable to ask what kind of path the Minister intended to take on that and how he intended to address the other areas. We need to follow this up, official to official, to ensure that we look at the language. However, there are other issues that, in the first place, we need to take up by way of letters to Carwyn Jones and Brian Gibbons, as has been suggested. There are issues to do with how this has been dealt with—of process—which would be to do with Carwyn, and to do with the Business Rate Supplements Bill, how it is going to be implemented, how the Minister intends to use these powers, assuming he does, and how we can flag that up to the subject committees to ensure that they are aware that they need to scrutinise the Minister on those.

[36] **Mark Isherwood:** I wish to clarify two points that I could not see in the paper, although you may correct me. First, with regard to giving the Secretary of State and Welsh Ministers, by regulation, the power to add, vary or omit services, the paper refers to the importance of ratepayers having confidence that the business rate supplement will be used only to promote economic development of local areas. How confident can we be that the wording provided will ensure that that power to vary will be restricted to the promotion of economic development and not be open to wider interpretation?

[37] Secondly, with regard to the ballot, are we to assume that, whatever threshold will be applied in Wales—it is £50,000 in England—it will also apply to those who can vote? If so, will there be one vote per organisation or would a larger organisation get a bigger vote?

[38] **Janet Ryder:** That question would possibly come under the issue of how the Minister would use the powers—what sort of regulations the Minister would put forward for using these powers. That would surely determine who has the right to vote locally on these issues.

[39] **Mark Isherwood:** I was just wondering whether that would be set out in the legislation.

[40] **Mr Griffiths:** There is a provision that requires voting to be weighted according to the amount that people would have to pay if they voted in favour so that people paying a huge amount cannot be outvoted by many smaller organisations that do not have to pay anything anyway.

[41] **Janet Ryder:** Would that detail apply to Wales as well as England?

[42] **Mr Griffiths:** Yes. Everything apart from the one clause about bringing the provisions in early applies equally to England and Wales.

[43] **Mark Isherwood:** Further to the first point that I made about the power to omit or vary, how can we be assured that that would be restricted to the promotion of economic development and could not be interpreted more widely?

[44] **Mr Griffiths:** The legislation requires it to be used for economic development. On the policing of that, it will be a matter for the Ministers to intervene if they think that it is being abused and, presumably, ratepayers would raise it with Assembly Members if they thought that the process was being abused, who, in turn, could raise it with the Minister.

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

[46] **Mark Isherwood:** Yes.

[47] **Michael German:** I am sorry, I forgot paragraph 8, which interested me considerably. Am I to read paragraph 8 as meaning that there is a guidance note to the UK Government on the drawing up of these memoranda? It states,

[48] ‘DCLG has been guided by the following criteria’.

[49] The word ‘guided’ indicates that some form of note exists that guides UK Government departments when drawing up such memoranda. I am not certain whether that was also the document—relating to something that Carwyn Jones said last week—that was a form of guidance in these matters. I may have confused two issues, but if there is guidance—it could be an important note—the committee should perhaps have sight of it, to use it to judge whether the level of delegated power on the face of Bills was appropriate or not.

[50] **Janet Ryder:** Do we have that, or is it something that we will have to request, Gwyn?

[51] **Mr Griffiths:** I am not sure whether there is formal guidance or whether it is just custom and practice within the Government Legal Service and Office of the Parliamentary Counsel. We can certainly look into the matter. The document to which Carwyn Jones referred last week was to do with the relationship between the Assembly Government and Whitehall departments, and that documentation is certainly available to this committee.

[52] **Michael German:** Have we received a copy?

[53] **Janet Ryder:** Would you like to have sight of that?

[54] **Michael German:** Yes. I asked him last week whether he would make it available but I do not know whether we have had it.

[55] **Janet Ryder:** I do not think that we have had a response from the Minister as yet.

[56] If we take up devolution guidance note 9, we can ask about this issue in particular, and see whether we can get any further clarification on that.

[57] **Michael German:** The point is, Chair, that you do not know what you are judging things against until you know what the guidance is that goes behind it. Obviously, there are

documents that we should have to hand when we look at these matters.

[58] **Janet Ryder:** That is fine. We will deal with that and bring that information forward next week, hopefully, with the draft committee report. Are there any further issues that Members would like to raise? I see that there are none. We will try to get answers to some of the questions that have been raised by next week and we will return to those, along with the draft committee report.

[59] There are no other items of business. The next meeting will be held at 8.15 a.m. next Tuesday. I declare the meeting closed.

Daeth y cyfarfod i ben am 8.48 a.m.
The meeting ended at 8.48 a.m.