



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

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

**Dydd Mercher, 4 Tachwedd 2009
Wednesday, 4 November 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)

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

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

Dechreuodd y cyfarfod am 9.28 a.m.
The meeting began at 9.28 a.m.

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

[1] **Janet Ryder:** I welcome everyone to the committee this morning, as Members, officials and members of the public. I remind you that, in an emergency, ushers will indicate the nearest safe exits. Headsets are available, and I remind Members to switch off all mobile phones completely. We have received apologies from Joyce Watson, but there is no substitution.

9.28 a.m.

Offerynnau na fydd y Cynulliad yn cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2, ac Offerynnau sy'n Agored i gael eu Dirymu yn unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
Instruments in Respect of which the Assembly is Not Invited to Pay Special Attention under Standing Order No. 15.2, and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (the Negative Procedure)

[2] **Janet Ryder:** The first instrument for consideration under this item is SLC342, the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2009.

[3] **Mr Griffiths:** Fel y gŵyr y sawl a fu'n aelodau o'r pwyllgor ers peth amser, mae rheoliadau am y pwnc hwn yn dod ger ein bron yn rheolaidd. Y tro hwn, maent dros 200 o dudalennau o hyd, ac felly mae'n bleser gallu cymeradwyo'r rheoliadau gydag

Mr Griffiths: As those who have been members of the committee for some time will know, regulations on this topic come before us regularly. This time, they are more than 200 pages long, and so it is a pleasure to be able to commend the regulations with a clean

adroddiad clir o ystyried y gwaith sydd wedi mynd i mewn i'w paratoi. Euthum i a Steve drwyddynt yn fanwl iawn, a buom yn llwyddiannus o ran methu dod o hyd i'r un gwall ynddynt, felly llongyfarchiadau i'r Llywodraeth.

report given the work that has gone into preparing them. Steve and I went through them in great detail, and we were successful in the sense that we were unable to find a single error, so congratulations to the Government.

[4] **Janet Ryder:** Da iawn. [*Chwerthin.*] **Janet Ryder:** Very good. [*Laughter.*]

[5] We have thrown plenty of brickbats at various education regulations over the years, especially this kind, and it is good to see that, for the first time, they have come back with a clean bill of health. Are Members content? I see that you are. Congratulations to the draftsmen on that one.

9.30 a.m.

Y Mesur Arfaethedig ynghylch y Diwydiant Cig Coch (Cymru) The Proposed Red Meat Industry (Wales) Measure

[6] **Janet Ryder:** The Proposed Red Meat Industry (Wales) Measure was debated in Plenary a little while ago. It was introduced on 19 October and has been referred to our committee for us to report by 18 December. Unlike previous Measures, this proposed Measure does not amend existing Acts of Parliament; instead, it contains a self-contained framework for the imposition of a levy in relation to the red meat industry. The delegated powers in it are not extensive, as in some previous Measures; nevertheless, it may be appropriate for the committee to consider certain aspects of these powers. Members have received a brief on this in the papers from Gwyn, and I will now invite him to say a few words.

[7] **Mr Griffiths:** Fel y gwelwch, ceir yma amryw o ddarpariaethau a fyddai'n rhoi'r pŵer i'r Gweinidog wneud is-ddeddfwriaeth. Mae'r gyfundrefn bresennol o ran yr ardoll wedi'i seilio ar y ffaith bod yr ardoll yn cael ei chodi mewn perthynas â lladd-dai. Bwriad y Mesur arfaethedig yw rhoi hyblygrwydd fel bod hynny'n gallu gweithio mewn ffordd wahanol. Byddai'r gallu i wneud hynny'n codi drwy is-ddeddfwriaeth, felly argymhellaf fod y pwyllgor yn ystyried ac yn trafod gyda'r Gweinidog ai dyna'r ffordd briodol o symud ymlaen ac a yw'r weithdrefn negyddol, fel a gymeradwyir, yn briodol os bydd eisiau newid, er enghraifft, i drosglwyddo'r cyfrifoldeb ar farchnadoedd neu ar ffermwyr yn uniongyrchol.

Mr Griffiths: As you can see, there are numerous provisions here that would give the Minister the power to make subordinate legislation. The current regime with the levy is based on the fact that it is charged in relation to abattoirs. The aim of the proposed Measure is to give flexibility so that that can work differently. The power to do that would arise in subordinate legislation, so I recommend that the committee considers and discusses with the Minister whether that is an appropriate way to progress, and whether the negative procedure, as recommended, is the appropriate procedure should there be a need for a change, for example, to transfer the responsibility to markets or directly to farmers.

[8] **Janet Ryder:** You have heard Gwyn's comments. It is a different kind of Measure that we have not seen previously. It gives powers to the Minister. Do Members have any comments or considerations on whether to invite the Minister to come before us?

[9] **Michael German:** The one issue that the report highlights and that I found concerning is the fact that the negative procedure is used under section 4(4), while the

designation of the people who carry out secondary activity under section 4(5) would be subject to the affirmative procedure. Both of these are about roughly the same thing, so why is one subject to the negative procedure and the other to the affirmative procedure? It seems to me that there is no consistency there. They should both be either negative or affirmative. Is there any reason why they should be different? Am I right in thinking that?

[10] **Mr Griffiths:** Yes, you are right.

[11] **Janet Ryder:** I suspect that the Minister would need to explain the reasoning behind that difference.

[12] **Mr Griffiths:** It would have been helpful had that explanation been included in the explanatory memorandum, but it is not.

[13] **Janet Ryder:** Are there any other comments?

[14] **Alun Davies:** I propose that we conduct a cross-examination of the Minister. I think that we should do that with each proposed Measure that comes us before us, to be content that only those powers that are sufficient to carry out the duties required of Ministers are included, and that those are set out in regulations and not on the face of a Measure.

[15] **Janet Ryder:** If Members are content for us to do so, we will write to the Minister to invite her to give evidence at the earliest possible opportunity. As there are no further comments on this item, we will move on to the next.

9.34 a.m.

**Cod Asesiad Effaith Rheoleiddiol ar gyfer Is-ddeddfwriaeth gan Weinidogion
Cymru
The Welsh Ministers' Regulatory Impact Assessment Code for Subordinate
Legislation**

[16] **Janet Ryder:** As you may remember, the Government is not required to provide this, but it has considered the matter and decided to provide it. You have quite a lot of detail in front of you on this. The regulatory impact assessment code is detailed in Standing Order No. 24.1.

[17] 'Any statutory instrument or draft statutory instrument laid before the Assembly and which is not subject to a parliamentary procedure must be accompanied by an Explanatory Memorandum, which must include any Regulatory Impact Assessment prepared in relation to the instrument.'

[18] As you may recall, the issue was referred to in this committee's report, 'Inquiry into the Scrutiny of Subordinate Legislation and Delegated Powers'.

[19] 'The Welsh Assembly Government is preparing a Regulatory Impact Assessment Code of practice for subordinate legislation, setting out how and when they will assess the regulatory impact of the legislation they make on those affected. The Welsh Assembly Government consulted on it in the autumn of 2008. This is a requirement of Section 76 of the Government of Wales Act 2006. When finalised, the code will cover a wide range of orders, regulations and other subordinate legislation.'

[20] As part of that inquiry, we agreed to review the code when it came through. You now have the code before you, so it is really a matter of considering whether we think that that

advisory code for officers will provide the information that we will require in future regulatory impact assessments.

[21] **Michael German:** Is there a comparator that we could use? I know that the Westminster Government, and presumably the Scottish Parliament, has a code of this sort. Given that this is the first time that we have seen such a code, I, for one, would want some advice on this, as I do not think that I am competent to judge whether it has any deficiencies. If we are to examine this code, would it be possible to have a comparator of another administration that has similar procedures, to see whether this code has been taken off the shelf or whether we have one that is as good as, or better or weaker than, others?

[22] **Janet Ryder:** Gwyn, are you able to shed any light on that for us?

[23] **Mr Griffiths:** That has not been done, but it can be done for consideration at a future meeting. There has been discussion about inviting the Counsel General to give evidence as part of an inquiry. If any questions arise out of such a comparison, they can be put to the Counsel General.

[24] **Michael German:** I would welcome having the Counsel General here to talk about it, but I think that we probably need to be brought more up to speed ourselves first.

[25] **Janet Ryder:** We hope to bring the Counsel General in as part of the review later on, so perhaps we could ask for that information to be gathered, assess that information ourselves, and then, when he comes in, use the same session to have him answer those questions. Are there any other considerations from Members on this?

[26] **Michael German:** Essentially, it is about the degree of what I would call ‘devolution within Government’. One issue that has concerned me and the witnesses whom I have taken evidence from in this committee and others about legislation is that things are often left to individual Ministers to achieve. This sign-off here is from an individual Minister, and so is there any overview on ensuring consistency in the different approaches that Ministers take to different pieces of legislation? That is another issue that we could address when examining the code.

[27] **Janet Ryder:** Presumably, once the code is brought in, it will act as a standard for all Ministers to follow, and it should bring some commonality to the procedure.

[28] **Michael German:** One would hope so. My view, and it is purely a layman’s view, is that there should be a ministerial role—presumably, the Counsel General’s—to ensure that the application of a code is applied universally and with commonality across the piece. One problem that I think the UK Government has had in this area is with inconsistencies of approach. Sometimes, they have impacted on the way in which functions have been transferred to us. It is important that any code that applies to Government itself has a means of being monitored to ensure that it is applied consistently.

[29] **Janet Ryder:** Perhaps we could ask Gwyn to prepare some comparisons for us with other codes of practice. We could write to the Counsel General asking him whose job it is to monitor the implementation of this code, and how that will be reported back to the Assembly, because there is no review date. It states that it will be reviewed after it has been implemented, but a date is not stipulated. We may want to ask him to consider including a date, and say that we would welcome a further report on how it has been implemented, perhaps within a year of its implementation, for this committee’s consideration. Would members of the committee be content with that? I see that you would. We will do that, then. Thank you.

9.40 a.m.

**Mesur Arfaethedig Cynulliad Cenedlaethol Cymru (Taliadau)
The Proposed National Assembly for Wales (Remuneration) Measure**

[30] **Janet Ryder:** You will remember that this proposed Measure was introduced on 15 October. It is proposed by the Assembly Commission, and the Member in charge is Lord Elis-Thomas. In August 2008, the commission set up the independent review panel to look at all aspects of the financial support available to Assembly Members, and we all know that the report 'Getting it Right for Wales' was published in July 2009. It contained 23 recommendations and 85 supporting recommendations, and the Presiding Officer made a statement to Plenary on this on 8 July 2009.

[31] One of the panel's recommendations was that the Assembly Commission should prepare a Measure that would establish a statutory independent review body to make decisions in respect of all aspects of financial support for Assembly Members, requiring the establishment of an independent remuneration board. Given that the need for this Measure has arisen from the panel's report, it was not considered necessary to carry out a separate consultation exercise, the report and the evidence gathered being considered sufficient. The legislative committee intends to consider its approach to the scrutiny of the proposed Measure on 26 November, and it is expected to report early in March 2010. There are no powers to make subordinate legislation in this proposed Measure.

[32] We are not here to debate the content of the proposed Measure. We are here to look at the delegated powers provisions. Given that there are none and that the proposed Measure is going to a legislation committee to be considered, do Members have any comments on this, or would you be content for me to write to Lord Elis-Thomas and the committee Chair?

[33] **Michael German:** It would be wholly inappropriate for any delegated powers to be granted to anyone, given that we are passing all these powers to an independent body. In that sense, it is right that there are no delegated powers, and therefore we should say that we are content.

[34] **Janet Ryder:** Are all Members content? I see that you are. That can form the basis of the letter. [*Interruption.*] Perhaps William should have declared an interest as a member of the commission. Sorry, William. [*Laughter.*]

9.45 a.m.

**Gohebiaeth y Pwyllgor: Ymateb y Dirprwy Weinidog i Lythyr y Cadeirydd:
SLC313—Rheoliadau Dŵr Mwynol Naturiol, Dŵr Ffynnon a Dŵr Yfed wedi'i
Botelu (Cymru) (Diwygio) 2009
Committee Correspondence: the Deputy Minister's response to the Chair's
letter: SLC313—the Natural Mineral Water, Spring Water and Bottled Drinking
Water (Wales) (Amendment) Regulations 2009**

[35] **Janet Ryder:** This has been a long-running saga. You may remember that we considered the regulations on 23 September, and we decided that there was a reporting point relating to the use of the Welsh and English languages and the requirement to use the English descriptions only for natural mineral water under regulation 5(2). The Government disagreed with the reporting point, so Members postponed the consideration of the statutory instrument until 30 September and we wrote to the Deputy Minister. On 30 September, we considered the regulations and the Deputy Minister's response, and we decided to lay the report before the Assembly with the Government's response and the Deputy Minister's letters as

attachments. We have made a recommendation that the Food Standards Agency and all other relevant organisations be made aware of the Deputy Minister's letter, because it appeared that she was saying that the Welsh language could be used, while the regulations said that only the English language could be used. There seemed to be a contradiction there, and we did not want the Food Standards Agency to enforce anything as a result of it. We wrote again to the Deputy Minister highlighting the inconsistencies between her response and the reporting point.

[36] You have before you today the Deputy Minister's second letter. Do Members have any comments on the letter as it stands?

[37] **William Graham:** It is the last paragraph of that letter that is pertinent.

[38] **Janet Ryder:** I really felt that we had got the message across until I reached the last paragraph. The last paragraph raises concerns because, for me, it raises a further issue.

[39] 'Having fully revisited the Amendment Regulations it has become apparent that there are some errors which require amending. The sub-regulations that need to be remedied are contained within Regulation 8 of the Amendment to Regulations, and need to be rectified to provide that only the English wording is shown for mandatory English terms in the Welsh language version of the Principle Regulations.'

[40] This has moved things on to a different field. We are not talking about the bottle labels any more; we are talking about the drafting of the regulations. My reading of that is that we have to use English terms when drafting Welsh regulations, and that is an issue that we need to consider carefully as it has quite significant implications. Gwyn, do you wish to comment on this?

[41] **Mr Griffiths:** Without seeing the proposed amendment regulations, it is difficult to give you specific advice on this matter. However, it is clear from this letter that the Government's view now is that Welsh can be used in addition to English, even though that is not what the regulations say and despite the fact that the Government's response originally quoted here said that the inclusion of the Welsh language equivalent would not provide a clear food labelling solution for the consumer. That was where the Government started from. Clearly, the correspondence from the committee has moved it on, but it is not clear how far it has moved. As I mentioned at a previous meeting, the Deputy Minister is being advised by the Food Standards Agency rather than her officials in relation to this matter. That may make the matter more complicated than would normally be the case.

[42] **Janet Ryder:** We could write to the Deputy Minister requesting that we have sight of these redrafted regulations as soon as possible, and we can give this further consideration at that point. Are Members content with that?

[43] **Alun Davies:** Yes, and it might be useful for us to have a meeting with the Deputy Minister if we cannot resolve this.

[44] **Janet Ryder:** Shall we inquire first when these newly drafted regulations will be available? If the timescale is too long, perhaps we will need to consider inviting the Minister to discuss this point.

[45] I do not know how many Members are aware of this, but this is Bethan's last committee as clerk. She will still be around and helping us, but she is moving on to Legislation Committee No. 5. Steve George, who is sitting behind, will be joining us next week as our committee clerk. We would like to thank Bethan for all the work and support that she has given the committee, and we look forward to her ongoing support as we draw forward

various pieces of work that we have started under her, and we look forward to welcoming Steve as the new committee clerk next week.

9.50 a.m.

**Cynnig Trefniadol
Procedural Motion**

[46] **Janet Ryder:** I move that

the committee resolves, in accordance with Standing Order No. 10.37(vi), to go into private session for items 5 and 6 of the agenda, to receive an update on the progress of the inquiry into the scrutiny of subordinate legislation and delegated powers, and to discuss the work review.

[47] Are Members content with that? I see that they are.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 9.51 a.m.
The public part of the meeting ended at 9.51 a.m.*