



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

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

**Dydd Llun, 18 Mai 2009
Monday, 18 May 2009**

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

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

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

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Bethan Davies	Clerc Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Joanest Jackson	Cynghorydd Cyfreithiol Cynorthwyol Assistant Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 4 p.m.
The meeting began at 4 p.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 committee meeting. I remind Members that, in an emergency, the ushers will indicate the nearest safe exit, and that headsets are available to hear the translation and for the amplification of the proceedings. I also remind Members to switch off their mobile phones completely. We have received apologies from Alun Davies. We have had a change to the committee membership, so we are not welcoming David Melding as a substitute but as a full member of the committee. I know that you have been a member of this committee before, David, and I look forward to strong contributions from you in future. We thank Mark Isherwood for his service to the committee. He was a committee member when the committee took a lot of its evidence for the report that we are about to launch, so we thank him for his work.

4.01 p.m.

Offerynnau na fydd y Cynulliad yn cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2, ac Offerynnau sy'n Agored i gael eu Dirymu yn unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)—SLC284: Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd) (Diwygiadau Ynghylch Ffliw Pandemig) (Cymru) 2009

Instruments in Respect of which the Assembly is not Invited to Pay Special Attention under Standing Order No. 15.2, and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (the Negative Procedure)—SLC284: the National Health Service (Charges) (Amendments Relating to Pandemic Influenza) (Wales) Regulations 2009

[2] **Janet Ryder:** Joanest has been looking at SLC284, the National Health Service (Charges) (Amendments Relating to Pandemic Influenza) (Wales) Regulations 2009.

[3] **Ms Jackson:** There is nothing to add to the written report.

[4] **Janet Ryder:** Members will be aware that we have had a letter about the 21-day rule from the Counsel General and Leader of the House. These regulations are particularly in relation to the possibility of a pandemic outbreak. *[Interruption.]* A pandemic outbreak is not definite, no. Are Members content with that, or does anyone have any questions? I see that they do not.

4.02 p.m.

**Y Mesur Arfaethedig ynghylch Addysg (Cymru)
The Proposed Education (Wales) Measure**

[5] **Janet Ryder:** Members have had a paper on this. Gwyn, would you like to introduce the paper and say a few words?

[6] **Mr Griffiths:** Fel y gwelwch, yr wyf wedi paratoi nodyn byr yn tynnu eich sylw at y pwerau i wneud is-ddeddfwriaeth a geir yn y Mesur arfaethedig hwn. Maent yn bwerau eang iawn, ac ni cheir llawer mwy yn y Mesur arfaethedig na fframwaith o ran sut y bydd y broses yn gweithio. Tynnaf eich sylw yn benodol at y pwerau a geir yn adran 18, a fydd yn rhoi pwerau eang dros ben i Weinidogion Cymru aildrafftio deddfwriaeth yn dilyn y cyfnod peilot a ragwelir yn adran 17. Anarferol iawn yw gweld hynny mewn Mesur Cynulliad neu mewn Mesur San Steffan, ac felly yr wyf yn argymhell bod y pwyllgor yn craffu ar bwerau is-ddeddfwriaeth y Mesur arfaethedig hwn ac yn gwahodd y Gweinidog i'w hesbonio.

Mr Griffiths: As you can see, I have prepared a short note drawing your attention to the powers to make secondary legislation found in this proposed Measure. They are very broad powers, and there is not much more than a framework in the proposed Measure for how the process would work. I draw your attention specifically to the powers in section 18, which will give very broad powers to the Welsh Ministers to redraft legislation following the pilot period envisaged in section 17. It is very unusual to see that in an Assembly Measure or in a Bill, and so I suggest that the committee scrutinises the secondary legislation powers in this proposed Measure and invites the Minister to explain them.

[7] **David Melding:** Is this what we used to call a Henry VIII clause, namely a clause that the Minister could subsequently change the substance of?

[8] **Gwyn Griffiths:** It is more than a Henry VIII clause.

- [9] **David Melding:** So, it is even worse.
- [10] **Michael German:** It is a Henry IX clause. [*Laughter.*]
- [11] **Gwyn Griffiths:** Henry VIII clauses allow you to amend other legislation; this would entitle Ministers to amend the Measure itself in the light of the pilot period.
- [12] **David Melding:** I think that we should seek evidence on why the Government feels that this sweeping power is necessary.
- [13] **Michael German:** The words are very cleverly written here. Should we seek evidence on the extended nature of the delegated powers? I wonder whether there are any other bodies that would have an interest in this matter. We have already had a discussion about a Magistrates Association courts committee—I think that it was the children’s courts committee—that has an interest in these issues. Are there legal bodies that would have a view on the amount of delegation here, which might like to provide evidence on the specific nature of that function? We have not done it before, but I know that the Law Society is very interested in this issue as a matter of principle. Perhaps we could do with some outside views on how this might work in an operational sense when applied by lawyers.
- [14] **David Melding:** I have other concerns, which we can draw out from evidence, specifically as to why there is a difference in approach in section 1, for example, which is quite important as it denies certain grounds for appeal. Regulatory powers are sought, but no explanation or example is given as to how those powers might be used. However, in section 3, which also mentions the power to make regulations, examples are given. Similarly, section 9 has no examples of how the power to make regulations might be exercised, and yet section 10 does. It seems very haphazard.
- [15] **Janet Ryder:** We are looking at the report under item 3, Joyce, about the new Proposed Education (Wales) Measure. The conclusion of the lawyers’ report to us says that the delegated powers in the proposed Measure are very extensive, and that those in section 18 would enable the content to be totally changed by Order.
- [16] Although Legislation Committee No. 3 will seek evidence on the substance of the proposed Measure, the discussion is whether we feel it appropriate and necessary to invite the Minister to answer a number of questions relating to the points that David Melding has just raised. We could consider inviting other bodies to touch on the issues that Mike German has raised.
- [17] **Joyce Watson:** Yes, I would be quite happy to do that.
- [18] **Janet Ryder:** If all Members are content, we will invite the Minister to the first meeting after half term, which will be on 1 June.
- [19] **Michael German:** I would take advice from Gwyn on these matters, because I do not know which courts committees would have an interest in these particular areas, but, in the meantime, should we write just to the Law Society to ask for its view on this matter?
- [20] **Janet Ryder:** Gwyn, would you like to comment on that?
- [21] **Mr Griffiths:** Yes. The Law Society would certainly be interested in this sort of thing. The special educational needs tribunal for Wales is giving evidence to Legislation Committee No. 3 on Thursday. So, if the Record of that meeting is available in time for our next meeting, in a fortnight’s time, it might help to inform the discussion.

[22] **Janet Ryder:** Would Members be content to look at the Record first, before inviting bodies in?

[23] **Michael German:** We might want to invite them, but it might be of use to seek written evidence from them on the proposed Measure and the principle that should be adopted. If we decided that we wanted to take it further after hearing the Minister and seeing the written evidence, we could dovetail them all together after that. However, I would not suggest that we call them in just yet.

[24] **Janet Ryder:** We can invite the Minister to the next meeting, if possible, to enable us to question her on the powers that she will have and how she will operate the powers in the proposed Measure. We will also make sure that Members receive a copy of the Record of the Legislation Committee No. 3 meeting at which it examines this aspect of it. We will write to the appropriate bodies, asking for their views on this as a mechanism within legislation. Would that satisfy you? We can then come to a conclusion, hopefully, on 1 June, as to whether to take that any further.

[25] If Members are content with that, we will move to item 4.

4.08 p.m.

Ystyried Mesurau yn y Dyfodol The Future Consideration of Bills

[26] **Janet Ryder:** You have had another paper from Gwyn, which outlines the Bills before Parliament. A number of them are at different stages. We may want to look at some of them and their implications for Wales. Some of you may even want to look at those that are at an early stage of the legislative process, to see where we can feed into them. Gwyn, would you like to introduce the paper first?

[27] **Mr Griffiths:** Mae'r papur byr hwn yn nodi Mesurau'r Llywodraeth sydd gerbron y Senedd ar hyn o bryd, eu perthnasedd i bwerau dirprwyedig a datganoledig i Gymru, a hefyd ble maent yn y broses seneddol. Gwelwch fy mod wedi tanlinellu'r rhai y byddai'n fwyaf priodol i'r pwyllgor hwn edrych arnynt. Yn ychwanegol, gallaf ddweud wrthyfch fod aelodau o'n tîm wedi dechrau ar y gwaith o graffu ar y Mesur Cydraddoldeb, sydd newydd gael ei gyflwyno i'r Senedd, ac sy'n ddogfen faith o 205 o gymalau a 28 o Atodlenni. Fodd bynnag, mae pwerau i Weinidogion Cymru yn y maes hwn sy'n bwerau newydd, mewn maes lle na chafwyd datganoli pwerau hyd yn hyn, fel cydraddoldeb. Felly, efallai y bydd y pwyllgor am graffu ar y pwerau hynny yn benodol, gan eu bod yn cynnwys pwerau i Weinidogion mewn meysydd newydd.

Mr Griffiths: This brief paper notes the Government Bills currently before Parliament, their relevance to delegated and devolved powers to Wales, and also exactly where they have reached in the parliamentary process. You will see that I have highlighted those most appropriate for this committee's scrutiny. In addition, I can tell you that members of our team have started the work of scrutinising the Equality Bill, which has just been introduced to Parliament, and which is a very lengthy document of 205 clauses and 28 Schedules. However, there are new powers delegated to Welsh Ministers in this area, where devolved powers have not existed in the past, namely in the area of equalities. The committee may, therefore, wish to scrutinise those specifically, as they include new powers for Ministers in these areas.

4.10 p.m.

[28] **Janet Ryder:** Members, you have heard Gwyn's advice. Do you have any comments?

[29] **Michael German:** The conclusion in paragraph 7 of Gwyn's paper is that we should carry out a quick scrutiny of one of the current Bills. I cannot work out whether Gwyn is saying that he would recommend the draft flood and water management Bill for that or whether he is saying that it will come up anyway and that he would recommend that for scrutiny as well. If the latter is the case, I am happy to make a suggestion from the ones before us. The Equality Bill is the one on which most of the work has already been done, so it would seem to be the obvious candidate. However, I would not want to rule out the draft flood and water management Bill, if that is also being worked on.

[30] **Mr Griffiths:** Frankly, given where we are in the parliamentary year and in the five-year term of Parliament, I suspect that it is unlikely that the draft flood and water management Bill will complete its passage through Parliament before the next general election. It may, therefore, be reintroduced subsequently. So, it might be something that can be looked at in the longer term, if the committee wishes to consider the Equality Bill or any of the other Bills between now and the summer.

[31] **Joyce Watson:** Given what Gwyn has just said and the fact that the Equality Bill is moving forward, we need to know what our obligations are. The Equality Bill would introduce some quite significant changes. I have been looking at it, just because I am interested in it, and I think that the work that we do could inform all the other committees. We may be able to flag up some issues that other committees either do not have time to look at or might not be thinking of examining. Therefore, it is a good example of where we can add value to the process of looking at a Bill, and the recommendations to come out of that will give a wider understanding of the Bill's implications to the whole Assembly.

[32] **David Melding:** It is of particular value, if we know that another committee wants to scrutinise a certain Bill in some detail, if we can get ahead and do our part of the work, looking at the implications of delegating powers to Ministers and so on.

[33] **Janet Ryder:** Joyce and I are members of the Committee on Equality of Opportunity, and we know that it is intending to look at this Bill. However, I agree with Members about looking at it from the perspective of the legislative process. Therefore, are Members content to concentrate on the Equality Bill? I see that you are. Are there any others from that list that Members wish to look at?

[34] **Michael German:** There is the Marine and Coastal Access Bill, which I think the Sustainability Committee is looking at—although I do not know whether it just looked at it in passing or whether it is going to give it detailed consideration. I remember the Minister saying that she wanted powers to be delegated via that Bill, and it would be useful to look at what powers are and are not being delegated. I think that there was an issue about coastal paths, which was very significant for Pembrokeshire.

[35] **Janet Ryder:** So, we have the Equality Bill and the Marine and Coastal Access Bill. Are Members content with those two? I see that you are. Gwyn, what would the way forward be on that? Would you prepare a paper for the next committee meeting?

[36] **Mr Griffiths:** It would certainly not be done that quickly. They are both very substantial Bills, so it will take a bit of time to prepare papers. The best approach might be for us and the clerking team to discuss how scrutiny of those Bills can be fitted in with the other things that the committee is doing. We can then come back with a suggested timescale for the next meeting.

[37] **Janet Ryder:** I see that Members are satisfied with that.

4.14 p.m.

**Cynnig Trefniadol
Procedural Motion**

[38] **Janet Ryder:** The committee will now consider the draft report on the Apprenticeships, Skills, Children and Learning Bill.

[39] I move that

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

[40] I see that there are no objections.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 4.15 p.m.
The public part of the meeting ended at 4.15 p.m.*