



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

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

**Dydd Mercher, 23 Medi 2009  
Wednesday, 23 September 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
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

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

Tracey Breheny	Pennaeth yr Uned Tlodi Plant Head of the Child Poverty Unit
Brian Gibbons	Aelod Cynulliad, Llafur (Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol) Assembly Member, Labour (Minister for Social Justice and Local Government)
Gill Lambert	Rheolwr Mesur Plant a Theuluoedd (Cymru) Children and Families (Wales) Measure Manager
Michael Lubienski	Cyfreithiwr Llywodraeth Cynulliad Cymru Welsh Assembly Government Lawyer

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol**  
**National Assembly for Wales officials in attendance**

Bethan Davies	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk

*Dechreuodd y cyfarfod am 9.31 a.m.*

*The meeting began at 9.31 a.m.*

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

[1] **Janet Ryder:** I welcome you to the new committee room—committee room 4. We are the first committee to meet here, so I hope that everything goes smoothly; I am sure that it will.

[2] I have received apologies from Joyce Watson, for whom we have no substitute. We are losing David Melding, and William Graham is coming back to the committee after a short absence. Welcome back, William. The committee would like to record its thanks to David for his work in taking the committee report through its final stages as the committee started to work in a new way, introducing the questioning of Ministers and the deeper scrutiny of

legislation. David played a valuable part in that.

[3] I remind Members that, in an emergency, ushers will indicate the nearest safe exit. Mobile phones and other electronic devices must be completely switched off. Headsets are available for translation and amplification. Translation is on channel 1 and amplification is on channel 0. We have a lengthy agenda today—it has been accumulating over the recess.

9.33 a.m.

**Offerynnau Na Fydd y Cynulliad yn Cael ei Wahodd i Roi Sylw Arbennig iddynt  
o dan Reol Sefydlog Rhif 15.2 c 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  
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Pursuant to a Resolution of the Assembly (Negative Procedure)**

[4] **Janet Ryder:** Gwyn has been looking at SLC314, the Houses in Multiple Occupation (Management) (Wales) Regulations 2009. I see he has nothing to report on that and that Members are content. Joane, I see that you have nothing to report on SLC315, the Products of Animal Origin (Disease Control) (Wales) (Amendment) (No 2) Regulations 2009 and that Members are content. Joane, do you have anything to report on SLC316, the National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) (No.2) Regulations 2009?

[5] **Ms Jackson:** Yes, there is something of interest to mention on this one. There is a link here with regulations that appear under item 3, SLC312. Both of these statutory instruments add antiviral drugs to the list of drugs that may be prescribed under the general medical services contract in circumstances where there is a pandemic. There are no reporting points on this particular statutory instrument, SLC316, which was the second one made to add Ralenza to the list. The reporting points that you will note under SLC312 were taken account of in SLC316 because SLC312 was made first and is to be reported to you for being made in English only. You will see from the report on that one that I did a bit of counting and came up with the number of words that would have required translation, and it was a very small number. Notwithstanding that both of these were made to deal with what were perceived to be urgent circumstances, it was a very short translation. The point was made and taken into account when the second set of regulations was made. There are no concerns with the one that we are considering at the moment.

[6] **Janet Ryder:** Perhaps we can take note of that and come back to it when we are looking at SLC312.

[7] We will move on to SLC317, the Assembly Learning Grants and Loans (Higher Education) (Wales) (No. 2) (Amendment) Regulations 2009.

[8] **Mr Griffiths:** Y peth pwysig i'w dweud ynglŷn â'r rhain yw eu bod yn cywiro camgymeriadau yn y ddeddfwriaeth a nodwyd gan y pwyllgor hwn yn gynharach eleni. **Mr Griffiths:** The important thing to say about these is that they correct errors in the legislation that were noted by this committee earlier this year.

[9] **Janet Ryder:** A yw wedi cymryd blwyddyn i'w cywiro? **Janet Ryder:** Has it taken a year for them to be corrected?

[10] **Mr Griffiths:** Wel, chwe mis. **Mr Griffiths:** Well, six months.

[11] **Janet Ryder:** A yw pawb yn hapus **Janet Ryder:** Is everyone happy with that? I gyda hynny? Gwelaf eich bod. see that you are.

[12] We will move on, therefore, to SLC318, the Non-Domestic Rating (Deferred Payments) (Wales) Regulations 2009. Joanest, do you have anything to report?

[13] **Ms Jackson:** There is nothing to report on this one.

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

[15] We will move on to SLC319, the Assembly Learning Grants (European Institutions) (Wales) (Amendment) Regulations 2009, SLC320, the Assembly Learning Grant (Further Education) Regulations 2009 and SLC322, the General Teaching Council for Wales (Disciplinary Functions) (Amendment No 2) Regulations 2009. Gwyn, have you been looking at those?

[16] **Mr Griffiths:** Yes. There is nothing in relation to SLC319, SLC320, or SLC322.

[17] **Janet Ryder:** Are Members content with those? I see that you are. We will move on to SLC323, the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2009, SLC324, the Purity Criteria for Colours, Sweeteners and Miscellaneous Food Additives (Wales) (Amendment) Regulations 2009, and SLC325, the National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No.3) Regulations 2009. Do you have anything to report, Joanest?

[18] **Ms Jackson:** Again, there is nothing to report on any of those.

[19] **Janet Ryder:** Are Members content with those? I see that you are. We will move on to SLC326, the Zoonoses and Animal By-Products (Fees) (Wales) (Amendment) Regulations 2009 and SLC327, the Equine Identification (Wales) Regulations 2009. Do you have anything to add, Gwyn?

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

[21] **Janet Ryder:** Is everyone happy with those? I see that you are.

9.37 a.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  
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[22] **Janet Ryder:** Some of these instruments have points to look at. We will start with SLC309, the Food Irradiation (Wales) Regulations 2009.

[23] **Ms Jackson:** You will see that we have reported these. There is inconsistency in the translation of the words 'significant risk', which has been translated variously as 'risg o bwys' and 'risg sylweddol'. As you will see from the report, the Government does not consider that any amendment is required and it does not think that there is any confusion. It believes that

both have similar meanings and that both are acceptable translations of ‘significant risk’ and, as such, it does not believe that this has created inconsistency in meaning and therefore that the regulations do not require amendment.

[24] **Janet Ryder:** We have here an issue where one English term has been translated in two different ways in Welsh, which may or may not be acceptable. Have Members any comments to make on this?

[25] **Michael German:** I will ask the obvious question to start. As I understand it, legislation has to be equivalent in both languages. In other words, if a lawyer were to take this matter to court, it could be taken in either language and either language would have to stand independently of the other. However, they would have to be exactly the same. Confusion between one language and the other—in this case, English and Welsh—might render any case invalid, or it could be used as an argument against us. May I test that, first of all, to see what the purpose is of having absolute equality and certainty in both languages?

[26] **Mr Griffiths:** It is really to avoid confusion. In this case, either of the Welsh terms would have been acceptable. However, two different terms have been used, which might lead someone reading the Welsh text to wonder whether there are two different concepts here. If they do not then read the English as well and see that it is, in fact, the same thing, then they might misunderstand the intention.

[27] **Michael German:** What would be the effect in a court of law?

9.40 a.m.

[28] **Mr Griffiths:** I do not think that it would get as far as a court of law because it would become clear at an early stage in any proceedings that, in fact, the intention was to convey the same meaning in both cases.

[29] **Michael German:** So, it is good law, as opposed to being a point of challenge in court.

[30] **Mr Griffiths:** Yes.

[31] **Michael German:** I will come back to that if I may.

[32] **Alun Davies:** I am not sure that I accept the Government’s points on this. I understand and appreciate the exchange that has just taken place, but I think that there is a need for consistency in these regulations. The need for consistency is more important. Both of those terms would be acceptable, but I think that one should be used, and not two. So I would certainly respond to the Government and say that there should be consistency in the writing of these regulations.

[33] **Michael German:** May I ask a supplementary question on that? Should this consistency apply across legislation? The term ‘significant risk’ is quite a common term in legislation, so should we be using the same working in every piece of legislation to ensure consistency?

[34] **Mr Griffiths:** That is certainly what the translators aim for and generally achieve, because they have all sorts of tools to enable them to do that. This is unusual in that they used two different terms and that that slipped through in a single piece of legislation. That is more important.

[35] **Janet Ryder:** We can have a detailed discussion on this, but I ask Members to bear in

mind that one issue has already been drawn to our attention regarding translation. I am aware that as we move on there may be other issues to do with translation and that we may want to discuss each one as it arises and, if necessary, deal with that piece of legislation. However, there may be a general issue that we may want to pick up at the end, when we have looked at all of these pieces of legislation.

[36] Is there anything on this particular piece of legislation? Given that those two terms have both been used, and given that Gwyn's advice to us is that someone reading the Welsh version may think that there are two different concepts behind this, are Members content to pass this piece of legislation, or would Members be content to pass it and also to write and draw the Minister's attention to this anomaly?

[37] **Alun Davies:** I think that the Government's attention should be drawn to it, if Members agree, because consistency of terminology and language is important. I understand that glossaries of various sorts have been published in the legal world to ensure that this takes place, so I assume that the objective in drawing up legislation would be to have clear, concise and consistent language. If this legislation fails that test, we should say that quite clearly and take the appropriate action.

[38] **Janet Ryder:** So, Members are content to pass this piece of legislation, but that we should also to draw the attention of the appropriate Minister to that issue.

[39] We now move on to SLC310, the National Health Service (Restructuring of National Health Service Bodies: Consequential Amendments) (Wales) Order 2009.

[40] **Ms Jackson:** As you will see from the report, there was a small reporting point on this, which the Government agreed to. In this instance we would have accepted a correction slip being issued, but as there was time before publication for the correction to be made in the published version, no further action is required.

[41] **Janet Ryder:** What was that correction?

[42] **Ms Jackson:** The title and the date were missing in one text. The Welsh text was correct, but the English text missed out the year of some regulations that were referred to. So, to be absolutely correct, the year should have been there. We considered that a correction slip would have sufficed, because there were no regulations that they could have been confused with in this instance. However, as a general point, having years missed off is not something that we want to see because very often regulations are made on an annual basis, which could cause confusion. However, this one has now been corrected.

[43] **Janet Ryder:** Are Members content for that piece of legislation to go through? I see that you are. We will move on to SLC311, the Welsh College of Horticulture (Dissolution) Order 2009.

[44] **Mr Griffiths:** Yr ydym newydd fod yn trafod sefyllfa lle mae dau derm Cymraeg wedi eu defnyddio i gyfateb i un term yn Saesneg. Yn yr achos hwn, mae wedi digwydd y ffordd arall—mae un term Cymraeg wedi'i ddefnyddio i gyfateb i ddau derm gwahanol yn Saesneg. Yn yr achos hwn, mae o bwys arbennig gan ei fod yn ymwneud â diddymu'r coleg garddwriaeth a throsglwyddo dau ddarn o dir i ddau gorff gwahanol. Gan fod y disgrifiad yr un fath yn **Mr Griffiths:** We have just been discussing a situation where two Welsh terms have been used to correspond to a single English term. In this case, it has happened in reverse—one Welsh term has been used to correspond to two different English terms. In this case, it is of particular importance because it involves the abolition of the horticultural college and the transfer of two pieces of land to two different organisations. As the description is the same in the Welsh version, it is not clear

y fersiwn Gymraeg, nid yw'n amlwg pa ddarn o dir sy'n cael ei drosglwyddo i ba gorff. Mae'r Llywodraeth wedi derbyn mai camgymeriad ydyw, a bydd yn gwneud deddfwriaeth i gywiro'r gwall o fewn byr amser—pedair i chwe wythnos.

which piece of land is to be transferred to which organisation. The Government has accepted that it is an error, and it will make amending legislation to correct it within a brief period of time—four to six weeks.

[45] **Janet Ryder:** Thank you, Gwyn. Again, it is a case where the Government has accepted the correction and has corrected the legislation, but had it stood undetected there would have been quite a notable difference between the English and Welsh text.

[46] **Michael German:** This was a more serious error, because it could have been tested in a court of law as to which piece of land was referred to or who had ownership of that piece of land.

[47] **Mr Griffiths:** Indeed, and it might have caused problems with conveying parcels of land many years down the road, when people perhaps might not be aware of the background.

[48] **Michael German:** So, is this one to be added to the list of Welsh-language problems, but keep the reporting point?

[49] **Janet Ryder:** We need to look back on all of the points raised—we still have some proposed Measures to go through. We have had two virtually consecutive pieces of legislation, one in which the English version says something different from the Welsh version, and one in which the Welsh version says something different from the English version. If we are scrutinising these pieces of legislation technically, which is what this committee originally did, this was something that was picked up on a number of occasions. This committee has in the past written a number of letters about this issue, so when we have completed all of these pieces of legislation, we perhaps need to take this issue a little further this time.

[50] **Alun Davies:** I agree, Chair. I remember us having this debate about a year ago in this committee. If we check back through the minutes, I think that we will find that we were going to review the legislation presented to us over a calendar year or political year. If we conduct that review and ask the committee secretariat to review the reporting points that we have received over the last year, perhaps we could do it towards the end of this term and capture 2009 in its totality. We could provide a report to the Assembly on the points that have been raised, and our conclusions and recommendations.

[51] **Janet Ryder:** We could leave it until the end of the year, but we have quite a good snapshot of the legislation, as it has banked up over the recess period, and we may want to take action. We will finish the pieces of legislation that we have before us, and we will return to this discussion. Are Members content with the Welsh College of Horticulture (Dissolution) Order 2009 in that the Government has noted the point for correction and that it will be corrected? I see that you are.

[52] We move on to SLC312, the National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc) (Wales) (Amendment) Regulations 2009.

[53] **Ms Jackson:** I alluded to this earlier, and you will see in the report by way of a footnote that I have explained my reasoning, stating that these regulations were extremely brief, amounting to 548 words in total. The amending text did not require amendment, because the amended regulations had been made in English only, which left just over 400 words to be translated, which included the title appearing three times, and the title was 15 words. In working on a translation, one only needs to translate it once and cut and paste it in



the second time. The Counsel General had advised the Presiding Officer of the need to breach the 21 day rule in respect of these regulations because they had to be made within a very urgent timescale. However, the same argument was used in the case of the previous regulations, under item 2, which were translated. However, the point was noted, and I believe that it was taken account of, as the second set was translated.

9.50 a.m.

[54] **Janet Ryder:** Members have heard Joanest recount that a previous piece of legislation on the same issue has now been translated. This piece is still to be translated.

[55] **Ms Jackson:** I do not think that it will be corrected, because they are amending regulations and the principal regulations were made in English only because they were part of a large suite of regulations made in 2004 relating to the GP contract. The point was about the brevity of these regulations and the fact that they were urgent. It was such a short set of regulations, it seemed a little—

[56] **Janet Ryder:** I am sure that Members are aware of the statement that the Presiding Officer issued earlier this week on translation and the importance that is placed on the need to translate legislation. We may want to put this issue into that category. Are we content as a committee to accept that, because it was a matter of urgency and there was no time to translate it, or are we prepared to say that it should have been translated, perhaps? It is for Members to consider that.

[57] **Michael German:** I think that we have heard enough evidence that it could have been translated. If you take the repetition out of the 400 words, you are left with a 375-word translation, which does not seem to me to be particularly onerous. It has been achieved and perhaps a lesson has been learned. I would not say that I was content with it at all; I would say that, in view of the brevity of the regulations, the Government should have translated it, and we can put this on the stack of problems that we have identified relating to Welsh-language issues.

[58] **Janet Ryder:** We can write specifically to the appropriate Minister on this piece of legislation, if Members wish to draw the Minister's attention to this.

[59] **William Graham:** The only thing is that this was to do with a risk to human health, and we should bear that in mind. I agree with what Mike said, but there will be circumstances when it will be necessary for such documents to be published as soon as possible. However, one must certainly not lose sight of the need to translate.

[60] **Janet Ryder:** Absolutely. So, with that caveat, are we content to write a letter on that and pass it on? I see that we are.

[61] I now ask Members to turn to SLC321, the School Teacher Appraisal (Amendment) (Wales) Regulations 2009. Gwyn, have you been looking at this issue?

[62] **Mr Griffiths:** Mae'r rhain yn rheoliadau sydd â gwallau mwy cyffredin nad ydynt yn ymwneud ag iaith. Maent yn bwyntiau sydd yn ymwneud â threfn geiriau, croesgyfeiriadau ac yn y blaen. Maent yn bwyntiau cyffredin y mae'r Llywodraeth yn eu derbyn, ac mae'n dweud y bydd yn gwneud deddfwriaeth i'w cywiro o fewn tri mis.

**Mr Griffiths:** These are regulations that have more commonplace errors that are not to do with language. They are points that deal with the order of words, cross-references and so on. They are general points that the Government accepts, and it says that it will make amending legislation within three months.

[63] **Janet Ryder:** Are Members content with that? I see that you are. We will now move back to SLC313. We are taking the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2009 out of order because, under Standing Order No. 15.3, we want to draw attention to it because it has legal or political importance and gives rise to issues that may be of public concern. Gwyn, you have also been looking at this one, I believe.

[64] **Mr Griffiths:** Darn o ddeddfwriaeth arwyddocaol yw hwn. Dyna pam yr wyf yn dod ag ef at eich sylw, gan ofyn i chi ystyried a ydych am wneud adroddiad ar y pwnc hwn. Mae hwn yn fater sydd yn codi o dan Reol Sefydlog Rhif 15.3. Yn ddarostyngedig i Reol Sefydlog Rhif 15.7, caiff y pwyllgor ystyried a chyflwyno adroddiad ar a ddylai'r Cynulliad roi sylw arbennig i unrhyw offeryn. Tynnaf hwn at eich sylw o dan bwynt (ii), sef,

**Mr Griffiths:** This is a significant piece of legislation. That is why I have drawn it to your attention and ask you to consider whether you want to do a report on this subject. This matter arises under Standing Order No. 15.3. Subject to Standing Order No. 15.7, the committee may consider and produce a report on whether the Assembly should pay special attention to any instrument. I draw this to your attention under point (ii), namely,

[65] 'ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad'.

'that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly'.

[66] Mae'r pwynt sydd yn codi yn yr achos hwn yn ymwneud â labelu poteli o ddŵr. Mae deddfwriaeth Ewrop yn nodi'r hyn sydd ei angen er mwyn i ddŵr o natur arbennig fod yn gymwys i gael label mewn termau arbennig. Fodd bynnag, mae deddfwriaeth Gweinidogion Cymru yn mynd ymhellach na hynny. Yr hyn a ddywedir yn rheoliad 8 o'r prif reoliadau a wnaed yn 2007 yw:

The point that arises in this case is to do with the labelling of bottled water. European legislation notes what is required in order for particular types of water to qualify for labels making particular claims for that water. However, Welsh Ministers' legislation goes further than that. What is stated in regulation 8 of the main regulations made in 2007 is:

[67] 'Ni chaiff neb beri i ddŵr mwynol naturiol gael ei botelu mewn potel wedi'i marcio neu wedi'i labelu â'r canlynol'.

'No person may cause a natural mineral water to be bottled in a bottle marked or labelled with'.

[68] Yn rheoliad 5 o'r rheoliadau presennol, rhoir paragraff 1(f) newydd—1(h) yn y Saesneg—i mewn, sydd yn dweud, 'disgrifiad gwerthu heblaw' ac wedyn yn nodi'r termau y caniateir eu defnyddio. Mae'r termau hynny'n ymddangos yn Saesneg yn unig yn y golofn Gymraeg yn ogystal â'r golofn Saesneg. Canlyniad hynny yw na chaniateir defnyddio unrhyw derm arall, gan gynnwys term cyfatebol yn y Gymraeg. Nid yw deddfwriaeth Ewrop yn mynnu hynny gan fod deddfwriaeth Ewrop yn cael ei wneud mewn llawer o ieithoedd. Byddai Gwlad Belg, er enghraifft, yn caniatáu labelu mewn Ffrangeg ac Iseldireg. Ceisiais weld beth

In regulation 5 of the current regulations, a new paragraph 1(f)—or 1(h) in English—is inserted, which states, 'a sales designation other than', and then it notes the terms that can be used. Those terms appear in English only in the Welsh column as well as in the English column. The consequence is that no other terms can be used, including a corresponding Welsh term. European legislation does not insist upon that, as European legislation is made in a number of languages. Belgium, for example, would allow labelling in French and Dutch. I tried to see what is happening in Ireland without much success. Perhaps they have not been as

oedd yn digwydd yn Iwerddon heb fawr o lwyddiant. Efallai nad ydynt wedi bod mor gyflym yn rhoi deddfwriaeth Ewrop ar waith ar y pwnc hwn.

swift in implementing the European legislation on this subject.

[69] Fodd bynnag, mae ymateb y Llywodraeth yn ddiddorol. Fel y gwelwch, mae wedi ei ddyfynnu ar ddiwedd yr adroddiad. Mae'n dweud y byddai caniatáu defnyddio'r Gymraeg a Saesneg yn gwneud y label yn llai eglur, ac felly nid yw'n bwriadu caniatáu defnydd o'r Gymraeg. Yr oedd hynny'n fy nharo—

However, the Government's response is interesting. As you can see, it is quoted at the end of the report. It states that allowing the use of the Welsh and English languages would make the label less clear, and therefore it does not intend to allow the use of the Welsh language. That struck me as—

[70] **Alun Davies:** Pwy sy'n dweud hynny?

**Alun Davies:** Who says that?

[71] **Mr Griffiths:** Y Llywodraeth.

**Mr Griffiths:** The Government.

[72] **Alun Davies:** Pa Lywodraeth?

**Alun Davies:** Which Government?

[73] **Mr Griffiths:** Llywodraeth Cymru. Dyna pam yr wyf yn tynnu hwn at eich sylw fel mater sy'n codi materion polisi cyhoeddus.

**Mr Griffiths:** The Welsh Government. That is why I am drawing this to your attention as a matter that raises public policy issues.

[74] **Janet Ryder:** I hope that Members will appreciate that we are not drawing this to anyone's attention because it is a health matter.

[75] **Mr Griffiths:** Mae'n ddrwg gennyf, Gadeirydd. Dylwn fod wedi cadarnhau nad oes pwyntiau i'w hadrodd o dan Rheol Sefydlog Rhif 15.2. Mae'r deddfwriaeth yn dechnegol gywir.

**Mr Griffiths:** I am sorry, Chair. I should have confirmed that there are no points to report under Standing Order No. 15.2. The legislation is technically correct.

[76] **Janet Ryder:** This is a matter of policy and I suspect that it touches on the language policy that we are pursuing in the Assembly. You have heard clearly from Gwyn that the European legislation states that it needs to be in English so that the majority of people can understand it, but that that in no way restricts the use of other languages. It is the Government here that has decided to only use English as the use of other languages would confuse. Have Members any comments that they would like to make on this?

[77] **Alun Davies:** I am bewildered as to why the Government would seek to do this, while legislating at the same time for an increase in the use of the Welsh language. It is an absolutely bewildering decision. I do not understand who took it. There was certainly no consultation on this sort of decision.

[78] **Michael German:** Well, it is wrong, is it not? It is wrong in policy terms. It is clear that it is wrong in principle and in policy terms, and we ought to take whatever action we can to draw this to the attention of the Assembly and the Assembly Government. It runs counter to the policy that we have been trying to promote. If bilingualism is to mean anything, we should certainly not amend regulations in such a way as to make it more difficult for the Welsh language to be used in this manner. The logic that the Government seems to be applying would be the same as that which used to be applied to road signs. Do you remember the fuss that we used to have when it was said that it would only confuse people if road signs

were put up in two languages? I do not think that there has been any evidence of problems with people being unable to understand where they are because a road sign was in two languages. We have gone so far beyond that now that we need to take a principled stand on this in terms of taking forward this Assembly's policy. I do not know quite how we can do that given that it is not a reporting point, but suggestions as to how we could do it would be helpful.

10.00 a.m.

[79] **Janet Ryder:** A number of things could fall from this. If we bear in mind the other issues that we have raised such as translating legislation, translating Measures into Welsh and the status of Welsh in legislation, we may want to pursue those as a committee and to invite the relevant Minister, in this case Edwina Hart, to committee to discuss those. However, if we wanted to pursue the translation issue more generally, presumably we would invite the Counsel General to committee. We could invite him to discuss the issues arising out of this committee. If we carry out the review that Alun suggested, we could look at the number of times that translation points have been noted, not only over the last term but over the entire course of this committee's existence.

[80] **Michael German:** It might be interesting to have Edwina Hart and Carwyn Jones in front of us, might it not?

[81] **Janet Ryder:** If we tackle this issue in terms of this piece of legislation, we will be acting within a timescale. If we are not happy with this legislation going through as it is, we may wish to table a motion to annul it and the timescale would then be altered. We may wish to accept this and allow it to go through as it is, but still request the Minister who is responsible for the subject of the legislation to come and discuss this particular issue with us. We may want to set this issue against a backdrop of issues relating to the Welsh translation of Measures as a whole and invite the Counsel General to committee.

[82] **Michael German:** This is about the transposition of a European directive into regulation, so in terms of timing, are we sufficiently within the UK Government and European timescales to be able to defer it—can we seek to annul it in order to get extra time? If Ireland is behind on this, then it strikes me that we could well be within time to do that. I would not want us to be in breach—

[83] **Mr Griffiths:** No, the directive was made on 18 June and the requirement was that it enter into force on the twentieth day following publication in the official journal. So, that is why the Government has moved so quickly. If we annulled it, we would then fail to comply with that requirement.

[84] **Alun Davies:** When we had this debate last June, the committee felt that there was a systematic issue with how this place or the Government operates in terms of creating a bilingual body of law. For that reason, we felt that we should consider and review these issues over a timescale. I think that I am analysing that correctly. I find this to be a curious decision by the Government, which runs contrary to its spirit and policy. I am bewildered as to why it has come before us in this way. It might be more useful to address this as a governmental issue rather than a specific one and to consider how the Government seeks to address the issue of creating a body of bilingual law, which, it has told us, is its objective. If we address that as a wider issue, then I think that we are looking at the high-level policy objectives of Government in terms of what it wants to see and the sort of jurisdiction that it wishes to create. Going on from there, we need to look at how this policy has been implemented by individual ministries and individual Ministers. The individual would inform the whole in this sense so that we have a much more rounded view of the Government's approach in this field.

[85] **Janet Ryder:** That would certainly be one way forward.

[86] **William Graham:** I am a new member of the committee, but from listening to the discussion it seems to me that we are going over the same ground as we did when I was last on the committee, or certainly prominent features of it. It would be helpful for you to at least write to the Counsel General and Leader of the House to invite him to meet with the committee. We would then get the chance to air the concerns that we have raised today, and for him to deliver a cogent answer. I am not so keen on inviting the Minister for health; this is a policy matter, with which are not going to get much further.

[87] **Janet Ryder:** There are two policies. This is not health policy.

[88] **William Graham:** I entirely accept the point about the language.

[89] **Janet Ryder:** What Gwyn said was that there is nothing technically wrong with this; it is a matter of policy.

[90] **William Graham:** One can perhaps see why this has been done in this way, which is a matter of health policy. However, I cannot help but insist that we do have the right to question the policy with regard to the translation. That is the issue.

[91] **Michael German:** Who is responsible for the policy on the Welsh language in the Government? If we are having trouble identifying that, the answer is clearly ‘the First Minister’, unless the Counsel General has responsibility for translation issues and for the use of the Welsh language in all legislation. What worries me is that when we took evidence from the Counsel General, he said that he leaves it to individual Ministers. There does not appear to be a concerted and consistent approach to the way in which these legislative matters are dealt with. They are dealt with on a case-by-case basis, but there does not seem to be any overarching internal guidance from anyone. If that is the case, who should we get at who looks at ensuring that there is an overarching consistency of approach within Government? It is a question, not a statement. I do not know the answer.

[92] **Janet Ryder:** I have a lot of sympathy with what you have said, because from looking at these issues, it has been difficult to trace who is responsible. Gwyn, do you have something to add?

[93] **Mr Griffiths:** Oes. Mae dau beth arwyddocaol ynglŷn â'r achos hwn. Yn gyntaf, mae llawer o ddeddfwriaeth Ewropeaidd yn ymwneud â labelu bwydydd, ac os mai dyma sy'n digwydd yn yr achos hwn, gallai ddigwydd eto mewn achosion eraill o weithredu deddfwriaeth Ewropeaidd ynglŷn â labelu bwydydd.

**Mr Griffiths:** Yes. There are two significant things in relation to this issue. First, a great deal of European legislation relates to the labelling of food, and if this is what happens in this case, it could certainly happen in other cases where European legislation is implemented on the labelling of food.

[94] Yr ail beth—ac efallai fod hyn yn arwyddocaol; wn i ddim—yw mai'r Asiantaeth Safonau Bwyd sy'n cynghori'r Gweinidogion ynglŷn â deddfwriaeth bwyd, ac nid gweision sifil Llywodraeth y Cynulliad. Efallai fod arwyddocâd yn hynny, ond ni wn.

Secondly—this may be significant; I do not know—is that it is the Food Standards Agency that advises Ministers regarding legislation relating to food, rather than civil servants within the Assembly Government. That may be significant, but I do not know.

[95] **Janet Ryder:** Does this come under food labelling, or under medicines?

[96] **Mr Griffiths:** It comes under food labelling.

[97] **Janet Ryder:** I think that we should invite the Counsel General to committee to discuss this, because there are a number of issues. We could also benefit from inviting someone like Andy Klom from the European Commission to the committee, so that we can discuss various issues. We have not really looked at European legislation yet on this committee; it might be an area that we may want to look at in future. We have the ability to look at that in the future. This is certainly a matter where an EU directive could be said to be impacting directly on our legislation. It may be an issue that we would like to discuss further with an EC representative, and Andy seems to be the one that we should invite. So, we could invite those two characters in.

[98] We may want to contact the Food Standards Agency. There was an issue at the end of last term to do with the labelling of food, which came under Elin Jones's remit, when certain labels were only going to be made available in English. Would that come under the remit of the Food Standards Agency as well?

[99] **Mr Griffiths:** No.

[100] **Janet Ryder:** That would be another one. We may want to consider the Food Standards Agency, but we certainly need to look at inviting those two gentlemen to committee in relation to the issue of language.

10.10 a.m.

[101] If we were to invite Edwina Hart as the Minister responsible for this, it would be a very short question-and-answer session I am sure, as it would be a very narrow one. If we were to look at some of the pieces of legislation that have been passed under health, perhaps we could invite the Minister in for a wider discussion. Cast your minds back to the NHS Redress (Wales) Measure 2008. It has been passed for some time now and, as yet, no regulations have been brought forward under the Measure. So, the Minister has those powers, but has not yet started to use them. It may be that if we invite the Minister for Health and Social Services in we would want to widen the subjects that we discuss with her to include other pieces of legislation as well. We could have a general discussion about the legislation that she is using within her area.

[102] **Michael German:** It sounds to me that we are looking at doing a report on the use of language in a bilingual context. You could choose to keep it to labelling in its broadest context, which might be a useful way of containing the breadth of the issue. I would agree with everything that you have said, but it seems to me that that is what we are doing, and producing a committee report with recommendations to the Assembly would seem to be appropriate. My only caveat to what you said earlier is that when you invite Carwyn Jones, you should ask, 'Should you be the Minister with overarching principal responsibility for ensuring the appropriate use of the Welsh language in legislation within the National Assembly for Wales? If you are not that person, please ask the person who has that responsibility to come in your place'. That way, we can at least direct our questions to the person who actually carries that responsibility.

[103] **Janet Ryder:** That is right. If the committee wanted to, we could embark on a short review of the status of the language in legislation and that would enable us to call other witnesses from outside who may be interested in how this field might develop.

[104] **Michael German:** I think that there are some very useful examples of this. Gwyn has mentioned Belgium and we talk about the Irish Republic as being a possible comparator. They are examples where European legislation is applied in different ways, or maybe in the

same ways, and we could use their experience. I think that it would be useful to have a short review of that.

[105] **Alun Davies:** I very much agree with Mike's proposal. My concern is that we should focus in on that use of Welsh. I would be concerned at the moment that if we invited Edwina, we might go off onto other subjects. I think that it is a good principle that you raised, Chair. We pass legislation through this committee, we interview Ministers and we discuss these issues with them and I think that it would be a good principle to review how Ministers have used those powers, consequent to receiving them. So, I think that it would be useful to undertake some review of the NHS Redress (Wales) Measure, possibly in the coming session. That might well be a good use of our time. For the time being, I would very much concur with Mike's proposal that we undertake a short, focused inquiry on the use of language in terms of translations, and that we do it this term.

[106] **Janet Ryder:** If Members are content, we will embark on a short review of different aspects of language. We will ask the committee secretariat to draw together all the letters that have gone from previous committees to do with this subject so that we can see the breadth of issues that we are dealing with, and perhaps we could have a first paper next week. If not next week, then the week after—in a fortnight's time.

[107] **Michael German:** What about the terms of reference?

[108] **Janet Ryder:** We will have the terms of reference the week after next so that we can get started on it. In relation to this particular piece of legislation, we will write to the Counsel General and copy it to the Minister for health with the caveat that Mike has put on it. We have to decide as a committee what we are going to do with this piece of legislation. Are we content to accept this as it stands or do we want to invite the Counsel General in within the timescale that we have, so that we do not fall in breach of anything?

[109] **Michael German:** I do not think that we can hold it back in any way.

[110] **Mr Griffiths:** The committee's report has to go before the Assembly by next week, so it could be adjourned until next week's meeting, but that is all; otherwise, we will come up against the deadline for reporting. As I indicated, there are technically no problems with it. It is purely a matter of whether you want to draw it to the Assembly's attention under Standing Order No. 15.3.

[111] **Janet Ryder:** We could invite the Counsel General specifically to discuss this issue, for next week, if possible.

[112] **Alun Davies:** We could do that by correspondence.

[113] **Janet Ryder:** It could be done by correspondence, but we need to draw this to his attention, because it is a major point of principle and a major issue.

[114] **Alun Davies:** I agree with that, but I want to put on the record that I do not support holding up the legislation.

[115] **Janet Ryder:** No, we do not want to delay the legislation, but we want to make the point that this needs to be addressed and we want to discuss it with him.

[116] **Michael German:** Presumably, this means that we would have lots of bottles of water with the description 'Welsh water' on them, but not 'dŵr Cymru'. It would be open to the Government, at a subsequent stage, to produce amending regulations that would ensure that that can happen. That would be the main thrust of it.

[117] **Janet Ryder:** If we invited the Counsel General in to discuss this, we could discuss how it could be corrected without delaying this legislation. Do Members want to wait until we have started a review to do that, or do you want to invite him specifically to discuss this piece of legislation and then again when we have commenced the review to discuss more general issues?

[118] **Michael German:** Perhaps we should begin with a letter to Carwyn stating that we are concerned about this piece of legislation and that we would like him to respond on it, but that we are intent on holding a review of this matter to which we will be inviting him to give evidence about the wider context. So, we can see whether we can get a speedy answer. There is the particular, which we have to deal with quickly, and then there are the more general principles, which we will follow through afterwards. However, in some ways, Alun is right about doing it by correspondence, because there could be an exchange within the week, rather than waiting.

[119] **Janet Ryder:** So, we will write and try to get a letter back by next week's committee meeting. The other issue is that perhaps we can review the Measures that have gone through so far and have a paper to committee showing which have gone through and what, if anything, has fallen out to date. If Members are content with that, we will finish that piece of legislation—

[120] **Mr Griffiths:** For the sake of the minutes, are you adjourning consideration of this item until next week, in the hope of getting a letter?

[121] **Michael German:** Can we do that?

[122] **Janet Ryder:** We can. We will adjourn that until next week. Brian Gibbons was due to come in to answer questions later, but the Minister needs to get away. We have quite a lengthy agenda, but would Members be content to move straight to the questions on the Child Poverty Bill, inviting Brian Gibbons in straight away to give evidence on that? I see that you would.

10.19 a.m.

**Mesur Tlodi Plant y DU—Trafodaeth gyda'r Gweinidog dros Gyfiawnder  
Cymdeithasol a Llywodraeth Leol, Dr Brian Gibbons AC  
Child Poverty Bill—Discussion with the Minister for Social Justice and Local  
Government, Dr Brian Gibbons AM**

[123] **Janet Ryder:** I welcome the Minister to committee this morning. I am sorry that he has had a long wait. We have a lengthy agenda and I understand that his time is under pressure.

[124] Minister, thank you for coming in to discuss the Bill with us. We will look at the Child Poverty Bill, which is of concern to all Members, and has been very much in the news of late. Dr Brian Gibbons, Minister for Social Justice and Local Government, is here to give evidence today.

10.20 a.m.

[125] As a reminder to Members, I will just say that we first considered the Proposed Children and Families (Wales) Measure in April 2009. In May 2009, the Minister gave evidence on the proposed Measure. At that point, the Child Poverty Bill had not been



introduced and we noted that we would need clarification on how it related to the legislation going through this body and to other issues emerging from the Bill that may relate to Wales. In June, the Bill was introduced into the House of Commons, and we have now invited the Minister to give evidence on it. Minister, could I ask you to introduce the officials whom you have with you?

[126] **The Minister for Social Justice and Local Government (Brian Gibbons):** Tracey Breheny is the head of the child poverty unit. This is Gill Lambert and Michael Lubienski, who are working with me on this. Michael is the lead lawyer for our Proposed Children and Families (Wales) Measure. Clearly, we are keeping an eye on this.

[127] **Janet Ryder:** Thank you for mentioning that, Minister. As I said in my introduction, there may be an overlap between the two, and that is one area that we wish to clarify this morning.

[128] As always, we have a series of questions to ask you. I will start with the first question. The Bill details the duties of the Secretary of State to ensure that the targets in relation to relatively low income, combined low income, material deprivation, absolute low income and persistent poverty are met. Section 1 of the Proposed Children and Families (Wales) Measure refers to ‘the relevant income group’. The targets mentioned in clause 1 of this Bill apply on a UK-wide basis and so will apply to Wales. How do the targets related to ‘the relevant income group’, mentioned in section 1 of the Bill, relate to the Proposed Children and Families (Wales) Measure?

[129] **Brian Gibbons:** There are two references in our proposed Measure to relative and material deprivation. So, the second category is called material deprivation, and two particular elements are referred to: the relative target is based on 60 per cent of median income, and the second is based on 70 per cent of median income. Some elements of material deprivation are derived from survey bases. In addition, there are two other measures that are not covered in our proposed Measure, one of which is the absolute poverty measure, which will be benchmarked and has to be defined in full detail in the Child Poverty Bill, and the other is the persistent poverty criteria, which have not yet been defined in the Bill because that will be done over a period of four to five years. So, they are not in a position to do so yet. I think that there are provisions in the Child Poverty Bill to further define most of those criteria.

[130] It does not really affect us, in one sense, but we have constructed our proposed Measure in such a way as to allow the flexibility to vary our definitions if we think it desirable to be in alignment with the Child Poverty Bill in the United Kingdom. From our point of view, however, it would not be very sensible to have such an alignment. So, if the UK Government were to come up with definitions that were at variance with those in our Measure—and I do not think it likely but it is conceivable—we could look at that. However, we are not expecting that to happen.

[131] **Janet Ryder:** So, you cannot see that this will cause you to re-draw or adjust your proposed Measure in any way.

[132] **Brian Gibbons:** No. I do not know whether Michael wants to add to that.

[133] **Mr Lubienski:** The references to the relative poverty and material deprivation indicators appear as broad aims in the Proposed Children and Families (Wales) Measure, but there is a different approach in the UK Bill because there are specific targets. So, the two are complementary, as it were, but are not necessarily aimed at doing the same thing.

[134] **Brian Gibbons:** I think that that is sensible. We have always recognised that the main levers required to address economic targets are held by Westminster. I cannot give a

quantitative number, but it is 90 per cent plus within the competence. So, it would be a pointless exercise for us to set up targets on income, for example, because the overwhelming bulk of the levers are not within our gift.

[135] **William Graham:** In clause 15 of the Bill, there is reference to a Scottish strategy and a Northern Ireland strategy. The Secretary of State is required to take into account the economic and fiscal circumstances when preparing the United Kingdom strategy. To what extent will such matters be required to be taken into account by Welsh authorities and the Welsh Ministers in preparing their strategies?

[136] **Brian Gibbons:** In drawing up our proposed Measure, we have anticipated a lot of what is in this Bill. I cannot remember what the timescale was, but our proposed Measure was certainly in the public domain about three to four months before the Bill. The fact that there is such an overlap indicates the co-operation that has taken place between us and Westminster. The fact that so many elements of the Child Poverty Bill are matched in the proposed Measure is also an indication of the good joint working that has taken place between officials and lawyers—and I have also had a few meetings with Westminster Ministers on this. Clause 15 fits in with the phrases in our proposed Measure, such as ‘reasonably practicable’—and some of the committees raised that issue with us, asking why we were using a phrase such as that. We recognised that you cannot ask people to do the impossible; we can ask people to do only what is reasonable and possible. Clause 15 in the Child Poverty Bill is the UK’s version of what is reasonable and practicable. So, we have covered that eventuality in our proposed Measure, albeit in a different form of words. The sentiment is very much the same.

[137] **Janet Ryder:** Alun, did you have a supplementary question on this issue?

[138] **Alun Davies:** Yes, just a short question. Thank you for that answer, Minister. I am curious as to why there is no mention of the Welsh Ministers or the Welsh Assembly Government in this clause.

[139] **Brian Gibbons:** When the UK Government got around to deciding that it wanted a Child Poverty Bill, we had already launched our proposed Measure. From discussing it with our officials, it knew what our proposed Measure would include, and then it was published by the time the Bill appeared. We argued—well, it was not really an argument. We discussed the issue with the UK Government and stated that we were doing everything in our proposed Measure that it wanted to do in the Bill, other than the income-based targets. Virtually everything in our proposed Measure relates to devolved areas of activity, so, given the principle of devolution and that we had set out to develop a child poverty strategy for Wales, it really did not make any sense for the UK Government to include us in this Bill. However, Northern Ireland and Scotland do not have child poverty strategies; they have child poverty policies but not a strategy that has a statutory basis, as provided for by this UK Bill.

[140] So, we feel that we have been two or three months ahead of everything that is in this Bill, not least in the publication. A lot of what is in the Bill probably follows on from the work that we have been doing in trying to develop an approach to tackle child poverty. Our proposed Measure is, in some respects, the template for this Bill. I do not know whether you look at it like that.

10.30 a.m.

[141] **Ms Breheny:** I do, Minister. I was just going to say that it is exactly that, and in January of this year, when the UK Government consulted formally on its proposals for the Child Poverty Bill, it was clear that there was no need to place the duty on Welsh Ministers in the way that was being proposed for Scottish and Irish Ministers, purely because our Measure was in train and would fulfil that duty. It was just a sensible way forward.

[142] **William Graham:** I will turn, if I may, to clause 8 of the Bill, which provides that the UK strategy:

[143] ‘may also refer to proposals of the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department’.

[144] How will Welsh Ministers ensure that their proposals are referred to in the UK strategy and are appropriately integrated where necessary?

[145] **Brian Gibbons:** If you look at clause 8, there are a few references to what we are doing in Wales. The Welsh strategy is referred to, and clause 8(7) ensures that the UK strategy must ‘describe’ our strategy in Wales. That is commenting on our strategy rather than placing a duty or onus upon Welsh Ministers to do anything. The requirement in relation to the Secretary of State is that they have to look at what is going on in Wales and refer to it in developing their strategy and, at clause 8(7), ‘describe’ what we are doing. So, in that sense, it does not create any duty for us.

[146] That is the answer. The Secretary of State, in developing the UK-wide strategy, will clearly be looking over his shoulder to see what is happening in Wales, Scotland and Northern Ireland, and will develop a strategy bearing in mind the experiences of those countries. However, in itself this does not oblige us to do anything; it has no mandatory effect on us.

[147] **Janet Ryder:** May I ask a quick supplementary question? In answer to an earlier question you said that the Secretary of State was well aware of the steps being taken in Wales under the Proposed Children and Families (Wales) Measure, and was satisfied that that was the agenda that the Government in Wales would pursue. You have said that you do not think that it will impact on you too much, but I would like to know what impact your proposed Measure will have on the UK legislation as it is drawn up. What impact is it having in Westminster? If it is drawing up a UK strategy that will impact upon us, how will our proposed Measure impact on the drafting of its Bill?

[148] **Brian Gibbons:** There are provisions elsewhere—Michael might want to explain about that—but there will be a duty on the Secretary of State to consult with us in developing his strategy and we will be bringing forward amendments so that there will be a reciprocal duty on Welsh Ministers to consult with Westminster Ministers as well. We will be under statutory duties to consult with each other on our strategies, to ensure that we are moving in the same direction, are complementary and so forth. This is a fairly unique occurrence, with both Westminster and us developing legislation in similar areas; we have an opportunity to build up complementary and synergistic activity. There is a statutory duty in the Bill, and as I say, subject to the agreement of the National Assembly for Wales, there will also be a statutory duty on Welsh Ministers to consult.

[149] The other factor is that Welsh Ministers will be given the opportunity to appoint someone to the child poverty commission, which will be set up under this Bill. So there will be lots of opportunities for both the Secretary of State and us to constructively engage and ensure that we are moving in the same direction and that we are all getting the benefit of the synergies from this unique opportunity.

[150] **Janet Ryder:** Sorry, William, I interrupted your question.

[151] **Brian Gibbons:** I think that Mike might want to say something.

[152] **Mr Lubienski:** To add to what the Minister is saying about the Bill and how it

accommodates the Proposed Children and Families (Wales) Measure and our provisions with regard to child poverty, clause 8(2) of the Bill talks about what the UK strategy contains. Clause 8(2)(a) refers to the things that the Secretary of State is doing to focus on the targets. Clause 8(2)(b) concerns the things that he is going to do to ensure, as far as possible, that children in the UK do not experience socioeconomic disadvantage. The Welsh strategy will be a component part of the overall UK activity. As I am sure that Members will have noticed, that is reflected in the fact that clause 8(7) of the Bill states that the UK strategy must describe the measures taken under a Welsh strategy. A Welsh strategy is defined in clause 17(1) as,

[153] ‘a strategy prepared by the Welsh Ministers under Part 1 of the Children and Families (Wales) Measure 2009’.

[154] However, the Scottish and Northern Ireland strategies are those required by the UK Bill. That is the other way in which the Welsh strategy is acknowledged in the Bill.

[155] **William Graham:** Part 2 of the Bill specifies duties of local authorities and other bodies in England. Obviously, their actions will feed into the UK strategy. Section 2 of the proposed Measure provides that Welsh authorities may select the objectives that are to be set out in their strategies. My concern is whether any difficulties will arise from these differences, and particularly from the differences in approach, given that the actions arising from the implementation of Welsh authority strategies will ultimately feed into the UK strategy.

[156] **Brian Gibbons:** I think that you slightly overstate this. We will have the capacity to develop a Welsh strategy here in Wales. As Michael was explaining, while Scotland and Northern Ireland will be developing their strategies under the auspices of the Bill, we will have much greater autonomy. So, we will not be acting under the Bill in quite the same way as the tail end of your question implied. We have more autonomy and discretion. Part 2 of the Bill replicates the process that we envisage fairly explicitly in the proposed Measure, with regard to the way in which we use the Children Act 2004 and the children and young people’s partnerships as the basis for developing a child poverty strategy at a local level here in Wales.

[157] If you look at what we are saying in the proposed Measure, you will see that all the bodies mentioned in Part 2 of the Bill are going to be part of developing children and young people’s strategies. Indeed, I think that it would be fair to say that, because we have included other public bodies in Wales, which are listed in the proposed Measure, we have, in some ways, gone a bit further in bringing in a wider range of public bodies and expecting them to work with the Assembly Government and, where appropriate, local children and young people’s partnership plans than the situation outlined in Part 2 of the Bill. Perhaps Mike would like to add to that.

[158] **Mr Lubienski:** The only other thing to mention about the difference with regard to local authorities between the provisions in Part 2 of the Bill and those in the Proposed Children and Families (Wales) Measure is that we designed the duty under the proposed Measure in such a way that it can be integrated with what local authorities are already doing with their partners under the children and young people’s partnerships. So, part of the proposed Measure amends the provisions in the Children Act 2004 to do with children and young people’s partnerships so that the child poverty strategy duty of each local authority is integrated and falls within what it already does, to avoid duplication.

[159] 10.40 a.m.

[160] **Janet Ryder:** Mike, does that lead naturally into your question?

[161] **Michael German:** It does. I want to supplement that set of answers and that question

about clause 20 of Part 2. Clauses 20(5) and 20(6) lay down some determined ways of getting co-ordination and co-operation: pooled funds, shared services and contributions from each of the local authorities. If you took the view that people have to work together, then laying it down in here is a strong way of doing it. What is the danger of using your looser approach of using the partnerships, where co-operation does not have such a strong legal base? Is that something that you might consider improving in your own regulations, as a result of your proposed Measure, or are you content with what is there already?

[162] **Brian Gibbons:** When our proposed Measure is enacted, it will be underpinned by a new round of guidance from us. Children and young people's plans have been put in place for the first time. The work might already have started on the new guidance to underpin the next round of children and young people's partnerships. So, on the basis of experience, there are areas where we feel that that guidance needs to be tightened up vis-à-vis the children and young people's plan.

[163] Part of the reason why we brought forward the proposed Measure was to strengthen the role of the children and young people's plans to be able to address child poverty. Children and young people's plans encapsulated our commitment to the United Nations convention and a rights-based approach to children's policy. The seven core aims of the children and young people's partnerships encapsulated that United Nations convention. However, we felt that, on top of that rights-based approach, we needed a more targeted effort to tackle child poverty. That is the reason for the proposed Measure. Therefore, the proposed Measure will strengthen the children and young people's plan from the point of view of child poverty on the one hand and, on the other, by April 2010, we will have the new children and young people's partnership guidance on developing their plans. So, we have a fairly robust system in place based on the experience of the first round.

[164] **Michael German:** To be absolutely clear, the duties laid out in clause 20(5)(a) and (b) on local authorities and partner authorities, which are to

[165] '(a) provide staff, goods, services, accommodation or other resources;

[166] (b) establish and maintain a pooled fund'

[167] are not included in the current partnerships in Wales, nor are they in your proposed Measure, but you intend to introduce guidance to make such arrangements possible. Can you be absolutely clear on that?

[168] **Brian Gibbons:** I will ask Tracey and Michael to give you chapter and verse on that.

[169] **Mr Lubienski:** Clause 20(5) and (6) of of the Bill give a power to the local authorities with those named partner authorities to enter into joint arrangements and set up pooled funds. The same power exists in the Children Act 2004 in relation to partnerships. I am not sure whether it is identical word by word, but it is a very similar power. So, I do not think that it is fair to say that there is more muscle in the partnership arrangements under Part 2 of the Bill.

[170] **Michael German:** That is exactly the answer that I was looking for.

[171] **Janet Ryder:** Would you like to contribute, Tracey?

[172] **Ms Breheny:** I would just like to add to what Michael has said. That also includes the undertaking of a local needs assessment under the Children Act. So, as Michael said, the provisions mirror what is already in the Children Act.

[173] **Michael German:** I would now like to deal with some definitions. I wonder if you could help us with some problems. Clause 25 of Part 3 defines a child as,

[174] ‘a person under the age of 16’.

[175] There is also a further qualification under the Social Security Contributions and Benefits Act 1992. However, your proposed Measure defines a child as,

[176] ‘a person who has not attained the age of 18’.

[177] That is one difference in definition between your proposed Measure and the Child Poverty Bill. So, there are two definitions of ‘child’ in statute.

[178] Under Part 2 of the Child Poverty Bill, clause 24(2) states that,

[179] ‘a child is to be taken to be living in poverty if the child experiences socio-economic disadvantage’.

[180] Sub-section (3) then lays out the definition of socioeconomic disadvantage. It is a very robust definition of child poverty. However, your proposed Measure does not currently include a definition of child poverty. Therefore, is your definition the same as the definition in the Bill? If your definition of child poverty is different, as was the case with your definition of ‘child’, how will you deal with the confusion later in relation to 18 and 16-year-olds?

[181] **Brian Gibbons:** I do not think it will cause confusion per se, but clearly, in practical terms, there is a bit of a gap. Up to the age of 16, there is symmetry between us and the UK Government; we have shared purposes. However, after 16, to a certain extent, we will be on our own. That slightly weakens our position in the sense that the two jurisdictions are working together on ages up to 16, but after that, we are on our own with regard to 16 to 18-year-olds. It would be more robust, from our point of view, if, in both cases, the age went up to 18; we have noted that. The point is probably worth raising with colleagues in Westminster. It will not stop us doing anything, but if the 16 were changed to 18, it would assist us. However, the fact that they are not the same will not stop us from doing something and nor will it mean that we cannot do something that we would otherwise do.

[182] Mike may be able to give you a more detailed legal answer, but in policy terms, we outline definitions and broad aims at the beginning of our proposed Measure. I think that we use the phrase ‘relevant income group’, which relates to definitions that we touched on earlier regarding ‘60% of median income’ and ‘70% of median income’ and ‘deprivation’. So, we provide a fairly clear definition of who we are talking about. Although the wording is not precisely the same, there should not be confusion about whether we are talking about and targeting the same groups of people, apart from with regard to those two years that we have discussed. Perhaps Mike can offer a more precise, legally nuanced answer, as opposed to focusing on the policy.

[183] **Mr Lubienski:** We have had an opportunity to consider the age difference of 16 and 18. Complete alignment in that regard would be desirable. We are trying to think through the possible consequences of a lack of alignment and if, for example, the Welsh strategy resulted in spectacular success with 16 and 17-year-olds, whether that would then be reflected in targets measured by the UK Secretary of State. All of that is possible, but it does not feel like a problem. Although it is a fair point to raise, it does not seem to be a problem.

10.50 a.m.

[184] **Michael German:** I will move on to Schedule 1 and the commission’s advice. I am

looking at clause 16 of Schedule 1 on the provision of advice by the commission. The commission must advise the Secretary of State in the preparation of the UK strategy, and Scotland and Northern Ireland must seek advice from the commission in preparing their respective strategies. Now, there is no such duty on Welsh Ministers to seek the advice of the commission. Is that just a discrepancy, and is there a danger that we will see discrepancies between the different strategies as a result of that? We may choose to go to the commission and ask it, but there is no obligation to do so.

[185] **Brian Gibbons:** They may be different, but ‘discrepancy’ suggests a dysfunctional difference. It would be very surprising if there were no differences between the strategies pursued in Scotland, Northern Ireland, England and Wales. I do not think that there is anything intrinsically wrong with the fact that they are different; that is the whole essence of the devolution project. Do not forget, however, that we have established our own child poverty expert group, and in doing so, this is another area in which we, in some respect, have anticipated what is in the Bill. The group has already given us some advice in two areas and it is working on a third area.

[186] As we develop our strategy—and certainly towards the end of the strategy—we expect the child poverty expert group to peer review what we in Wales are proposing, and probably in a way that the commission will not be involved. You could argue that, in some respects, we have a more resilient approach, quite apart from the other work that we are proposing, which is possibly not relevant to the committee under the subordinate legislation heading. We have a number of other quality assurance strands underpinning our strategy to ensure that the evidence base for what we are doing in the strategy is well founded and subject to critical review by outside experts.

[187] **Michael German:** It seems to me that you have more flexibility than your colleagues in Scotland and Northern Ireland as a result of what you have achieved here, and that you have the opportunity to get advice from the commission or not, as you choose. In other words, it looks as though you have got away with that one and succeeded in getting some more room for manoeuvre.

[188] **Brian Gibbons:** Well, we have more strings to our bow, to borrow an analogy from your previous life. [*Laughter.*]

[189] **Alun Davies:** How can I follow that?

[190] I understand the flexibility that you have in your relationship with this new commission, and I think that we all welcome that. Could you describe how you see the relationship developing between you in the Assembly Government and this new commission? You do not have any legal obligations as such to consult the commission, but how do you see the relationship?

[191] **Brian Gibbons:** First, we will be able to nominate a member of the commission. We would want to use that nominee to influence the type of work that the commission would do, particularly in areas such as income, for example. Theoretically, if the commission were to advise on benefits, we would want our nominee to influence any implications that such advice may have for Wales, be they tax credits or whatever. The Bill contains a statutory duty, and the fact that one of the few statutory duties is for us to appoint somebody to the commission greatly strengthens the value of the commission for us. The person who sits on the commission for us will act as a conduit—we will be able to read the stuff anyway because the commission stuff will be in the public domain. The fact that we will have an appointee on the commission will provide us with a conduit to get the benefit of the commission’s deliberations. Again, it is more power to our elbow.

[192] **Ms Breheny:** Another advantage is that it will allow us to look at where we can add value to UK approaches. Employment support is an example. If that person were to advise the UK Government as part of the commission, the Welsh member can also advise us on what the Welsh Assembly Government could be doing to complement the UK Government's work, which is so important in this area. Also, because the expert group is in place, we very much hope that there will be a strong relationship between the child poverty expert group in Wales and the UK commission.

[193] **Alun Davies:** The Secretary of State has some powers to make subordinate legislation on a UK basis for implementation in Wales, particularly in Part 1 of the Bill in relation to target strategies and reports. Can you describe how those regulations under section 3 and section 5 will apply to Wales, and how those regulations will help or support you in the strategies that you will develop as a consequence of the proposed Measure becoming law?

[194] **Brian Gibbons:** Michael might want to deal with the detail, but in policy terms I do not think that the regulations will directly affect us. If the regulations defining the age of children and child poverty in the four areas of the Bill change at a Westminster level, it would trigger us to consider whether we would need to use the powers in our proposed Measure to change our definitions to ensure better alignment with the Westminster definitions. I do not think that it is helpful to have different definitions for the purposes of child poverty, and so forth, because it would create confusion and lose that sense of joint effort, which is one of the unique opportunities of what is happening in this regard. I think that we need to be flexible, and if the goalposts change at Westminster, in policy terms we would also consider changing the goalposts in Wales, but probably only in an upward direction.

[195] **Alun Davies:** If there were a Conservative Government in Westminster that sought to water down definitions of poverty by saying that poverty is something different, and so on, would we have the powers within this statutory framework to say 'In Wales, this is what we consider to be poverty', so that we would have the powers to maintain a very strong and effective definition of poverty to drive forward very different policies on the other side of the border?

[196] **Brian Gibbons:** Substantially, that would be the case. In the income domain, it would be exceedingly difficult if there were a Government that was hostile to the current targets. In other words, if someone jettisoned the current targets and said that they did not matter and we were to retain them as we have outlined in section 1(2), it would make it extremely difficult for us. However, you are right to say that it would not mean that we could not pursue our proposed Measure as outlined.

[197] **Janet Ryder:** Are you saying that if a future Government in Westminster amends the Bill and changes those targets in Westminster, whoever is the Government in Wales would automatically have to amend its targets? Would you be able to pursue your own targets in Wales?

[198] **Brian Gibbons:** Yes, we would retain that discretion.

[199] **Ms Breheny:** To clarify, in terms of the first two targets that we have under our broad aims around income, we would have to balance that with a recognition of the policy levers that we have in that area. That is what we are saying, because around 90 per cent of the policy levers in that area are reserved. We would have to balance that in our thinking if we were to start thinking about setting separate income-related targets at a Wales level. It is part of the reason why the aims are as broad as they are that we can carry on in Wales to develop a strategy and choose objectives that do all of the other things outlined in the broad aims of our proposed Measure, irrespective of what happens at a UK level.



11.00 a.m.

[200] **Brian Gibbons:** If we take Alun's hypothetical situation, it would be much more difficult for us to deliver what we would like to deliver if we did not have a Westminster Government that was committed and sympathetic to delivering the current ambition in the—

[201] **Janet Ryder:** Allowing whatever Government is in place here to pursue its agenda.

[202] **Brian Gibbons:** It could not interfere with us legally and we could continue as we wanted, but, in terms of policy delivery, not legal restrictions, if a Westminster Government was at odds with the aspirations of the current Child Poverty Bill, it would make the task considerably more difficult for us. However, we would be legally free to do it if we wanted to, because we have developed our own separate proposed Measure in Wales.

[203] **Mr Lubienski:** On a technical point, to emphasise, the Minister is absolutely right: section 1(5) of the Proposed Children and Families (Wales) Measure gives Welsh Ministers power by regulations to say what they mean by material deprivation indicators and the relative income group. There is a neatness about the fact that they will be aligned with the regulations that come under clause 3 of the Bill, for example. However, in the event that there was a difference in view between Governments, there would be potential to unhook the Welsh definition of those items from the Westminster concept.

[204] **Janet Ryder:** In that last response, you have answered the questions that I was going to ask about how coupled you are into following the Westminster agenda in your proposed Measure. You have satisfied me in your last answer that you can pursue your own agenda and the agenda that is right for Wales, which is what the ethos of the Assembly should be. Do other Members have further questions? Would you like to add anything further to that, Minister?

[205] **Brian Gibbons:** No, thank you. The questions that you have asked have been useful and they have helped to raise some issues that we could pursue constructively elsewhere.

[206] **Janet Ryder:** Thank you very much for coming. I know that we have taken you past the time by which you had to be somewhere else, so thank you very much indeed. There will be a verbatim transcript for you to look at before the minutes are approved. If there is anything further that you feel that you want to add in written evidence, we would be happy to receive that. Thank you very much for coming, Minister.

[207] We have to go back to finish some other agenda items before we go on to the rest of our agenda. We have been here for some time. Would Members like to take a short break now for five minutes? It will be five minutes only and then we will resume.

*Gohiriwyd y cyfarfod rhwng 11.04 a.m. ac 11.09 a.m.  
The meeting adjourned between 11.04 a.m. and 11.09 a.m.*

**Mesur Arfaethedig Cludo Gwastraff i'w Adfer (Ymgysylltiad Cymunedau â'r  
Trefniadau) (Cymru)  
Proposed Shipment of Waste for Recovery (Community Involvement in  
Arrangements) (Wales) Measure**

[208] **Janet Ryder:** We will resume the meeting and go back to item 4 on the proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure. This was the Member proposed Measure that was laid on 5 November 2008 by Nerys Evans. Gwyn, you have been looking at this item.

11.10 a.m.

[209] **Mr Griffiths:** Mae hwn yn Fesur arfaethedig cryno iawn sy'n dair tudalen o hyd. Dim ond un pŵer i wneud is-ddeddfwriaeth sydd yn y Mesur arfaethedig. Nid oes hyd yn oed pŵer cychwyn gan y bydd y Mesur arfaethedig yn dod i rym ar y dyddiad y cymeradwyir ef. Yr unig bŵer yw'r un sy'n rhoi pŵer i Weinidogion Cymru newid drwy Orchymyn y diffiniadau sy'n ymddangos yn adran 55(A)(3) a gynigir yn adran 1 o'r Mesur arfaethedig. Mae'r diffiniadau hynny yn cyfeirio at ddeddfwriaeth Ewrop sydd, fel y gwyddom, yn newid o dro i dro, ac felly mae'n bosibl y bydd angen newid y diffiniadau hynny fel y bydd deddfwriaeth Ewrop yn newid. Y cynnig ar hyn o bryd yn y Mesur arfaethedig yw y byddai Gorchymyn o'r fath yn cael ei ddelio ag ef gan y Cynulliad drwy'r broses gadarnhaol. Fodd bynnag, o ystyried natur syml y pŵer, efallai bydd y pwyllgor am ystyried argymhell y byddai proses negyddol yn ddigonol ar gyfer rhywbeth mor syml.

**Mr Griffiths:** This is a very brief proposed Measure—it is only three pages long. There is only one power to make subordinate legislation in the proposed Measure. There is not even a commencement power because the proposed Measure will come into force on the date on which it is approved. The only power is the one that empowers Welsh Ministers to change by Order the definitions that are included in proposed section 55(A)(3) in section 1 of the proposed Measure. Those definitions refer to European legislation that, as we know, changes from time to time, and therefore it is possible that those definitions will need to be amended as European legislation changes. The proposal at present in the proposed Measure is that an Order of that sort would be dealt with by the Assembly through the affirmative procedure. However, bearing in mind the simple nature of the power, the committee might consider recommending that a negative procedure would be adequate for such a simple matter.

[210] **Michael German:** It seems to me that the Member whose proposed Measure this is was trying to be as helpful as possible to get the maximum amount of engagement and involvement of the Assembly in everything that happened. It is quite unusual for us to propose a more streamlined approach in engaging the Assembly. However, I suppose that we must remember that the actions in this proposed Measure will be executed by Welsh Ministers and not by the Member concerned. I do not feel very strongly about it; it simply means that the Assembly will be far more engaged than it would need to be in the way that the regulations are made.

[211] **Janet Ryder:** Do any other Members have any comments on this matter? You have heard arguments for and against suggesting a change to this. Are we satisfied that this piece of legislation needs no further scrutiny and that we should write to Nerys Evans on this matter? I see that you are satisfied with that action.

[212] **Michael German:** The legal advice was very good.

[213] **Janet Ryder:** Therefore, we will write to Nerys with the legal advice that we have received and offer her that consideration.

11.12 a.m.

**Gohebiaeth y Pwyllgor: Ymateb gan Carwyn Jones AC, y Cwnsler Cyffredinol ac Arweinydd y Tŷ i Lythyr y Cadeirydd ynghylch y Defnydd o'r Weithdrefn Gadarnhaol/Negyddol yn y Mesur Arfaethedig ynghylch Plant a Theuluoedd (Cymru)**

**Committee Correspondence: Response of Counsel General and Leader of the House Carwyn Jones AM to the Chair's Letter re the Use of**

## **Affirmative/Negative Procedure in the Proposed Children and Families (Wales) Measure**

[214] **Janet Ryder:** You will have received a copy of the response of the Counsel General and Leader of the House, Carwyn Jones, regarding the use of affirmative or negative procedure in the Proposed Children and Families (Wales) Measure. Our recommendation 4 states that

[215] ‘The Committee considers that as regulations made under section 60 (power to make regulations about the assessments which local authorities must make on the sufficiency of play opportunities in their area), would effectively set out the substantive detail of the duty, regulations made under Section 60, should be subject to the affirmative procedure.’

[216] The letter went on to state:

[217] ‘The Committee accepts that if the regulations are ‘detailed’ in a purely administrative, technical way then they should be negative, but if regulations make ‘detailed’ fundamental changes then they should be subject to the affirmative procedure.’

[218] That is what we sent to Carwyn Jones. We have received a response from him in which he states that it will remain as it stands and that our recommendation will not be taken on board. This proposed Measure is at a very late stage. I do not know whether anyone present sits on that committee—it is about to go into stage 2 proceedings, is it not?

[219] **Ms Jackson:** I think that the first meeting for stage 2 proceedings will be a week on Thursday.

[220] **Janet Ryder:** Therefore, if we choose to do anything about this, we have until 5 p.m. on Thursday this week to table an amendment, and that would have to be done by an individual Member.

[221] **Michael German:** I have a technical question about your letter of 7 July and the response by Brian Gibbons, which is the material response of 2 September. The view of the committee was expressed in your letter as follows:

[222] ‘The Committee does not agree with this view and believe that it is what the regulations do, and not their detailed nature which should determine the choice of procedure.’

[223] So, it is not the detail, but what the regulations do. However, in Brian Gibbons’s response, in which he helpfully, in the third paragraph from the end, lays out what these regulations do, he states that the matters listed in paragraphs (b) to (e) of subsection 2 are routine ancillary matters about the operation of the duty. Do we have a view? Are those regulations routine ancillary matters about the operation of the duty, or are they more substantive, in terms of our definition of what they do? Do we have any advice on that?

[224] **Ms Jackson:** I think that the main concern would relate to that part of the regulations that would be made under section 60(2)(a), which relates to the matters to be taken into account in assessing sufficiency. There are no regulations at the moment that deal with assessing sufficiency of play opportunities. It is the fact that this would be a new and technical procedure to be undertaken by local authorities that led you to the previous conclusion, supported by Legislation Committee No. 2, that the regulations should go affirmative. I would have to agree that the ‘frequency of assessments’, ‘review of assessments’, and ‘publication of assessments’ will, in due course, become rather technical matters. As to the meat of what they do, I am not sure that that can be described as something

purely technical.

[225] **Janet Ryder:** So, it is initiating a new—

[226] **Ms Jackson:** It is initiating a new duty on local authorities to assess the sufficiency of play opportunities for children in its area in accordance with the regulations.

[227] **Janet Ryder:** It is that that led us to recommend an affirmative—

[228] **Ms Jackson:** It was because of that that you came to the view that the negative procedure was not appropriate.

[229] **Michael German:** Presumably, the legislation committee can table an amendment. No, it cannot; it can recommend an amendment.

[230] **Janet Ryder:** It has to be individually tabled.

[231] **Ms Jackson:** It would have to be moved by members of Legislation Committee No. 2.

[232] **Alun Davies:** If the committee feels strongly about this, I would suggest that the best thing that we could do is to write to members of that committee with our views and a copy of our report. It would then be a matter for those Members as to whether they wish to take it forward.

[233] **Janet Ryder:** That letter would have to be dealt with swiftly if an amendment was to be tabled before Thursday night. Alternatively, and presumably, we could assess the situation again before the proposed Measure goes into Stage 3.

[234] **Ms Jackson:** There will be further opportunities at Stage 3.

[235] **Alun Davies:** I would have thought that the realistic opportunities to secure an amendment to the legislation in Stage 3 would be limited. I cannot see the Government entertaining any amendments unless it is drafting amendments or wishes to do more with the legislation. Stage 2 is where the real deliberation on this matter will take place, and that is the best place for us to influence matters, should we seek to do so.

[236] **Janet Ryder:** Would Members be content with writing to members of the legislation committee dealing with this in order to alert them to our concerns on the matter?

[237] **Michael German:** The deadline is 5 p.m. on Thursday.

[238] **Janet Ryder:** The letter would need to be sent by the end of today for it to be of any use, as it is Thursday tomorrow. I see that Members are content. Thank you. We will now bring the public part of the meeting to an end in order to assess the evidence that we have received from the Minister and consider the committee reports.

### **Cynnig Trefniadol Procedural Motion**

[239] **Janet Ryder:** 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).*

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

*Derbyniwyd y cynnig.*

*Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11.19 a.m.*

*The public part of the meeting ended at 11.19 a.m.*