



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

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

**Dydd Llun, 22 Mehefin 2009
Tuesday, 22 June 2009**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
David Melding	Ceidwadwyr Cymreig Welsh Conservatives
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales 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 3.32 p.m.
The meeting began at 3.32 p.m.

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

[1] **Janet Ryder:** I welcome Members and members of the public to the meeting. In an emergency, the ushers will indicate the nearest safe exit and headsets are available for translation and amplification. I remind Members to switch off their mobile phones completely. If you need the interpretation, please use channel 1 on the headsets and for amplification, please use channel 0. We have received apologies from Joyce Watson and Alun Davies. We have no substitutions, but as we are quorate, we will proceed with the meeting. I thank Members for being willing to start the meeting half an hour earlier than usual.

3.33 p.m.

Offerynnau na fydd y Cynulliad yn cael ei Wahodd i Roi Sylw Arbennig Iddynt o dan Reol Sefydlog Rhif 15.2 ac Offerynnau sy'n Agored i Gael eu Dirymu yn unol â Phenderfyniad gan y Cynulliad (Y Weithdrefn Negyddol)
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[2] **Janet Ryder:** Gwyn has been dealing with SLC288, the Education (Areas to which Pupils and Students Belong) (Wales) (Amendment) Regulations 2009, SLC289, the General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2009, SLC290, the Education (Supply of Information) (Wales) Regulations 2009, SLC291, the General Teaching Council for Wales (Additional Functions) (Amendment) Order 2009, SLC292, the General Teaching Council for Wales (Constitution) (Amendment) Regulations 2009, and SLC293, the General Teaching Council for Wales (Functions) (Amendment) Regulations 2009.

[3] **Mr Griffiths:** Fel y gwelwch, mae'r adroddiadau i gyd yn glir. Maent i gyd yn rheoliadau byr iawn ac, heblaw am y cyntaf, maent i gyd yn ymwneud â dod â darpariaethau Deddf Diogelu Grwpiau Hyglwyf 2006 i rym. **Mr Griffiths:** As you can see, the reports are all clear. They are all very short regulations and apart from the first one, they are all to do with introducing provisions under the Safeguarding Vulnerable Groups Act 2006.

[4] **Janet Ryder:** Are Members content with those? I see that they are. We will, therefore, move on to SLC294, the Seed (Conservation Varieties Amendments) (Wales) Regulations 2009, SLC297, the Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009, and SLC298, the Plant Health (Wales) (Amendment) Order 2009, which Joanest has been looking at.

[5] **Ms Jackson:** I have nothing to add to what is contained in the written reports on these three items.

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

3.34 p.m.

Offerynnau y bydd y Cynulliad yn cael ei Wahodd i Roi Sylw Arbennig Iddynt o dan Reol Sefydlog Rhif 15.2 ac Offerynnau sy'n Agored i gael eu Dirymu yn unol â Phenderfyniad gan y Cynulliad (Y Weithdrefn Negyddol)
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[7] **Janet Ryder:** Joanest has been looking at SLC295, SLC296, and SLC299. First, on SLC295, the Swine Vesicular Disease (Wales) Regulations 2009, I believe that you have something to report, Joanest.

[8] **Ms Jackson:** Yes, I do. We did report this instrument on the grounds that there was a discrepancy between the English and the Welsh texts. I was particularly concerned about this because it concerned a potential offence. The Government has accepted the point and is proceeding to make immediate amending regulations, and has confirmed that it would have no intention of prosecuting any unintentional obstruction of an officer in the meantime.

[9] **Janet Ryder:** Are the Members content with that? Are there any questions? I see that there are none.

[10] Next is SLC296, the Products of Animal Origin (Disease Control) (Wales) (Amendment) Regulations 2009. Joanest, do you have something to say about these?

[11] **Ms Jackson:** Yes. The reporting point concerns terminology. This, too, has been accepted, and immediate amending regulations are to be made.

[12] **Michael German:** I know that these are 'terminological inexactitude issues', but they happen fairly regularly. Do we track whether the amending regulations actually get laid when the Government agrees to our suggested changes?

[13] **Ms Jackson:** They will come to you for scrutiny.

[14] **Michael German:** I am sorry to say this, but I would not remember that the Products

of Animal Origin (Disease Control) (Wales) (Amendment) Regulations 2009 required a minor amendment. Is somebody else keeping an eye on these things?

[15] **Ms Jackson:** Yes, and we endeavour to include a note in the informative paragraph that you get to tell you that they are referring back to matters that you have previously identified.

[16] **Janet Ryder:** If Members would prefer it, in the case of an Order that has been amended and returned to us on our suggestion, we could highlight that fact as we go through the Order. Would that be helpful?

[17] **Michael German:** Or maybe as a separate item on the agenda.

[18] **Janet Ryder:** It would just be to determine that the amendments had gone through. If that would satisfy you, we will try to arrange the agenda in such a way that, when these items return, having been amended, you can see them as a separate item.

[19] **Michael German:** Yes.

[20] **Janet Ryder:** Fine. There will also be another one: SLC299, the Contaminants in Food (Wales) Regulations 2009.

[21] **Ms Jackson:** The Government has again accepted our point, and it intends to amend these regulations as soon as possible, but in any event before the end of the year.

[22] **Janet Ryder:** Thank you. These regulations raise a slightly different issue. The other two are to be amended immediately, while this one will be amended before the end of the year. If we follow the procedure that we have just suggested, namely to have a separate agenda item to track changes, perhaps we need to draw up a table of some sort so that we can check that those changes have gone through.

[23] **Mr Griffiths:** We in the Legal Division keep such a checklist, and we do not close our files until the correcting regulations have been made. We do, therefore, check that carefully. Indeed, we will bring an issue back to you next week or the week after to show where a correction has been made promptly as requested.

[24] **Janet Ryder:** That is fine. Could we include that check? Is it some sort of running order checklist? Do you add to it weekly?

[25] **Mr Griffiths:** We are still working on its format. We keep it as a working document, however.

[26] **Janet Ryder:** It might be helpful for Members for it to be included as a regular agenda item, when it becomes a complete document and you are satisfied with it, so that we can see what is going on. It might help as well to track the kinds of changes that are regularly requested. That might help us to see whether there are particular issues to which we need to pay more attention. Are Members content with that?

[27] **Michael German:** Yes. The words 'as soon as possible' automatically suggest to me 'in the autumn', which means drift one way or the other. I appreciate the mechanism, but we have no clout in a matter if it slips through the net or is not dealt with in the appropriate timescale that we have taken on board. If we could know that 'as soon as possible' meant 'two years' time', we would presumably reject that as a reasonable excuse. I do not know whether that ever happens, but even so, we might wish to keep track of these matters.

[28] **Janet Ryder:** I see that Members are content with that way forward.

3.39 pm.

Unrhyw Fater Arall Any Other Business

[29] **Janet Ryder:** Under this item, we will consider the matter of forthcoming UK legislation that we may wish to look at; in this case, the Marine and Coastal Access Bill and the Equality Bill. Both Bills contain provisions that we may want to scrutinise in more detail. If Members are content to do so, we will invite the Minister for Social Justice and Local Government, Brian Gibbons, to discuss the Equality Bill on 6 July and, provisionally, the Minister for Environment, Sustainability and Housing, Jane Davidson, to discuss the Marine and Coastal Access Bill on 30 July. On the Equality Bill, are Members content to invite Brian Gibbons to come before the committee on 6 July? I see that you are.

3.40 p.m.

[30] Speaking as an Assembly Member, rather than as Chair of this committee, the concerns that have been raised with me on the Marine and Coastal Access Bill have mostly been on the fisheries part of the Bill and the way in which they will translate, and the raft of regulations that will have to be introduced to support that, as this is a new function that is being taken over from England. We might need to have two sessions. I suggest that we need to invite Jane Davidson before the committee to discuss the coastal and environmental issues of this Bill, but it might be apt to invite Elin Jones as well to discuss issues to do with fisheries regulations. Are Members content to invite both Ministers?

[31] **Michael German:** You and I know will know this, Chair, but David may not, but the report prepared by Legislation Committee No. 4 raised issues relating to things that are included as being exempt and things that are not to be included. The current proposed LCO is following quite a tortuous constitutional route. When we come to look at this particular matter, it might be useful to look at the report of Legislation Committee No. 4 on the Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009 in respect of issues relating to executive powers, which is one of the issues that we will be looking at here, and in respect of legislative powers. We are beginning to see a pattern emerging of the Government linking the two together.

[32] **Janet Ryder:** We can certainly look at that committee report in conjunction with the questions that we may want to raise with Jane Davidson, because there will be a significant overlap in that regard. It does not seem to be clear at all how the legislation and regulations will work out, having seen that report by Legislation Committee No. 4. There will be a lot of overlap, and that is the stage at which this committee will have to start scrutinising these Bills, because there is no other mechanism for that scrutiny to take place. Unfortunately, if Jane Davidson does not come before the committee until 13 July, we will be going in to recess the following week. I suspect that it might be a rather long session if we invited Jane Davidson and Elin Jones, but we could invite them to the same session on 13 July.

[33] **David Melding:** Why not? If we need a long session, we should have one, if they are available on that day.

[34] **Janet Ryder:** We will try to invite those Ministers for that session, and if they are not available we will inform Members next week as to how we can progress with that.

[35] The committee has also expressed an interested in looking at the draft flood and water management Bill. It might be appropriate for us to leave that until the autumn term.

[36] The Child Poverty Bill has been laid in Parliament. Members may wish to note that a legislative consent memorandum will be debated in Plenary tomorrow in connection with this. Joane, do you wish to say something about this?

[37] **Ms Jackson:** Very briefly. I think that Members have received copies of the memorandum, which were circulated prior to the meeting. There is a significant overlap with the proposed proposed Children and Families (Wales) Measure, and you will recall that you raised questions of overlap or coincidence between the Bill and the proposed Measure when scrutinising Dr Brian Gibbons. Similar issues were raised by the legislation committee. In total, there were four scrutiny sessions in relation to the proposed Measure, but there was no mention of the possibility of the use of a legislative competence memorandum. I may take you back to our inquiry on the scrutiny of subordinate legislation and delegated powers, recommendation 5 of that report suggests that the Business Committee gives consideration as to how legislative competence memoranda under Standing Order No. 26.2 could be subject to scrutiny prior to debate in Plenary. You can also tie in recommendations 6 and 7 of our report to the general working practice when similar topics are being considered both here and in Westminster. I put that before the committee, although there is not much that we can now do about it, but I thought that it was important that we took some note of what has occurred in this instance, particularly in light of the recommendations made in the inquiry report.

[38] **Janet Ryder:** I suggest that, as we have already published our report on this, and it is difficult to go back and add an addendum to it, I take a slot to speak in this debate as the Chair of the committee and raise that issue, taking the opportunity to highlight the lack of scrutiny of Welsh issues that is happening in Westminster. It would seem that we, as a committee, have picked up issues to do with Wales that are going through in Westminster that are receiving scant, if any, scrutiny as to their impact in Wales and the implications for Wales. This seems a little like devolution in reverse. If the Minister is saying, 'These issues are going to be dealt with in Westminster. They're under my jurisdiction now, but I'm going to hand them back to Westminster to be dealt with', my concern tomorrow and today is how that will be scrutinised. What arrangements have been put in place to ensure that adequate scrutiny of that will happen in Westminster, or will it happen in Westminster and be scrutinised here? What is the way forward?

[39] **David Melding:** I wonder whether the legal team could give us advice on how often Sewel arrangements are used to deal with something that is quite fundamental. It seems to me that this is not a technical adjustment, because the Minister will drive some policy through by the use of this mechanism. I thought that when the Scottish Parliament asks the UK Parliament to deal with something, it is only done on technical matters, not to undo the devolution settlement. I am not sure what advice we can have.

[40] **Mr Griffiths:** I think that that is right; it is only used for technical matters, unless there is a particular issue that needs to be dealt with, but I do not have any information about how often it happens. I think that it happens on technical issues relatively frequently, but we can look into that, if that would be of assistance.

[41] **David Melding:** Sometimes, it may decide that a policy area can be dealt with by a UK bit of legislation, so that it gets the level of scrutiny that it requires on how it would apply in Scotland, but it is an odd system in which you can hand back power that you are already partly using. The scrutiny becomes confused, to put it mildly.

[42] **Mr Griffiths:** You may recall that, when we dealt with the Apprenticeships, Skills, Children and Learning Bill, the same issue arose, namely, while other aspects of education had been dealt with by the Learning and Skills (Wales) Measure 2009 here, for some reason, it was decided that the apprenticeship aspect would be dealt with at Westminster, rather than

legislative competence being sought to enable the Assembly to deal with apprenticeships at the same time that it dealt with other aspects of education.

[43] **Janet Ryder:** Was that dealt with through a legislative consent memorandum or was that power already retained in Westminster?

[44] **David Melding:** It was uncoupled at that stage.

[45] **Janet Ryder:** That is right. So, what David is saying is that this is the next stage. The power is already vested here, and the Minister is saying that it can be operated back in Westminster. Given the evidence that we have taken to date on Bills that have gone through Westminster in relation to Wales, I feel that the committee should register a concern if it is not made clear tomorrow exactly how this will be scrutinised.

3.50 p.m.

[46] **Michael German:** We need to do what you have suggested and go a step further. However, I am always wary of a precedent of this kind—and it is now becoming more of a precedent that matters are being handed back without proper scrutiny. We need to have some form of dialogue agreement protocol between the legislature and the Executive on the circumstances in which they would do this, how they would do it, and the manner in which it would be dealt with by the legislature. We do not have any of that in place at the moment. Therefore, I would suggest that, as well as speaking at the debate tomorrow, you may care to write to the Business Committee, on behalf of this committee, pointing this out and asking for the Government to come forward with some proposals for a protocol on how this might work in the future; particularly, as David rightly points out, when we are seeking to give back powers that we are already using.

[47] **Janet Ryder:** Are Members content to follow those two strands? I see that you are.

[48] **David Melding:** We will be there cheering you. [*Laughter.*]

[49] **Janet Ryder:** Thank you. Finally, for Members' information, on Thursday, Bethan, as clerk to the committee, and I have been invited to give evidence to the All Wales Convention on the points that the committee has picked up so far. It would seem that the convention is interested in how we are interfacing with Westminster and how Bills are developed there.

[50] **Michael German:** How long does it have?

[51] **Janet Ryder:** We will report back in full next week after we have given that report.

3.52 p.m.

Cynnig Trefniadol Procedural Motion

[52] **Janet Ryder:** If Members are content with all of those items so far, so that we can discuss the next item on the agenda, which is the consideration of the draft report on the Proposed Education (Wales) Measure, in private, I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 10.37(vi).

[53] I see that the committee is in agreement.

Daeth rhan gyhoeddus y cyfarfod i ben am 3.52 p.m.
The public part of the meeting ended at 3.52 p.m.