



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

**Y Pwyllgor Materion Cyfansoddiadol
The Constitutional Affairs Committee**

**Dydd Mercher, 17 Tachwedd 2010
Wednesday, 17 November 2010**

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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
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Rhodri Morgan	Llafur Labour
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Ele Hicks	Swyddog Prosiectau a Pholisi, Stonewall Cymru Projects and Policy Officer, Stonewall Cymru
Andrew White	Cyfarwyddwr, Stonewall Cymru Director, Stonewall Cymru

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
Gareth Howells	Cyfreithiwr dan hyfforddiant Trainee Solicitor
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 9.30 a.m.
The meeting began at 9.30 a.m.

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

[1] **Janet Ryder:** I welcome Members, officials, and members of the public to this meeting of the Constitutional Affairs Committee. In an emergency, the ushers will indicate the nearest safe exit. Headsets are available for translation and amplification. I remind everyone to please switch off mobile phones completely.

[2] We have not received any apologies.

9.31 a.m.

Offerynnau na fydd y Cynulliad yn cael ei Wahodd i Roi Sylw Arbennig Iddynt o dan Reolau Sefydlog Rhif 15.2 a 15.3, ac Offerynnau sy'n Agored i Gael eu Dirymu yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
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[3] **Janet Ryder:** The first set of regulations to be discussed is CA498, the M4 Motorway (Junction 41, Westbound Exit Slip Road, Sunnycroft Roundabout, Baglan, Neath Port Talbot) (50 MPH speed limit) Regulations 2010.

[4] **Mr Howells:** They introduce a permanent 50 mph speed limit. You may know the road. There is already a 40 mph speed limit there, but that is subject to a temporary Order. The regulations introduce a permanent 50 mph speed limit.

[5] **Janet Ryder:** Are Members content with that? I see that you are. Therefore, we shall move to CA500, the Foodstuffs Suitable for People Intolerant to Gluten (Wales) Regulations 2010.

[6] **Mr Griffiths:** Mae'r rheoliadau hyn yn darparu ar gyfer rhoi deddfwriaeth Ewropeaidd ar waith, ac nid oes pwyntiau technegol i'w hadrodd mewn perthynas â hwy.
Mr Griffiths: These regulations provide for the implementation of European legislation, and there are no technical points to report in relation to them.

[7] **Janet Ryder:** A yw pawb yn hapus? Gwelaf eich bod.
Janet Ryder: Is everyone content? I see that you are.

[8] We shall now turn to CA502, the Local Authorities' Traffic Orders (Procedure) (England and Wales) (Amendment) (Wales) Regulations 2010.

[9] **Mr Griffiths:** Mae'r rheoliadau hyn yn ymwneud â pharcio dwbl, ac maent yn cael gwared o'r gofyniad i gael arwyddion i wahardd parcio dwbl lle mae lefel y pafin wedi'i ostwng at y ffordd. Nid oes pwynt i'w adrodd ar hynny.
Mr Griffiths: These regulations relate to double parking, and do away with the requirement for there to be signs to note that double parking is prohibited where there is a dropped kerb. There is no point to report on that.

[10] **Janet Ryder:** A yw pawb yn hapus? Gwelaf eich bod.
Janet Ryder: Is everyone content? I see that you are.

9.33 a.m.

Offerynnau ac Offerynnau Drafft y Caiff y Cynulliad ei Wahodd i Roi Sylw Arbennig Iddynt o dan Reolau Sefydlog Rhif 15.2 a/neu 15.3, Offerynnau sy'n Agored i Gael eu Dirymu yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol), ac Offerynnau Drafft sy'n Agored i Gael eu Cymeradwyo yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Gadarnhaol)
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[11] **Janet Ryder:** The first set of regulations for us to discuss are CA501, the Animal Feed Regulations (Wales) 2010

[12] **Mr Griffiths:** Mae tri phwynt i'w nodi yn yr adroddiad drafft sydd o'ch blaenau. Mae'r pwynt cyntaf yn ymwneud â'r ffaith bod y gair 'diwygio' wedi'i hepgor o destun y rheoliadau sy'n cael eu diwygio. Mae'r Llywodraeth yn derbyn hynny ac yn dweud y bydd yn ei gywiro y tro nesaf y bydd cyfle i wneud hynny mewn is-ddeddfwriaeth.

Mr Griffiths: There are three points to note in the draft report that is before you. The first point relates to the fact that the word 'amendment' has been omitted from the title of the regulations that are being amended. The Government accepts that and says that it will correct that the next time there is an opportunity to do so in sub-legislation.

[13] Mae'r ail bwynt yn ymwneud â chyfeiriad yn y rheoliadau at '*post-authorisation monitoring*'. Nid dyna'r term a ddefnyddir yn yr erthygl o reoliad Ewropeaidd 1831/2003. Yn yr achos hwn, mae'r Llywodraeth yn nodi nad oes angen dilyn y geiriad yn fanwl gywir, oherwydd mater o helpu pobl i ddarganfod y wybodaeth ydyw yn hytrach na rhan hanfodol o'r ddeddfwriaeth. Mae hynny'n berffaith gywir; nid yw'n rhan hanfodol o'r ddeddfwriaeth. Fodd bynnag, os yw'r Llywodraeth yn cynnwys hynny er mwyn ceisio helpu pobl i ddeall y rheoliadau, mae defnyddio term gwahanol i'r hyn sydd yn y rheoliad Ewropeaidd yn peri problem. Bydd pobl yn chwilio am y term '*post-authorisation monitoring*', ond ni fyddant yn gallu dod o hyd iddo, a byddant yn meddwl eu bod yn chwilio yn y lle anghywir. Felly, os yw'r rheoliadau yn cyfeirio at rywbeth arall, credwn y dylent ddefnyddio'r term sydd yn y ddeddfwriaeth y byddai rhywun yn chwilio amdani.

The second point relates to a reference in the regulations to '*post-authorisation monitoring*'. That is not the term that is used in the article of European regulation 1831/2003. In this case, the Government notes that there is no need to keep to the exact wording, because it is a matter of helping people to find the information rather than an essential part of the legislation. That is entirely correct; it is not an essential part of the legislation. However, if the Government is including it in order to help people to understand the regulations, using a different term from that which appears in the European regulation will create a problem. People will be looking for the term '*post-authorisation monitoring*', but they will not be able to find it, and they will think that they are looking in the wrong place. Therefore, if the regulations are to refer to something else, we believe that they should use the term that is in the legislation that people would be looking for.

[14] Mae'r paragraff terfynol yn ymdrin â chwestiwn a godwyd wrth graffu ar y rheoliadau, am yr hawl o dan Ddeddf Amaeth 1970 i addasu'r Ddeddf honno at ddibenion rheoliadau. Wrth edrych ar y rheoliadau hyn,

The final paragraph addresses a question that was raised during scrutiny of these regulations, regarding the right under the Agriculture Act 1970 to modify that Act for regulations. In looking at these regulations, it

yr oedd yn amlwg eu bod yn mynd ymhellach na'r pŵer hwnnw yn Neddf Amaeth 1970. Yr oeddem yn tybio mai'r rheswm am hynny oedd eu bod yn dibynnu ar y pŵer yn Neddf y Cymunedau Ewropeaidd 1972, ac yn ei ymateb i'r cwestiwn yn yr adroddiad drafft, mae'r Llywodraeth yn cadarnhau mai dyna yw'r sefyllfa. Byddai wedi bod yn ddefnyddiol pe bai hynny wedi'i egluro yn y memorandwm esboniadol, ond yn sgîl ymateb y Llywodraeth, yr wyf yn awgrymu i'r pwyllgor ei bod yn derbyn hynny ac yn adrodd ar bwyntiau un a dau yn unig.

was clear that they go further than the power contained in the Agriculture Act 1970. We thought that the reason for that was that they were dependent on the power contained in the European Communities Act 1972, and in its response to the question in the draft report, the Government confirms that that is the case. It would have been useful had that been made clear in the explanatory memorandum, but in light of the Government's response, I recommend that the committee accepts that and reports on points one and two only.

[15] **Janet Ryder:** Therefore, you are happy with the Government's response and with that last point in particular. Do Members have any questions? I see that they do not. Are you happy to accept that, bearing in mind the points that Gwyn has made, we should report on those two issues? I see that you are.

[16] We are now looking at CA499, the Single Use Carrier Bags Charge (Wales) Regulations 2010, for the first time. There is quite a bit to say about this. Before we start, I apologise for the dreadful noise that we are suffering this morning. One of the coverings for the skylights seems to have blown loose, so we will either have to listen carefully or ask people to raise their voices. The plastic covering for the skylight where the workmen are is blowing loose, and I think that there is little we can do about it.

[17] **Rhodri Morgan:** We are going to apply to the council for a grant. [*Laughter.*]

[18] **Janet Ryder:** Steve, would you like to introduce the Single Use Carrier Bags Charge (Wales) Regulations 2010?

[19] **Mr George:** Our legal advisers have not identified any technical points. We suggest that the committee considers issuing a merits report. There are a number of issues that have been set out in the draft that we supplied to you. For the most part, they relate to matters that were raised in consultation, that have either not been clarified or that there is some doubt about in the explanatory memorandum or the regulations. We think that this is a matter of public or legal importance that might be of interest to the Assembly for two main reasons. First, this is the first time that the powers under the Climate Change Act 2008 to require charges for carrier bags have been used anywhere in the UK. Secondly, it is the first time that civil sanction powers have been granted to local authorities in Wales for this purpose. Also, although the principle has been considered by a number of Assembly committees, the powers under which these regulations have been made have not been scrutinised at any point by the Assembly. The report's main focus is on flagging up issues and asking the Minister to address them during the debate, rather than being critical of the regulations.

[20] **Janet Ryder:** Gwyn, do you have anything that you would like to add?

[21] **Mr Griffiths:** Na, yr wyf yn gallu cadarnhau fy mod wedi craffu'n dechnegol ar y rheoliadau hyn ac nid oes unrhyw bwyntiau yn codi.

Mr Griffiths: No, I can confirm that I have undertaken technical scrutiny of the regulations and there are no points arising.

[22] **Kirsty Williams:** I would like to support the point made by the clerk regarding the scrutiny of this piece of legislation. When we were looking at the Proposed Waste (Wales) Measure—on which we had a great deal of discussion and consultation—when the Minister was asked questions about charging for plastic bags, they were never answered, because she would say that that was an issue for a separate piece of legislation. She would say that she was before us to answer questions on the Proposed Waste (Wales) Measure, and that the ability to charge would fall out of the Climate Change Act 2008, which was not what we were there to consider. I would like to reinforce the point that there was never a serious discussion about the climate change legislation because the Proposed Waste (Wales) Measure allows for a voluntary scheme, which is a different issue. Therefore, I would support the fact that this committee needs to really focus on this issue and bring it to the attention of the Assembly, because it has not been scrutinised to any great extent anywhere else.

9.40 a.m.

[23] **Alun Davies:** Clearly, ministerial answers are not a matter for this committee and it would be difficult for this committee to second-guess ministerial answers. However, if there are concerns, the committee should perhaps write to the Sustainability Committee and invite it to investigate and report back. I was a member of that committee when the original report was concluded, and there was some scrutiny, but you are right: it was prior to the legislation being published, and it was on the principle of it. There are some important questions here that might well be answered. Perhaps it would be better for the Sustainability Committee to undertake that investigation.

[24] **Janet Ryder:** That would be a very good route to take. Unfortunately, time is against us, and, according to the 21-day rule, we must lay our report this week. We can certainly write to the Sustainability Committee and ask it to look at it, but that will presumably be after the regulations have been passed. There is nothing to suggest that these regulations should not be passed or that they do not have a wide range of support, but there are a number of issues. This issue highlights the process whereby a piece of legislation like this can come through and unless, with a lot of forewarning, a committee picks it up, we do not get it until this late stage. What is significant about this piece of legislation in particular is the triggering of two pieces of action by the Minister and the ability for councils to be able to charge. The sanctions are quite significant. As in all things, set against this piece of legislation, you can say, ‘Yes, that is reasonable’, but it is a first step—it is quite a major step—so, as a point of merit, if everyone is content, we will submit a report accordingly and there will be a debate in Plenary.

[25] **Mr George:** We will also copy it to the Sustainability Committee, for its information.

[26] **Mr Griffiths:** Hoffwn ychwanegu un pwynt, Gadeirydd. Mae'r rheoliadau hyn yn cael eu cyflwyno i'r Cynulliad yn gynnar iawn. Ni fyddant yn dod i rym tan fis Hydref 2011. Felly, bydd cyfle i bwyllgorau eraill graffu ar y paratodau ar gyfer y rheoliadau hyn yn ystod y flwyddyn sydd i ddod.

Mr Griffiths: I wish to add one point, Chair. These regulations are being placed before the Assembly at quite an early stage. They will not come into force until October 2011. Therefore, other committees will have an opportunity to scrutinise the preparatory work for these regulations over the coming year.

[27] **Janet Ryder:** We will write to the Sustainability Committee and draw it to its attention—whether it chooses to pick it up or not is a matter for that committee. However, we need to lay our report this week.

[28] **Mr George:** I think that it is by Thursday.

[29] **Janet Ryder:** When that report is drafted, we will circulate it to everyone for

agreement, if everyone is content with that way forward.

[30] **Mr George:** Unless Members have any concerns, this will be the report.

[31] **Kirsty Williams:** No; it is fine.

[32] **Janet Ryder:** Are you content with the report?

[33] **William Graham:** Just as an aside, forgive my ignorance, but what does 'internalised' mean?

[34] **Mr George:** At present, the cost of all carrier bags is assumed to be part of the cost to the business. They are trying to take that cost and pass it on to the consumer. Therefore, the consumer internalises it. You could say that it is actually externalising the cost, but I have put it within quotation marks because that is what is used in the explanatory memorandum. I am not sure whether that explains it all.

[35] **William Graham:** I think that I understand the basis of it now.

[36] **Janet Ryder:** Are we all now content?

[37] **Kirsty Williams:** My understanding is that businesses will be able to take their own costs out of the money that they accrue from charging for a bag. Therefore, any legitimate business costs that they have accrued they are allowed to take out of the global sum that they collect from charging for the bags. The rest is then supposedly given in voluntary donation to charity.

[38] **Janet Ryder:** Yes. I think that the regulations are quite complex. If Members are content with that way forward, and if they are content with the report, we will lay that and report on it to Plenary.

9.46 a.m.

**Ymchwiliadau'r Pwyllgor: Drafftio Mesurau Llywodraeth Cymru: Gwersi a
Ddysgwyd o'r Tair Blynedd Cyntaf
Committee Inquiries: Drafting Welsh Government Measures: Lessons from the
First Three Years**

[39] **Janet Ryder:** I welcome Stonewall Cymru. We have with us Ele Hicks and Andrew White, who are going to give evidence this morning. I want to thank Stonewall for responding to practically every consultation on subordinate legislation. It is one of the few groups that has responded in this way. You have taken the time to respond to our committee, so we have invited you in so that we can try to use your expertise a little further. We have had some noise interference this morning.

[40] **Rhodri Morgan:** Are you any good at roofing? *[Laughter.]*

[41] **Janet Ryder:** There seems to be an external problem with the roof above this committee room. The problem seems to have blown away now, so we are hoping that it will be a bit quieter, but please let me know if you are having trouble hearing. Please introduce yourselves for the record, and if there is anything that you would like to say before we start the questions, you are very welcome to do so.

[42] **Mr White:** Andrew White wyf i, **Mr White:** I am Andrew White, the director

cyfarwyddwr Stonewall Cymru ers dydd of Stonewall Cymru since Monday.
Llun.

[43] **Ms Hicks:** I am Ele Hicks, projects and policy officer for Stonewall Cymru.

[44] **Janet Ryder:** Thank you, and thank you again for responding. It is interesting that you chose to respond to this, so we are very interested to hear what you have to say. We have a series of questions, which we will go straight into if that is all right with you. In your written evidence, you say that sexual orientation issues cross-cut the majority of policy and legislative areas and agendas. Can you provide examples of the way in which these issues have been affected by Assembly Measures this term?

[45] **Ms Hicks:** Certainly. One example is the Proposed Local Government (Wales) Measure, which affects lesbian, gay and bisexual people in that local authorities are key service providers, and lesbian, gay and bisexual people experience discrimination, including as a barrier to standing for office. The proposed Measure improves scrutiny processes and restructures community councils in addition to other methods of increasing participation by, and the voice of, lesbian, gay and bisexual people. Another example is the Carers Strategies (Wales) Measure 2010, which particularly affects LGB people, as they are often assumed to be single by their families and are therefore more likely to become carers. This Measure also needed to be responsive to the needs of lesbian, gay and bisexual carers and citizens in the provision of appropriate information and in ensuring that same-sex partners with caring responsibilities were recognised. Another example is the Children and Families (Wales) Measure 2010, which clearly implies that the term 'family' should be read as inclusive of same-sex couples and non-traditional families. There are other examples, but I think that three will suffice at the moment.

[46] **Janet Ryder:** So, in some respects, the language used and the interpretation of that are what cause concern.

[47] **Ms Hicks:** To a certain extent, yes, it is about the language and ensuring that it is inclusive. In some areas, it is also about the provision of services. For example, tailored information within carers' strategies may be important to certain people, so that they know their rights and responsibilities as well, and so that that information is as readily available to same-sex couples and LGB carers as it is to heterosexual people.

9.50 a.m.

[48] **Janet Ryder:** William, you have the next set of questions.

[49] **William Graham:** Building on what the Chair said, and as you have been kind enough to respond to a lot of our calls for evidence, what are your views with regard to the standard of drafting of Assembly Measures and their accompanying explanatory memoranda?

[50] **Ms Hicks:** We feel that the standard of drafting of Assembly Measures has been appropriate to their context as legislative implements. However, the language in the explanatory memoranda presents a barrier to engagement for LGB people, as lay people.

[51] **William Graham:** In your evidence, you state that the balance between what is presented on the face of Measures and what is provided for in regulations is generally appropriate. Would you care to expand on that?

[52] **Ms Hicks:** We believe that Measures to date have generally been prescriptive enough to set down legislative principles for implementation while allowing enough flexibility to respond to changes in policy, legislation and practice in subordinate legislation. An example

would be the Proposed Local Government (Wales) Measure, which permits cross-boundary bodies while not creating a duty, thereby allowing for local flexibility on needs and issues.

[53] **William Graham:** In your evidence, you note that

[54] ‘it is often unclear how Measures will be implemented’,

[55] and you feel that this is particularly worrying as

[56] ‘this is the stage at which sexual orientation mainstreaming and inclusion, or exclusion occurs’.

[57] Could you provide practical examples of this occurring in relation to the Assembly Measures introduced by the Welsh Government to date?

[58] **Mr White:** Certainly. To start, sometimes equality is not quite enough, and equality of treatment needs to be tailored for some groups. In the case of Stonewall Cymru and LGB people, services have to be designed somewhat differently. An example would be the Mental Health (Wales) Measure 2010, which has recently been passed, providing information and advice to service users and their carers. It contains provision for care treatment plans without any mention of equality as a quality or clinical-care issue on the face of the Measure. We hope that that will be catered for in the regulations that ensue. There is evidence that LGB people are more susceptible to mental health issues, which is often attributed just to their sexuality, although that is not always the case. The majority of cases can be attributed to the provision of services and the cultural discrimination that happens in service delivery and design. So, we feel that putting an equality principle on the face of the Measure would be a great enhancement.

[59] **Kirsty Williams:** Good morning to you both. If I may, I will turn to the issue of consulting on regulations. In your written evidence to the committee, you state that

[60] ‘as there is usually no opportunity to provide input into secondary legislation important aspects, including best practice design to ensure sexual orientation inclusion, are often overlooked’.

[61] How could the system be changed to ensure that these aspects are not overlooked in the future?

[62] **Mr White:** We believe that the system could be enhanced rather than changed totally by the introduction of tracking—for instance, for the evidence submitted during consultations—as well as by inviting amendments during that consultation period from members of the public, stakeholder groups and representative organisations. As a part of that, we would obviously encourage some standardised advice to respondents on how to draft amendments, and how to present them clearly. Changing that system and reporting on the consultation process would enhance the seeking of the views of the citizens of Wales, including stakeholder organisations and community groups, making it more proactive.

[63] **Kirsty Williams:** Could you identify those important aspects that you have described as overlooked, and which could be addressed should we adopt a system similar to that that you are advocating?

[64] **Mr White:** We could. We would probably reword our response to that. Our reference in our response there was to perhaps other equality strands, but our remit is sexual orientation. So, we would rather not comment specifically on those at this stage.

[65] **Kirsty Williams:** Thank you. You have given us an idea of how you believe that the system could be enhanced, by—from my understanding of what you have just said, and from your evidence—adopting a formal procedure for collating responses and input regarding the implementation of Measures. I think that I understand the theory, but could you give us an example of how that would work in reality? What would that look like for an organisation such as yours, and how would you engage in that system?

[66] **Mr White:** The current procedures are very open and democratic. People and organisations respond, and those responses are all published as part of the consideration of evidence and part of the process of Measures. What we would like to see is perhaps a more co-ordinated, proactive approach to the consultation process, so that, once the responses are in, they would be collated, analysed and a report on the consultation responses would then be part of the process of considering a Measure. In that way key issues, and perhaps themes that come up in several responses, could be highlighted, giving an opportunity to seek proactively further clarification on issues, or to get further evidence before a Measure goes to the next stage. So, as for the practical shape of that, we would envisage a report on the consultation being considered as part of Stage 1.

[67] **Kirsty Williams:** You do not feel that that happens at the moment.

[68] **Mr White:** We feel that the consultations are noted and that some consideration is given. Clearly, we are pleased to be part of that today, and to have been part of that on other occasions, but we feel that it could be clearer.

[69] **Kirsty Williams:** Would the use of a super-affirmative procedure in future Assembly Measures allay some of your concerns regarding the lack of consultation with stakeholders prior to the introduction of regulations? We have great debates about negative and affirmative procedures; would a super-affirmative process allay some of your concerns?

[70] **Ms Hicks:** We feel that regular and consistent use of a super-affirmative procedure would considerably improve the consultation process and the ability to input into secondary legislation in particular. However, we still feel that recommendations from the consultation process should be able to be recorded for consideration at later stages, due to issues of capacity to respond, combined with the complexity of procedures.

[71] **Rhodri Morgan:** I am fascinated by your comments in your written memorandum, and again this morning, about the appropriateness of the language used in drafting. You say that you think that the Measures are drafted in a language that is appropriate, given their legal status, which is like a pat on the back, and then you say that the problem is that it is inaccessible, and not understood by the majority of individuals or organisations with an interest in the subject matter. You cannot really have it both ways; it is either appropriate or inappropriate. Will you expand on the tightrope that has to be walked here?

[72] **Ms Hicks:** Certainly. What the response was intended to convey is that the language on the face of the Measures is appropriate, because they are legislative implements and need to be appropriate as such and written in legal language. However, explanatory memoranda could be improved to be more accessible to people to ensure that LGB people, groups and individuals understand the explanatory memoranda and can input into the consultation process.

[73] **Rhodri Morgan:** Is that something that you think is specific to LGB people and to Stonewall? You are probably the only minority interest group that has, in fact, responded, and more is the credit to you for doing that; you are alongside the Association of Chief Constables and the National Farmers Union, with which I would not normally compare your organisation. However, do you think that if other minority representative groups were here

today with you, they would make the same points? In other words, if you have the specific job of minority group representation, do you have the same issue that either you as the representative group must understand what is in the Measure or you must understand it indirectly, via the explanatory memorandum, even though you accept that it is not easy to draft legal instruments in accessible language, but you hope that it is at least in language that is accessible to lawyers or specialists, such as yourselves?

10.00 a.m.

[74] **Ms Hicks:** I have been at meetings at which representatives of other equality strands have also raised this issue. The issue is specifically about the accessibility of explanatory memoranda, rather than of Measures. We feel that, in the interests of open government, they need to be accessible to all. With respect, lawyers are one part of the process. They are an important part, but accessibility is vital to Welsh legislation being understood by the citizens of Wales.

[75] **Rhodri Morgan:** That is an issue for the general public. It is not so much an issue for equality strand/minority group representative bodies such as Stonewall and other equivalent bodies. It is a puzzle to all of us, really, as to whether you pay lawyers to understand law, and you do not expect to understand it, although it would be nice if you had a general grasp of it, or whether, if you are a member of a minority, you expect not so much lawyers, but the people employed to represent you, such as yourselves, to be able to understand it, unless it is a particularly knotty point, which is when you would hire a lawyer. Is that a fair description of what you would expect? That is, you would not expect to hire a lawyer all the time, but would hope, via the explanatory memorandum, to be able to understand what is going on in a proposed law.

[76] **Mr White:** Yes. With respect to the lawyers present, sometimes the process of clarifying the legal situation in Measures and in explanatory memoranda can interfere with the clarity—well, not with the clarity of the law, because the lawyers would argue that it clarifies the law even more—but it can interfere with the understandability or accessibility of the law.

[77] **Rhodri Morgan:** However, the point on accessibility is that it should be accessible to you as the specific, full-time officials of a minority representative group, or equality group, as you are. Is that right?

[78] **Mr White:** Yes. As an equality group, however, we would also encourage our stakeholders to take part in consultations on Measures. In doing so, we have experienced difficulty in encouraging local community groups, which you, as the law makers of Wales, presumably want to hear from, which find it impenetrable.

[79] **Rhodri Morgan:** Does that also apply to the explanatory memoranda? You have described some explanatory memoranda as ‘too complicated’. Do you want to go into that a bit more?

[80] **Ms Hicks:** It is partly the complicated language, which is still present in explanatory memoranda. For example, in the Proposed Welsh Language (Wales) Measure, the terminology used included ‘graduated alternatives’, which makes sense to policy makers, all of us and to many people, but not to local community groups. There are often long sentences, even in the explanatory memoranda, which are so convoluted that they are very difficult for people who are not policy makers to understand. Often, the explanatory memoranda refer to the current legislative framework, but they do not explain its implications in practice beyond a statement of the current law and legislative competence. That is crucial to the implementation of Measures, but the lay people who are trying to understand the implications need to

understand exactly how the current position affects them compared with the proposed Measure. So, there are ways that these could be improved. For example, the recent Proposed Local Government (Wales) Measure included a section by section bullet point list of the rationale for the proposed Measure in the explanatory memorandum, avoiding jargon within that, which policy makers and people working in related fields understand, but which mean little to the general public. This would greatly assist individuals and organisations in understanding the explanatory memoranda.

[81] **Rhodri Morgan:** Just to be clear, are you commending the way that the explanatory memorandum of the Proposed Local Government (Wales) Measure was laid out?

[82] **Ms Hicks:** Sections of it, yes, such as the section that has bullet point lists explaining, section by section, what the content of the proposed Measure is and exactly how that is a change. That was an extremely good example of best practice.

[83] **Rhodri Morgan:** Very good. Do you have some examples of bad practice? If you were asked to put recent legislation on a spectrum of inaccessibility and accessibility, along the lines of what you have just illustrated in an example now, could you also give us some examples of some rubbish ones?

[84] **Ms Hicks:** Yes. Ironically, the Proposed Welsh Language (Wales) Measure, a proposed Measure dealing with language, had an explanatory memorandum that was written in complicated language. Terms such as ‘reasonable’, ‘proportionate’, ‘clarity’, ‘consistency’, ‘enforcement regime’ and ‘duties’ are words that we all understand and come across every day. However, to lay people, these are words that simply do not have implications for their day-to-day lives and are inaccessible. Another example in the explanatory memorandum of the same proposed Measure is ‘interference with people’s freedom to use Welsh with one another’. That has a very clear legislative background. However, to lay people, that sentence simply does not make sense. One section refers to person A, person B and so on at some length, which is extremely complicated to follow for policy makers, let alone for lay people.

[85] **Rhodri Morgan:** That is in the memorandum, is it?

[86] **Ms Hicks:** Yes. It is in the memorandum, as well as in the actual proposed Measure.

[87] **Rhodri Morgan:** Okay. I do not know where we would be if we got rid of the words ‘reasonable’ and ‘proportionate’ from all legislation, but we take your point. If you want to provide any additional written material on this spectrum issue of marks of five out of 10 for this one, seven out of 10 for that one, and nine out of 10 for another one, we would find that enormously helpful.

[88] You say that the language used in explanatory memoranda should be changed to follow plain English and plain Welsh guidance as closely as possible. Do you think that the failure to follow plain English and plain Welsh guidance in explanatory memoranda to date will have dissuaded stakeholders from engaging in the consultation process, and might that be one reason why you are relatively alone in this? You are not quite on your own—you are there with the chief constables and the National Farmers Union—but you are among the few that have engaged in this consultation process. However, in consultation more widely, does the fact that plain English and plain Welsh guidance is not being followed discourage people from participating?

[89] **Mr White:** We are very proud to be side by side with chief police officers and farmers, which is something that I did not think some time ago that an LGB charity such as ours would ever achieve. Joseph Conrad once wrote:

[90] ‘Words, as is well known, are the great foes of reality.’

[91] In the case of the terminology and words that we are using today in explanatory memoranda, they can get in the way. Talking of Cymraeg clar or plain English, we have some anecdotal evidence to suggest that people do not respond because of the impenetrability of that process and of the language used. As for Stonewall Cymru, we are hacks, in a sense; therefore our job is to understand this. It has not dissuaded us, professionally.

[92] **Rhodri Morgan:** I am very pleased that you referred to Joseph Conrad, because he shared a Cathedral Road address with you. He started his novel-writing career further down Cathedral Road. Not a lot of people know that.

[93] **Mr White:** I certainly did not.

[94] **Rhodri Morgan:** I have finished, Chair.

[95] **Janet Ryder:** To sum up, is it your view that, while you accept that the legislation itself needs to be in lawyer speak, the explanatory memorandum needs to use common language that anyone can access and understand, and should give examples of how that piece of legislation may impact on people, once it is passed.

10.10 a.m.

[96] **Mr White:** That is right. One other bullet point that I want to raise is that, although the Measures need to be written in legalese, if I may use that particular piece of jargon, we would caution against the desire for legal clarity getting in the way of the language of the Measures.

[97] **Alun Davies:** In paragraphs 4.2 and 4.3 of your evidence, you discuss regulatory impact assessments and say that some of the options contained in them are limited and alternative legislative proposals might be a better way of achieving those objectives. Could you outline what you mean by that?

[98] **Ms Hicks:** The current options in regulatory impact assessments are to do nothing, issue further guidance, or adopt the specific proposed Measure. However, it may be that, in certain circumstances, introducing a different proposed Measure, regulations or Order may be more appropriate to achieve the aims of the legislation. We simply feel that they could be expanded to include other legislative options.

[99] **Alun Davies:** How would that help to achieve the objective that we have been discussing this morning, namely to have clearer legislation and enable more people to understand it?

[100] **Ms Hicks:** The regulatory impact assessments would result not necessarily in clearer legislation but in more appropriate legislation. There would be options to introduce alternative legislation—for example, an Order—to achieve the aims of the proposed Measure.

[101] **Alun Davies:** To be quite honest, I am not sure how that would change what we have at the moment. We regularly see and read regulatory impact assessments, and I would probably accept your point about intelligibility, because quite often the documents can be impenetrable, and we are all scratching our heads when reading some of them, but using a different instrument would not necessarily achieve the objective of having greater clarity in these matters; you would just be using a different instrument to do the same thing.

[102] **Ms Hicks:** Yes. Our proposal is that regulatory impact assessments should justify

why the proposed Measure being consulted on is the most appropriate method of achieving the aims and objectives. That would make the proposal much clearer for citizens by stating not just why legislation is appropriate but why that specific piece of legislation is appropriate.

[103] **Kirsty Williams:** We heard evidence earlier in the inquiry that legislation should perhaps be a last resort if policy objectives cannot be achieved by any other means. We have also heard examples recently of a new proposed Measure restating a power that a Minister already has under a separate piece of legislation, so why the need for that in the new proposed Measure? I think that there are examples of that in the Proposed Local Government (Wales) Measure. Is that what you are trying to get at?

[104] **Ms Hicks:** Yes.

[105] **Janet Ryder:** Among the most complex pieces of legislation that the committee has considered has been that on the firefighters' pension scheme. That has gone from having an assumption of there being a fireman plus a wife to referring to firefighters of both genders with partners of both genders, as well as former partners. Do you have any views on how overly complex drafting can be avoided while still avoiding assumptions about gender and sexuality?

[106] **Mr White:** It is curious that legislation would refer to a firefighter as having partners of both genders, and I am not quite sure what that achieves. However, I understand the point. It can get complicated, although we do not feel that it needs to be complicated. We welcome the proactive approach that has been taken to drafting legislation in non-gender-specific language. That is fantastic and is great for same-sex couples, as is the fact that they are a part of Wales's statute book from the outset. That is really important. When referring to partners, 'spouse' and 'partner' are terms that could be used quite simply. The lawyers may argue with that, but we would be happy to hear their opinion on that. We do not feel that it needs to be complicated. An example from Westminster is the Civil Partnership Act 2004, which defined 'spouse' to include civil partners. We do not feel that there needs to be a clause for 'wife', 'husband' or 'civil partner'. We do not see that it needs to be complicated.

[107] **Janet Ryder:** Do you want to cast some light on that, Gwyn?

[108] **Mr Griffiths:** No, I do not. I only suggested that it might be of interest on the basis that Stonewall might have greater experience than Assembly Government lawyers of drafting materials to avoid the use of gender-specific language, which I know we sometimes struggle with because we try to avoid the repetitive use of multiple pronouns, or repeating the noun 'officer' several times in one sentence, for example. I thought that you might have experience that you could share with us.

[109] **Mr White:** We are currently working with the Welsh Language Board on equality terminology, particularly sexual orientation. We would welcome the opportunity to work with Assembly lawyers, if that were appropriate.

[110] **Janet Ryder:** One of the main points that this committee repeatedly drew to the attention of the Assembly in the very early days was the use of gender-specific language. We used to report a huge number of instruments for being gender specific. That seems to have been overcome now. We very rarely now find that in the language that is used in drafting. So, I suppose that the argument that you are putting forward now may move it on another step, and we might want to consider that.

[111] Finally, you have obviously considered much of the legislation that has gone through, and you will be fully aware of the Assembly's duty of equality. In any of the legislation that has been passed, have you detected anything that might conflict with that duty or affect the

way in which that duty is carried out? Is there anything in the way in which the legislation has been drafted or in the language used?

[112] **Mr White:** ‘No’ is the simple answer. However, going forward, we would encourage you to move from a non-discriminatory model to an anti-discriminatory model, which goes back to my previous point about designing services differently sometimes to cater for minority groups or protected characteristics. So, sometimes, for a group that experiences discrimination, culturally, practically every day, it is just not enough for you to say, ‘We will treat everyone equally’, because if that means that you ask everyone about ‘partners’, some LGB people might not feel comfortable with that, as they may not be out or they may not have a partner, and so that would enhance the discrimination. That is one small example, but we would encourage you to be more proactive on the equality duty.

[113] **Janet Ryder:** Thank you very much. Is there anything else that you would like to add that we have not touched on?

[114] **Rhodri Morgan:** I will just ask a supplementary question, if I may. You used the expression ‘legal clarity’. Is it legal clarity or legal certainty, or does the duty to have legal certainty sometimes clash with legal clarity?

[115] **Mr White:** Sometimes, it does, if I understood the question right. There can be a desire to clarify the law, which then results in so many supplementary clauses that the Measure itself becomes inaccessible. So, the law becomes clear and the lawyers know how to read it, but maybe the policy makers are less clear, and certainly the public is less clear.

10.20 a.m.

[116] **Janet Ryder:** Thank you. Is there anything else add that you wish to add?

[117] **Mr White:** Only to thank you very much for this opportunity.

[118] **Janet Ryder:** Thank you for your time and for your written evidence. A record of this morning’s proceedings will be available for you to check for accuracy. If anything else should occur to you that you would like to submit in writing, we would be willing to accept that.

10.20 a.m.

Gohebiaeth y Pwyllgor: Ymateb gan y Gweinidog dros Faterion Gwledig i Lythyr y Cadeirydd ynghylch Adroddiad Technegol ac Adroddiad ar Ragoriaethau Rheoliadau Wyau a Chywion (Cymru) 2010 (CA459) a Gorchymyn Iechyd Planhigion (Cymru) (Diwygio) 2010 (CA469)
Committee Correspondence: Response from the Minister for Rural Affairs to the Chair’s Letter regarding the Technical and Merits Reports on the Eggs and Chicks (Wales) Regulations 2010 (CA459) and the Plant Health (Wales) (Amendment) Order 2010 (CA469)

[119] **Janet Ryder:** This matter has quite a long and complex history, and therefore I will allow Gwyn to go over the main points.

[120] **Mr Griffiths:** Yr ydym wedi cael llythyr pellach gan y Gweinidog, dyddiedig 4 Tachwedd. Nid wyf yn gweld bod y llythyr hwn yn ateb y cwestiwn, sef pam y **Mr Griffiths:** We have received a further letter from the Minister, dated 4 November. I do not see that this letter answers the question, namely why the Government has

newidiodd y Llywodraeth y drafft gwreiddiol. Nid wyf yn siŵr pam nad yw'r Llywodraeth yn gallu ateb y cwestiwn hwnnw. Mae'n peri problem gan nad oedd wedi cyfeirio at hyn yn yr ymgynghoriad na'r cofnod sydd o benderfyniadau'r Gweinidog a'r rhesymau drostynt. Am ryw reswm, mae'r Llywodraeth yn methu ag ateb cwestiwn clir. Yr oedd pŵer ynghynt i fynd i mewn i dai gyda gwarant ynad heddwch, ond pam y newidiwyd hynny? Nid yw wedi ateb hynny.

[121] Mae gennym ddau ddewis yn awr, hyd y gwelaf i. Y cyntaf yw y dylem dderbyn mai dyma'r ohebiaeth a'n bod wedi mynd â'r mater mor bell ag y gallwn—ac mae dwy ddadl o blaid hynny. Yn gyntaf, clywsom dystiolaeth yr wythnos diwethaf am y Mesur Arfaethedig ynghylch Diogelwch ar Gludiant i Ddysgwyr (Cymru), a dywedodd y cyfreithwyr eu bod yn ymwybodol o ddiddordeb y pwyllgor hwn mewn mynediad i dai a'u bod wedi penderfynu peidio â'i gynnwys yn y Mesur arfaethedig hwnnw. Felly, efallai fod y Llywodraeth wedi dysgu gwers o'r ohebiaeth hon hyd yn hyn. Yn ail, yn achos y ddeddfwriaeth ar ieuchyd planhigion, arolygwyr y Gweinidog fydd yn gweithredu'r ddeddfwriaeth beth bynnag, felly dylem allu bod yn weddol sicr y byddant yn ei gweithredu yn y ffordd y mae ei swyddogion wedi disgrifio. Felly, galleu adael y mater gan wybod bod y Llywodraeth yn ymwybodol o'r peth.

[122] Y dewis arall—a mater i'r Aelodau yw hwn—fyddai gofyn i'r Gweinidog ddod gerbron y pwyllgor i ateb cwestiynau.

[123] **Janet Ryder:** So, do we leave it as it is and accept that the lesson has been learned, or do we take further action?

[124] **Rhodri Morgan:** Beth yn benodol yw'r bwlch neu'r gwall yn yr ateb, yn yr ystyr ein bod wedi gofyn cwestiwn plaen ond mae'r Llywodraeth am ryw reswm wedi anwybyddu, wedi methu deall neu heb ateb y cwestiwn penodol?

[125] **Mr Griffiths:** Mae'n dweud yn y llythyr bod y ddwy ffordd o ddarparu ar gyfer mynediad i dai yn gyfartal ac yn gyfreithiol ddilys.

changed the original draft. I am not sure why the Government cannot answer that question. It causes a problem because it did not refer to this in the consultation or in the record of the Minister's decisions and the reasons for them. For some reason, the Government cannot respond to a clear question. There was previously a power to enter properties with a warrant from a justice of the peace, but why has that been changed? It has not answered that.

We now have two options, as I see it. The first is that we should accept that this is the correspondence and that we have taken the matter as far as we can—and there are a couple of arguments in favour of that. First of all, we received evidence last week on the Proposed Safety on Learner Transport (Wales) Measure, and the lawyers said that they were aware of this committee's interest in access to properties, and had decided not to include that in the proposed Measure. Therefore, perhaps the Government has learned a lesson from this correspondence thus far. Secondly, in the case of the legislation on plant health, it is the Minister's inspectors who will be implementing that legislation in any case, and so we can be fairly certain that it will be implemented in the way in which her officials have described. Therefore, we could leave the matter there in the knowledge that the Government is aware of it.

The other choice—and this is a matter for Members—would be to ask the Minister to come before the committee to answer questions.

Rhodri Morgan: What exactly is the gap or the flaw in the answer, in the sense that we have asked a clear question but the Government for some reason has ignored, misunderstood or has not responded to the specific question?

Mr Griffiths: What it says in the letter is that the two ways of providing access to properties are equal and legally valid.

- [126] **Rhodri Morgan:** A yw'n dweud nad yw'r Llywodraeth yn torri'r gyfraith neu'r cyfyngiadau diweddar a oedd gerbron Llys Hawliau Dynol Ewrop? **Rhodri Morgan:** Does it say that the Government is not breaking the law or the recent restrictions that were before the European Court of Human Rights?
- [127] **Mr Griffiths:** Ydy. Serch hynny, nid yw wedi esbonio pam mae angen newid os yw'r ddau opsiwn yn gyfreithiol ddilys ac yn gyfartal. **Mr Griffiths:** Yes. Nonetheless, it has not explained why change is necessary, if the two options are legally valid and equal.
- [128] **Alun Davies:** Yr wyf yn credu y dylem ysgrifennu'n ôl at y Gweinidog yn dweud hynny. **Alun Davies:** I think that we should write back to the Minister saying that.
- [129] **Rhodri Morgan:** Mae'n werth ysgrifennu un llythyr arall er mwyn ceisio pennu ateb gan y Llywodraeth. **Rhodri Morgan:** It is worth writing one more letter to try to pin down the Government for a response.
- [130] **Mr George:** That is essentially what we have done—two or three times, now. We are getting lots of answers back but not to the question that we have asked. The basic choice seems to be that the committee has made its point and draws a line under the matter, or if you want to take it further, it might be as well to invite the Minister or her officials to come in to give evidence.
- [131] **Janet Ryder:** It would be a very short session, as we want to ask her only one question. Kirsty, do you have any thoughts on this?
- [132] **Kirsty Williams:** I take quite a hard line on this. The Government is waiting for us to give up. It thinks that if it keeps not answering the question, we will eventually have the conversation that we are now having, where we say, 'Oh, we've tried three or four times, but they don't answer the question' and then—
- [133] **Rhodri Morgan:** The alternative is that they are too dull to answer the question.
- [134] **Kirsty Williams:** Whether it is because they are too dull or whether they deliberately do not want to answer the question, it is making me even more suspicious about what they are up to—I have a very suspicious mind, which comes from being a Liberal Democrat. So, I think that we should get them in. Writing another letter is not going to achieve anything, because they will just not answer the question. It will be more uncomfortable for them not to answer the question if they have to come in and not answer it in front of us on camera.
- [135] **Rhodri Morgan:** You think that we should make them an offer that they cannot refuse, that is, if they do not answer the question, we will ask the Minister to come in.
- [136] **Kirsty Williams:** Exactly.
- [137] **Janet Ryder:** The general consensus seems to be that we will invite the Minister to come in and we will ask her this pointed question.
- [138] **Rhodri Morgan:** In the letter responding to what we have just said, which will go from you to Elin, will you note the specific point that has not been answered so far, which Gwyn has set out, and say, 'We would like the Minister to come and answer that one specific point, but if she is able to answer that point in writing, she does not have to turn up to answer the question before the committee'?

[139] **Kirsty Williams:** That would be very helpful.

[140] **Janet Ryder:** We can certainly try that, as long as we do not get a response back saying, 'We've already answered this point'. We will make it clear in the letter as to why we are inviting her and give the Minister the option again to answer that question.

[141] **Kirsty Williams:** The Minister will get the message that letters from this committee have to be answered seriously or she will have the inconvenience of having to make herself available to appear before the committee.

[142] **Rhodri Morgan:** By that time, the roof might have blown off and the rain will be pouring in on the Minister when she is giving evidence.

[143] **Janet Ryder:** That is rather a doomsday scenario. If Members are content with that, we will follow that course of action.

10.27 a.m.

**Unrhyw Fater Arall
Any Other Business**

[144] **Janet Ryder:** There is no other business in this section at the moment.

**Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting**

[145] **Janet Ryder:** I remind Members that the next meeting will be on Wednesday, 24 November. Apart from the routine business, we will be taking evidence for our inquiry from Cardiff Law School. Do we have a location for next week's committee yet? I see that no location has been arranged yet, so please look at the committee papers when they are published.

**Cynnig Trefniadol
Procedural Motion**

[146] **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.

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

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.28 a.m.
The public part of the meeting ended at 10.28 a.m.*