



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

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

**Dydd Mercher, 11 Tachwedd 2009  
Wednesday, 11 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)

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

Dorian Brunt	Cyfreithiwr, Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Lawyer, Legal Services, Welsh Assembly Government
Neil Howard	Pennaeth Rheoli Cynlluniau, Llywodraeth Cynulliad Cymru Head of Scheme Management, Welsh Assembly Government
Elin Jones	Aelod Cynulliad, Plaid Cymru (y Gweinidog dros Faterion Gwledig) Assembly Member, Plaid Cymru (the Minister for Rural Affairs)

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

Stephen George	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Carys Eyton Jones	Gwasanaeth Ymchwil yr Aelodau Members' Research Service
Olga Lewis	Dirprwy Glerc Deputy Clerk

*Dechreuodd y cyfarfod am 9.29 a.m.*  
*The meeting began at 9.29 a.m.*

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

[1] **Janet Ryder:** I welcome all Members, officials and members of the public to the meeting and remind you that, in an emergency, the ushers will indicate the nearest safe exit. Headsets are available for translation and amplification. I remind everybody to switch off all mobile devices completely. We have received apologies from Joyce Watson. I also remind Members that at 11 a.m., in the Oriel of the Senedd, there will be the Remembrance Day commemoration. We intend to break in time for Members to be in the Oriel to attend that service. If we need to, we will reconvene later, but we will see how the meeting goes.

9.30 a.m.

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

[2] **Janet Ryder:** Under this item on instruments in respect of which the Assembly is not invited to pay special attention, we have SLC344, the Combined Fire and Rescue Services Schemes (Variation) (Wales) Order 2009, SLC345, the School Teacher Appraisal (Wales) (Amendment No 2) Regulations 2009, and SLC347, the Feed (Specified Undesirable Substances) (Wales) Regulations 2009. Gwyn, is there anything to report on those?

[3] **Mr Griffiths:** Nac oes, dim byd. **Mr Griffiths:** No, nothing.

[4] **Janet Ryder:** Are Members content with those instruments? I see that you are. We have one more instrument, which is SLC349, the Public Transport Users' Committee for Wales (Establishment) (Amendment) Order 2009. I understand, Gwyn, that you have an issue to raise regarding this one, but also on the next piece of legislation. Do you want to take this issue now or do you want to take both pieces together under the next item?

[5] **Mr Griffiths:** I will take it now.

[6] Mae dau offeryn yma yn ymwneud â'r un pwnc, sef pwyllgor defnyddwyr trafnidiaeth gyhoeddus Cymru. Cafodd y cyntaf ei wneud ar 20 Hydref—dyna'r un y mae adroddiad ar ei gyfer, sef SLC343, sy'n nodi bod gwahaniaeth rhwng y Gymraeg a'r Saesneg. Mae cyfreithiwr y Llywodraeth yn yr achos hwn wedi gweithio'n gyflym dros ben ac wedi paratoi offeryn i gywiro'r gwall. Yr oedd hwnnw wedi ei wneud ar 2 Tachwedd ac mae'n destun adroddiad clir, sef SLC349. Nid oes gennyf ddim i'w ychwanegu at hynny, ond yr oeddwn am esbonio bod y ddau yn gysylltiedig yn y modd hwnnw. There are two instruments here concerning the same subject, namely the public transport users' committee for Wales. The first was made on 20 October—that is SLC343, for which there is a report noting that the Welsh and English versions are different. The Government's solicitor in this case has acted very swiftly and has prepared an instrument to correct the error. That was made on 2 November and is the subject of a clear report, namely SLC349. I do not have anything to add to that, but I wanted to explain that they are connected in that way.

[7] **Janet Ryder:** They are the only reporting points on that instrument and SLC343, but there is another issue relating to these. We are looking at SLC349 and, under item 3 on the agenda, SLC343. Both concern the public transport users' committee for Wales. If Members have looked at these regulations, you will have noted that it is still at the discretion of the Secretary of State to appoint the Welsh representative on this body. It does not specify which Secretary of State that is, however. We assume that it would be the Secretary of State for Transport, but it does not say it specifically. This would seem to be something that has never been addressed, as these regulations have been redrafted. It is an issue in that we have a Secretary of State appointing a representative from Wales, and it may be an issue that we want to look at under our ability to consider the merits of these things. We may want to refer the matter to the Enterprise and Learning Committee. We may also want to refer it to the Committee on Equality of Opportunity. We may wish to report on this ourselves and write to

the Deputy First Minister for an explanation of why this mechanism has never been revisited, why it is in here and what he intends to do with it.

[8] **Michael German:** Is there a public transport users' committee for England establishment Order of some sort?

[9] **Mr Griffiths:** I am afraid that that is not something that I have looked at.

[10] **Michael German:** If there is, does this clause appear within it? Do you see my logic? If someone has simply transposed the whole shooting match from an English Order that is meant for England, then it would make reasonable sense to have a nomination from the Secretary of State for Transport. If that is the reason for it, I think that that is a sign of slovenliness, or certainly a lack of care, but if it is something else, we need to find out.

[11] **Janet Ryder:** I think that the best way forward would be to write to the Deputy First Minister, draw this to his attention, note it, and ask him for an explanation of this matter.

[12] **Alun Davies:** This subordinate legislation is being made under the Transport (Wales) Act 2006, is it not? It looks like a freestanding set of regulations, so I would support the proposal to write to the Deputy First Minister.

[13] **Mr Griffiths:** Dylwn esbonio mai un person ychwanegol a gynhwyswyd yn y ddarpariaeth a wneir yng nghymal 4(1)(c) yr offeryn hwn, sef y person a fydd yn cynrychioli Cymru ar y Pwyllgor Ymgynghorol ar Gludiant Pobl Anabl. Nid wyf yn sicr ai corff Prydain Fawr ai corff y Deyrnas Gyfunol ydyw, ond beth bynnag am hynny, bydd person penodol arno. Fel sydd yn digwydd yn weddol aml, mae'r Ysgrifennydd Gwladol yn penodi pobl, ond mae'n rhaid iddo benodi un person a fydd yn gwarchod buddiannau Cymru yn benodol. Felly, nid yw'r offeryn hwn yn rhoi pwerau i'r Ysgrifennydd Gwladol; esbonio mai cynrychioli Cymru fydd y sawl a benodir y mae ef. Eto, mae'n berffaith gywir i holi pam mai dyma'r sefyllfa.

**Mr Griffiths:** I should explain that an additional person has been included in the provision made under section 4(1)(c) of this instrument, namely the person who will represent Wales on the Disabled Persons' Transport Advisory Committee. I am not certain whether it is a Great Britain body or a United Kingdom body, but whatever it is, a specific person will be included on it. As happens quite often, the Secretary of State appoints people, but he has to appoint one person who will protect Wales's interests specifically. So, this instrument does not bestow any powers on the Secretary of State; it merely elucidates that whoever is appointed will represent Wales. That notwithstanding, it is perfectly proper to ask why the situation is as it is.

[14] **Janet Ryder:** Do you want to add anything, Steve?

[15] **Mr George:** Only to ask whether you want to make a formal report. Under Standing Order No. 15.32, this matter gives rise to issues of public policy, which are likely to be of interest to the Assembly. The issue of public policy would be whether it is appropriate for the Secretary of State to appoint a Welsh member to this council, whatever the legal basis for doing so.

[16] **Michael German:** Just for further clarification, so that I get this absolutely right, is the person in paragraph 4(1)(c) the representative on the Disabled Persons' Transport Advisory Committee for England and Wales?

[17] **Mr Griffiths:** I am not sure quite how broad that committee is; that is, whether it covers England and Wales, GB, or the UK.

[18] **Michael German:** That is the crucial bit, is it not? What it sounds like is this: if this is a GB, a UK, or even an England and Wales body, then the Secretary of State for Transport in England will appoint the person to that committee who is to represent Welsh interests. It would make it doubly worse if the Secretary of State is appointing someone to represent Welsh disabled interests on a committee that represents England and Wales, as that is something that ought to be with Ministers. We ought to point that out, as we want to understand that, too.

[19] **Janet Ryder:** If Members are content, we will report on that under the relevant Standing Order and ask for an explanation from the Minister. I see that you are content.

9.38 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 unol â Phenderfyniad gan y Cynulliad (Y Weithdrefn Negyddol)**  
**Instruments in Respect of which the Assembly is Invited to Pay Special Attention under Standing Orders No. 15.3 and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (Negative Procedure)**

[20] **Janet Ryder:** Before we move on to the rest of item 3, I take it that Members are content with SLC 343. I see that you are, in which case, we will move on to consider SLC 346, the Hazardous Waste (Wales) (Amendment) Regulations 2009.

[21] **Mr Griffiths:** Yn yr achos hwn, fe welwch fod amwysedd rhwng y Gymraeg a'r Saesneg, sef bod y naill iaith yn cyfeirio at yr hyn sy'n digwydd 'ar safle', a'r llall yn cyfeirio at yr hyn sy'n digwydd 'o safle'. Mae'r Llywodraeth yn cytuno nad yw hyn yn gwbl glir, ac mae'n bwriadu gwneud deddfwriaeth bellach a chynnwys cywiriad ynddi.

**Mr Griffiths:** In this case, you will see that there is ambiguity between the Welsh and English versions, in that one language refers to what happens 'at a site' while the other refers to what happens 'from a site'. The Government agrees that this is not entirely clear, and it intends to make further legislation in which a correction will be included.

[22] **Janet Ryder:** Diolch yn fawr.

**Janet Ryder:** Thank you.

[23] There is another point in this. If you look at the explanatory memorandum, you will see that the Environment Agency used the regulations as put forward in England as a default position until the regulations came forward in Wales. These regulations were delayed by six months in Wales, and in the explanatory memorandum, the point is made that the Environment Agency has used the English regulations as a default position to ensure that businesses are not disadvantaged in any way. Two points arise. One is that there seems to have been a delay of six months in the regulations coming forward in Wales compared with England. In that case, the Environment Agency was put in the position of having to take as a default position the regulations that were brought forward in England. If Members are content for us to do so, I propose that we write to the Minister to ask what the reason for the delay is.

[24] If Members are content, we will look at the explanatory memoranda for other examples of this. This was one of the issues that was raised when we looked at the Marine and Coastal Access Bill, because a raft of regulations need to be introduced in Wales. The Minister gave us an assurance that she would adhere to the timetable that she had set out, but a number of concerns have been raised by bodies that will have to use those regulations that delays may cause problems. So, if Members are content with that action on this piece of regulation, we will also attempt to monitor it as other Measures come into force. I see that you are. Thank

you.

9.40 a.m.

**Y Mesur Arfaethedig ynghylch y Diwydiant Cig Coch (Cymru)—Trafodaeth  
gyda'r Gweinidog dros Faterion Gwledig, Elin Jones AC  
The Proposed Red Meat Industry (Wales) Measure—Discussion with the  
Minister for Rural Affairs, Elin Jones AM**

[25] **Janet Ryder:** I welcome the Minister for Rural Affairs, Elin Jones, and her officials to committee to discuss the Proposed Red Meat Industry (Wales) Measure. To remind Members, on 19 October this year, the Proposed Red Meat Industry (Wales) Measure was introduced, and it has been referred to Legislation Committee No. 3. However, unlike previous Measures considered by the Assembly, this proposed Measure does not amend existing Acts of Parliament, but it instead contains a self-contained framework for the imposition of a levy in relation to the red meat industry. On 4 November 2009, the Subordinate Legislation Committee considered the proposed Measure and decided that it was appropriate for the committee to scrutinise certain aspects of the delegated powers contained in it. We have invited the Minister along to provide further information on this piece of legislation. So, I welcome the Minister, Elin Jones, and I ask her to introduce her officials.

[26] **The Minister for Rural Affairs (Elin Jones):** Dorian Brunt is a lawyer in my department, and Neil Howard is the official leading on the proposed Measure.

[27] **Janet Ryder:** Thank you. If we have not finished before then, it is my intention to adjourn in plenty of time for Members to attend the Remembrance Day commemoration. We hope to have finished by then, but if not, we will have to reconvene afterwards. In that case, if you do not have opening remarks, we will go straight to questions. I will ask the first question. Minister, the proposed Measure appears to contain extensive provision for subordinate legislation that will give Welsh Ministers the ability to amend a number of areas within the Measure in the future. Why have you chosen this approach, rather than choosing to deal with matters on the face of the proposed Measure? Do you think that you have struck the right balance in delineating what will happen in the future?

[28] **Elin Jones:** I hope so, in that a large part of the proposed Measure, and related subordinate legislation, refers to the raising of a levy from the red meat sector. There needs to be a degree of flexibility in the raising of the levy—the amount may need to be changed from one year to the next—and subordinate legislation is considered to be more appropriate for that purpose than placing it on the face of the proposed Measure. The current process in amending the amount of the levy, which already exists—this is just to change the process of raising the levy—is by an administrative procedure by the Welsh Levy Board. This, by subordinate legislation, will open up to democratic accountability an area that is not currently open to that level of scrutiny.

[29] **Janet Ryder:** Are satisfied that the sections that will go through under sections 3, 5 and 6 would be subject to an affirmative procedure?

[30] **Elin Jones:** I am sorry, which sections?

[31] **Janet Ryder:** Sections 3, 5 and 6.

[32] **Elin Jones:** Yes, I am content that that is the case.

[33] **Janet Ryder:** I will move on to Alun, who I believe has the next question.

[34] **Alun Davies:** Perhaps this goes beyond the scope of this committee, but I am curious about it. You have taken substantial powers for yourself in the proposed Measure and we have seen that, on a number of occasions, from other Ministers in other Measures. You have said previously, as this has gone through our processes, that the current means of collecting the levy makes the Welsh red meat industry vulnerable and so you need this legislation to create a statutory framework for you to do it yourself. In doing so, you are accruing a wide range of powers. Why do you need all those powers?

[35] **Elin Jones:** Currently, the power to raise the levy resides with the Welsh Levy Board, so the purpose of the proposed Measure is for Welsh Ministers to raise the levy and obviate the need for the Welsh Levy Board. So, I am accruing those powers. On widening the scope and the possibility of raising those levies in a different way, that addresses the issue that you have referred to in relation to the possible vulnerability of the current levy-raising capacity, in that the levy is raised at abattoirs. We have four major abattoirs in Wales and several little abattoirs. If, for any reason, there was a rationalisation in the abattoir industry, that could affect the numbers of abattoirs in Wales. If one or two of the larger ones closed, that would not change the number of animals produced in Wales, but it would change the amount of levy raised in Wales, because those animals would then go to England or, possibly, Scotland to be killed, and we would lose that levy. So, in this legislation, there is the possibility of making subordinate legislation to change the process of raising the levy, if that is considered necessary at any point.

[36] **Alun Davies:** Thank you for that. I am looking at the legal briefing that we have received. Section 3 of the Measure declares that:

[37] ‘The Welsh Ministers may do anything that they consider appropriate to further the objectives’

[38] as outlined in section 2. That is a wide-ranging power, is it not? You are asking for the authority to do anything you see fit to achieve those objectives. That is an extensive range of powers.

[39] **Elin Jones:** Yes, if you choose to say that, but it is to meet the purposes of the objectives.

[40] **Alun Davies:** I am not choosing to say that; what you have written into your legislation is

[41] ‘anything that they consider appropriate to further the objectives’.

[42] I think that I am right in saying that you rarely see ‘Ministers may do anything they see fit’ in legislation. I understand the relationship between this and the Government of Wales Act, but at least that legislation was about conferring powers from one legislature to another. Here, we are talking about a Minister taking powers away from the legislature to herself and saying, ‘I can do anything as I see fit to support my objectives’. That is potentially an enormous array of powers.

[43] **Elin Jones:** However, it would be subject to new legislation, if that was the case.

9.50 a.m.

[44] **Alun Davies:** It would be subject to regulation.

[45] **Elin Jones:** Yes, it would be subject to subordinate legislation.



[46] **Alun Davies:** My question is, why are arranged powers that you believe are necessary not written on the face of a Measure?

[47] **Elin Jones:** That is because I currently have no policy aspirations, other than what I have outlined to you here on the red meat sector, that I currently want to undertake under this.

[48] **Alun Davies:** So, why do you need those powers, Minister? You have the legislative competence, I believe, under the LCO, from which this proposed Measure arises; therefore, you could, if you require additional powers, come back to the Assembly and ask for those powers through primary legislation.

[49] **Elin Jones:** The objectives are the same objectives as currently exist. The objectives themselves are no different to the objectives as outlined under the Natural Environment and Rural Communities Act 2006.

[50] **Janet Ryder:** If you were not the Minister and you were, perhaps, an opposition Minister, would you be satisfied with the checks and balances in this as it is written?

[51] **Elin Jones:** Yes. As I outlined earlier, there is an increase in democratic accountability in the raising and setting of the levy that this proposed Measure now provides, compared to the current situation where that levy is decided by a Welsh levy board by administrative procedure in conjunction with discussions in England and Scotland. I have already said in a policy debate on these issues that the levy is currently the same in Wales, England and Scotland. I cannot conceive of a situation where we would necessarily want that levy in Wales to be different to those of England and Scotland, because that could alter the trading pattern by setting a higher or lower levy.

[52] **Alun Davies:** You seem to have taken the LCO, turned it into a Measure and then said, 'All subsequent legislation, which I might require in order to achieve my objectives, will be done by regulation'.

[53] **Elin Jones:** I currently have the policy objective of changing the process of raising the levy.

[54] **Alun Davies:** No-one questions that, Minister. The question is, do you need the powers that you are requesting under this legislation, because you are accruing significant powers for yourself? As I said, the wording

[55] 'anything that they consider appropriate to further the objectives'

[56] is quite extraordinary. It is difficult for us, as a committee, to articulate what exactly that could mean. You also seem to have difficulty articulating how those powers could be used. Do you not appreciate that when the Minister comes to us and says, 'I want all of these wide-ranging powers to achieve these objectives. I don't have any policy aspirations to use them. I don't know how they could be used by another Minister at another time in the future, but I want those powers in any case', we may have difficulty with that?

[57] **Elin Jones:** I do not have difficulty in articulating it. I am merely saying that I have no policy intention to use those powers in any way other than currently in the changing of the raising of the levy. As to why it is phrased in this way, perhaps my officials can tell me.

[58] **Mr Howard:** The proposed Measure is very similar in scope to the current Welsh Levy Board Order. Therefore, we have a situation where the framework within which the promotion and development of the different industries were set by the NERC Act 2006. That

scope was reflected in the Welsh Levy Board Order, and that same scope is being reflected in the legislative competence Order and now in the proposed Measure, and we are not suggesting that the proposed Measure would be any more restrictive than the Welsh Levy Board Order 2008, which is in force now.

[59] **Alun Davies:** That may be the problem, Mr Howard. You have not answered the question. It is clearly not restrictive; in fact, it is highly permissive, and that is the problem. What we want from the Minister is an explanation of why she requires such wide-ranging powers and why it is not possible to explain, on the face of the proposed Measure, what powers are needed, or at least delineate the powers that the Minister believes are required and the purposes to which those powers will be used. I understand that these are ongoing powers that can be used differently by another Government and another Minister. We are fortunate to have the current Minister for Rural Affairs because in 18 months' time we may have a different Minister in a different Government—that is unlikely, but it could be anyone in this room. The point that I want to make is that these are ongoing powers accruing to a Minister, and if those powers are to be passed from the legislature to the executive, the legislature deserves an explanation as to why those powers are required.

[60] **Elin Jones:** The powers are required to meet the objectives and to take appropriate actions for the purpose of meeting the objectives, which are outlined in section 2 of the proposed Measure.

[61] **Mr Brunt:** I would like to add that I was involved in instructing the Office of the Welsh Legislative Counsel in drafting this proposed Measure. The objectives, as listed in section 2, are the same objectives that were approved by an affirmative procedure in relation to the Welsh Levy Board Order and also approved by Parliament in relation to the NERC Act 2006. Section 3(1) does not give a wide-ranging power, as you suggest, because if it were a wide-ranging power, it might say that the Welsh Ministers may do anything that they consider appropriate in relation to the red meat industry. That would be a wide-ranging power, but, in my opinion, section 3(1) is specifically tied to the objectives noted in section 2, because it states that

[62] 'The Welsh Ministers may do anything that they consider appropriate to further the objectives.'

[63] So, section 3(1) does not give the power to increase the number of objectives that have already been approved through scrutiny processes. It is just a power to cater for any change in circumstances in the red meat industry, for example, if the way that it worked changed suddenly or in relation to the way that the levy is collected. In my view, it is not a wide-ranging power, because it is specifically tied to objectives that have been previously agreed and we hope the Assembly will agree them again in relation to this proposed Measure.

[64] **Alun Davies:** I do not have any problem with the objectives; I think they are fine. It is the powers that are accrued to achieve those objectives that are of concern.

[65] **Janet Ryder:** We will move on now. Are you satisfied that anything that falls out of this section will go through fully in an affirmative procedure?

[66] **Elin Jones:** Section 3 in its entirety?

[67] **Mr Brunt:** The Order-making power in section 3(3) is subject to the affirmative procedure. There are no Order-making powers in sections 3(1) or 3(2). So, section 3(3) will, in accordance with the clause in section 17, go through the affirmative procedure.

[68] **Janet Ryder:** Would a superaffirmative procedure be more appropriate?

[69] **Mr Brunt:** Section 17(4) specifies that any statutory instrument must be

[70] ‘laid before, and approved by a resolution of, the National Assembly for Wales.’

[71] It may be a matter of having a Standing Orders discussion when it comes for an Order to be made under section 3(3) as to how exactly that should proceed through the Assembly.

[72] **Alun Davies:** May I ask another question?

[73] **Janet Ryder:** Yes, but it must be the last one.

[74] **Alun Davies:** Minister, do you not believe that the superaffirmative procedure would be appropriate here?

[75] **Elin Jones:** No; the affirmative process is the process that this outlines.

[76] **Alun Davies:** I know that that is what is currently in there, but if you are taking such wide-ranging powers, perhaps an additional safeguard for the legislature would be to change the way in which you take and exercise those powers.

10.00 a.m.

[77] **Elin Jones:** Yes, but, currently, my view is that the affirmative procedure is appropriate here.

[78] **Janet Ryder:** We will move on to Mike, who has the next question.

[79] **Michael German:** I will move on to section 4, if I may, Chair. My question follows the same pattern of thinking. I noted your earlier comments, Minister, about not wanting to alter trading patterns. When we look at this legislation, we do so in its entirety as a permanent fixture for Wales. Although it may, in some ways, democratise the previous procedure with the board, that does not mean that you have to simply transfer things from one place to another, keeping them in virtually the same order. Making legislation should be a matter of making good, appropriate law, and that is what we want to achieve in this process.

[80] In section 4, you are taking powers to amend the categories of persons subject to a levy. You say that you may not wish to alter trading patterns, but it could be that a future Minister with these powers—and that is what we have to be mindful of now—could take and use them to amend the categories of people subject to a levy. That might well affect the trading patterns between various parts of the UK, and affect our trading relationship with other parts of the UK, which would not be helpful. I appreciate that you do not want to alter trading patterns, but, given the powers here, what trading patterns could be altered if there was a change to people subject to the levy?

[81] **Elin Jones:** Currently, the levy is charged on the producer and the slaughterer, but it is collected by the slaughterer. The provisions of the proposed Measure mean that the collection could be changed and undertaken either by the producer or a person involved in secondary activity—I think that is the wording used—within the red meat sector. If it is collected by the producer rather than the slaughterer, then that is not a change for the producer, in that the producer is still paying the levy; it is just that it is also being collected by the producer. Therefore we have decided that that is not a significant change, as it only affects collection. Welsh Ministers could undertake that kind of change by statutory instrument subject to negative resolution. Any introduction of collection by a person involved in a secondary activity would require further scrutiny and debate, I believe, because it is completely new, and

therefore any such Order would be subject to affirmative resolution.

[82] **Michael German:** I wish to draw your attention to 5.5.2 of the explanatory memorandum, which does not just deal with collection, but says that

[83] ‘it may be necessary in the future to designate other persons as liable to pay the levy’.

[84] This is not just about collection, therefore; this is also about payment. Who might pay?

[85] **Elin Jones:** With regard to secondary activity, yes. That is a change.

[86] **Michael German:** If people are paying a levy, then the issue of how much they pass on to other parts of the industry would be a matter for them, not for Ministers. Why do you need to take these powers on who pays, rather than putting it on to the face of the legislation?

[87] **Elin Jones:** I should say that there is currently concern about the amount of levy raised for Wales, because a number of our animals are slaughtered outside Wales as things stand, even before any change to the slaughterhouse capability in Wales. We are probably losing around £1 million of funding that would be available to Hybu Cig Cymru for promotional activity. The same is true of Scotland, I believe. Therefore, there is a debate going on between Hybu Cig Cymru and the organisations in England and Scotland on the current situation with regard to the amount of levy being raised. I think that it is appropriate that there is discussion between Ministers in England, Scotland and Wales about the way in which the levy is currently constituted.

[88] **Michael German:** So, is it right to say that, by taking on these powers with regard to who pays, you are hoping to be able to alter the trade pattern in Wales’s favour?

[89] **Elin Jones:** It is a possibility that is open to me, but that would have to be done in conjunction with a discussion with the English and Scottish Ministers.

[90] **William Graham:** I wish to say, Minister, that a degree of flexibility is very necessary. If, in future, there were no abattoirs in Wales, collection of the levy would be very difficult without flexibility. Do you not agree?

[91] **Elin Jones:** Yes, I do.

[92] **Michael German:** I wish to look at sections 4(4) and 4(5). The only difference between those sub-sections is that one contains the word ‘secondary’ and the other contains the word ‘primary’. However, you intend to use negative procedure with regard to sub-section (4), and the affirmative procedure with regard to sub-section (5). Can you explain the use of negative procedure with regard to sub-section (4)? Should it not be affirmative, as it is in sub-section (5)?

[93] **Elin Jones:** It is that way because any person currently involved in the primary activity is currently paying the levy. It is not being collected from that person, but it is being paid and charged back from the slaughterhouse to the primary producer. So, we consider that any change to that should be undertaken through negative procedure. The provision with regard to any person carrying out a secondary activity is completely new, as they are not currently involved in the paying or collecting of levy. Therefore, any changes considered that involve people involved in secondary activities would be more appropriately dealt with through affirmative procedure.

[94] **Michael German:** In that case, I wish to present to you a scenario. What you are saying is that, because sub-section (4) relates to the status quo, we do not need to use the

affirmative procedure. However, we are talking about this as a piece of legislation with some permanence. We do not want to have to come back to amend a Measure when it could be done in the appropriate way. If you use the powers to transfer the levy to those involved in secondary activity, another Minister at some stage could wish to alter it back to being primary activity. Surely, you would need the same procedure for both, because it is basically an 'either/or' situation. If you have moved from one to the other, surely you need the same procedure for both, given that the situation might move from that set out in sub-section (4) to that set out in sub-section (5) at some point and then, depending on future Ministers, move back. Surely it makes sense to have the same procedure for both.

10.10 a.m.

[95] **Mr Brunt:** Our view on that is that the way that sub-sections (4) and (5) have been drafted means that they are not mutually exclusive. Therefore, as you say, there could be a scenario in future where only those engaged in secondary activities are designated or where only those engaged in primary activities are designated. The way that it is drafted means that there is a possibility that both categories of person could be designated at the same time, if that was what the policy required at that time. So, because the way that it is being collected and paid at present involves, essentially, primary producers, although they do not pay directly, we would still want to keep the negative procedure for sub-section (4) and the affirmative procedure for sub-section (5).

[96] **Michael German:** That does not answer my point, but I understand—

[97] **Janet Ryder:** Are you justifying keeping the negative procedure? Are you telling us that this is purely technical or administrative? I have read what you have just told us as meaning that it would reflect a change in policy, and if it reflects a change in policy, surely the default position should be an affirmative procedure.

[98] **Elin Jones:** It would reflect a change in policy on collection, but it would not reflect a change in policy on the payment of levy. So, it is different from including any person involved in secondary activity. We considered the negative resolution to be appropriate because it would not change who was paying the levy; it would only change where it was being collected. So, we considered that the negative resolution was appropriate for that, but you are obviously challenging that.

[99] **Janet Ryder:** If the Minister has followed the history of this committee, she will know that we have challenged the use of the negative procedure on every occasion possible, because of this very reason. If you choose to go down the route of the negative procedure and, at some point, Assembly Members want to challenge that, the only option open to them is an annulment Order, whereas, if you take the affirmative procedure route, there may well not be much debate on it, should it come to Plenary, but Members have the opportunity to express any concerns raised with them by constituents. That is why we would urge the Government, and have been urging the Government, on every occasion possible to choose the affirmative procedure as the default position rather than what appears is becoming the default position of the Government and the normal course of operation. That is why we are challenging this. As you said, this reflects a slight change in policy and it has been the view of this committee for some time now that if it reflects a change in policy or could substantively affect the proposed Measure, the affirmative procedure route should be taken rather than the negative procedure. The Minister may not want to comment on that at present, but we hope that she will take it away and give it consideration.

[100] **Michael German:** To pick up what the Minister said, sub-sections (4) and (5) talk about the power to impose a levy. It is not just about collection; it is about imposing a levy.

[101] **Mr Brunt:** The reason the word ‘impose’ was chosen was because, without it, there would be doubt about our legal powers to collect the levy. The proposed Measure is designed to designate a person liable to pay and then impose that levy and then for regulations to be created to collect it, set it and so on.

[102] **Janet Ryder:** Alun, are you satisfied that your question has been answered?

[103] **Alun Davies:** It has at least been asked, if not answered.

[104] **Janet Ryder:** We will move on to William, then.

[105] **William Graham:** Minister, on section 5, on calculating the levy on slaughterers and exporters and payment, in paragraph 5.5.3 of the explanatory memorandum, you state:

[106] ‘Over time, it is likely that the maximum levy rates and the administrative means of collecting levy will need to change to adapt to changes in the industry.’

[107] That is broadly acceptable, so why would subordinate legislation be the most appropriate way of amending the levy rates and administrative means of collecting the levy?

[108] **Elin Jones:** As the rate of the levy could be changed annually, subordinate legislation is considered to be the appropriate mechanism, as I said earlier. It is currently done by administrative procedure. It will continue to be done that way in England and Scotland, and we will be the only levy-raising authority undertaking this through a legislative process with regard to any change to the amount of levy, and I believe that it is appropriate to do that by subordinate legislation rather than putting it on the face of the proposed Measure.

[109] **William Graham:** Section 6 contains extensive provision for Welsh Ministers to create Orders for the imposition of a levy on those involved in primary and secondary activities, and can

[110] ‘make any amendments to this Measure as appear necessary or expedient’.

[111] Minister, could you explain why such wide-ranging powers are necessary?

[112] **Elin Jones:** I am sorry, but where are you now?

[113] **William Graham:** I am referring to section 6. It is set out in paragraph 5.5.4 of the explanatory memorandum.

[114] **Mr Brunt:** It is along the same lines as the wording of section 3(1). As we do not know what will happen with the red meat industry in the future, we do not know what changes will need to be made to the proposed Measure or to subordinate legislation that is made under it. So, we have used wording such as ‘necessary or expedient’ in order to give us the fullest opportunity to adapt to any circumstances that may arise. Any subordinate legislation that is made will be subject to scrutiny, either through the negative procedure or the affirmative procedure. That is the reason for that wording.

[115] **Alun Davies:** Minister, over the last half an hour or so we have discussed the wide-ranging powers that you are accruing, which you are taking from the legislature and transferring to the executive. We have asked you for a number of examples of how you would use those powers, but I cannot think of a single example that we have heard of why those powers are necessary and how they would be used in the future. They are simply accrued to the executive. It is a matter of great concern in respect of the creation of Welsh legislation—Chair, this has been commented on in relation to other proposed Measures—that we have

seen the executive taking powers from Westminster via the Assembly. It is a matter of profound disappointment that we are not able to understand in any real detail why these powers are necessary, and why the powers that you require cannot be specified on the face of the legislation, so that the legislature itself can understand what powers you are seeking and how you would seek to use them.

[116] **Elin Jones:** The reason for seeking the powers in this way is to raise the levy directly, but to also consider the possibility of changing, if necessary, how the levy is collected. We have discussed the possibility of collecting the levy directly from the producer—in primary activity—or from people involved in the transactional part of the red meat sector, that is, in secondary activity, so that we have an allocation that is more reflective of the red meat sector from the levy that is collected throughout Great Britain. I am outlining how the powers may be used if it is agreed, as a result of my consulting with Hybu Cig Cymru, the Ministers in England and Scotland, and the industry more widely, in that there needs to be a change to the basis of the collection of the levy in Wales, and possibly to that in Scotland and England.

[117] **Alun Davies:** No-one is challenging that; we are challenging the requirement that you have outlined this morning to accrue substantial areas to yourself in which you would be able to exercise power by regulation, thereby avoiding parliamentary scrutiny by the Assembly.

[118] **Elin Jones:** The collection of the levy will remain, and the proposed Measure allows for that to happen. That is on the face of the proposed Measure. If a decision to not to have a levy were taken, the proposed Measure would have to be changed. The issue is where the collection of the levy should take place; that is the issue under consideration, and where we may need to use the proposed Measure, through subordinate legislation. Subordinate legislation is accountable, and a significant change would take place through the affirmative resolution procedure, and would be scrutinised by the Assembly.

10.20 a.m.

[119] **Janet Ryder:** The point that has been raised in relation to a number of different pieces of legislation that this committee has looked at is that it is not our job to scrutinise the policy intention of the Minister; it is our job to scrutinise increasingly the balance of where decisions are taken and the balance of where that power lasts. We have seen a number of Measures coming through where Ministers have said, 'We know we will need this power in the future and we are going to take it now.' The question that this committee asks is, while that is fine and you may well need those powers in the future, do those powers need to be taken now or should they rest with the Assembly. They would still be usable by a Minister, but the Minister would then have to gain assent from the Assembly to use them. It is about whether we are getting the balance right with regard to where the power lies between the Cabinet and the legislative body.

[120] **Elin Jones:** I understand that point. The only additional point I would make on this is that the collection of levy and any changes will involve discussion and agreement between Welsh Ministers, English Ministers and Scottish Ministers, if there is a change. In Wales, we now have a process, through this proposed Measure, which is far more accountable and open in making those changes, and that is probably true of England and Scotland, too. So, having a degree of flexibility for Welsh Ministers through subordinate legislation allows the Welsh Government to be open and accountable in its decision-making process, but in a way that allows us to move at the same pace as that of any decisions that are taken in England and Scotland.

[121] **Michael German:** Chair, it is not just about the boundary between what should be on the face of a Measure and what should be covered by subordinate legislation. We can understand Ministers wanting to act quickly and being able to respond, but it is then a

question as to whether the affirmative procedure, the negative procedure, or the superaffirmative procedure is appropriate for those powers. The bit that I am struggling with—and you have said it already in evidence to us this morning, Minister—is that many of the changes that you would make using these powers could be seen as policy changes; they would in fact be made to alter the trading position, to alter the balance or to retain powers perhaps. They are usable; I am not saying they are usable for bad reasons, but they are usable for policy reasons. That is the difficulty that this committee will face; if these powers can be used for policy-making purposes, then we believe that scrutiny by the Assembly is important and that the affirmative or superaffirmative procedure would be appropriate. Unless you want to tell us now that these are all technical and we have got it all wrong, I have not yet been convinced that there are policy areas where these powers could be used. At the same time, I am not saying for a minute that this is not a better situation than that which we have had before, because we are democratising the whole process, which is very good. However, will you respond to the point about whether these changes are actually changes that could be made to alter trading conditions?

[122] **Elin Jones:** They are changes to make the collection of levy different. As I have said already, I would consider it a significant change to introduce the collection of a levy and impose a levy upon people involved in secondary activity in the red meat sector, because they are currently not paying or collecting a levy. That is why the affirmative procedure is followed. I have listened to your views on the appropriateness of the negative resolution process in relation to the imposition of levy on primary producers, and I am sure that you will be writing to me on that in order to make your views known, and I will consider them.

[123] **Janet Ryder:** I have one last issue that I would like to raise with you, Minister, with regard to section 8 on returns and estimates. Section 8 would give you power to issue directions regarding the submission of returns. Given the discussion that we have just had, why would this be dealt with by directions, which may constitute legislation not made by statutory instrument, rather than by regulations that would be subject to an appropriate Assembly procedure?

[124] **Elin Jones:** I would consider that the major policy debate or the major aspect of scrutiny that is appropriate relates to the issue of who pays and who collects. We have already discussed that. On some of the more administrative requirements of the payment procedure, then it is appropriate that it is not undertaken through legislation but rather through direction. These are primarily administrative issues, and that is why I have considered direction to be appropriate rather than legislation.

[125] **Janet Ryder:** Thank you, Minister. Given the discussion that we have had, we will leave it at that point if Members have no further questions. I ask, Minister, that you bear seriously in mind the issues that we have raised about the use of the affirmative and the negative procedures and the fact that it is still possible for you to bring forward amendments as this progresses through the committee stages. We would welcome any reflection on today's discussions and amendments being brought forward by you regarding the affirmative and negative procedures as this progresses through the committee stage.

[126] We will send you a record of today's proceedings to check for correctness. If there is anything that you would like to add at this point or you would like to send in writing to add to the evidence that we have taken on this, then it would be very welcome and we would be willing to receive that. Thank you very much for your time this morning Minister, and that of your officials.



**Cynnig Trefniadol  
Procedural Motion**

[127] **Janet Ryder:** In order to discuss the content of the report on the proposed Measure, I move that

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

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

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.27 a.m.  
The public part of the meeting ended at 10.27 a.m.*