



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

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

**Dydd Mawrth, 14 Hydref 2008
Tuesday, 14 October 2008**

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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

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
David Lloyd	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

Anna Daniel	Clerc Clerk
Joanest Jackson	Cynghorydd Cyfreithiol Cynorthwyol Assistant Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 8.45 a.m.
The meeting began at 8.45 a.m.

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

- [1] **David Lloyd:** Croeso i Bwyllgor Is-ddeddfwriaeth y Cynulliad. Croesawaf Aelodau, swyddogion a'r cyhoedd. **David Lloyd:** Welcome to the Assembly's Subordinate Legislation Committee. I welcome Members, officials and the public.
- [2] Os bydd argyfwng, bydd y tywyswyr yn ein harwain at yr allanfa agosaf. In the event of an emergency, the ushers will lead us to the nearest safe exit.
- [3] Gellir defnyddio'r clustffonau i gael cyfieithiad ar y pryd ac i addasu lefel y sain; gall y tywyswyr ddangos i'r cyhoedd sut i'w defnyddio. Mae cyfieithiad ar y pryd o'r Gymraeg i'r Saesneg ar gael ar sianel 1, a gellir clywed cyfraniadau yn yr iaith wreiddiol ar sianel 0. Rhaid diffodd ffonau symudol yn llwyr. The headsets can be used for simultaneous interpretation and for the amplification of sound; the ushers can explain to the public how they work. Interpretation from Welsh to English is available on channel 1, and contributions in the floor language can be heard on channel 0. Mobile phones must be switched off.
- [4] Ni chafwyd unrhyw ymddiheuriadau. We have received no apologies.

8.46 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 Order No. 15.2 and Instruments Subject to Annulment Pursuant
to a Resolution of the Assembly (Negative Procedure)

[5] **David Lloyd:** Mae Joanest wedi bod yn craffu ar SLC201 ac SLC204. SLC201 yw Rheoliadau'r Gwasanaeth Iechyd Gwladol (Gwasanaethau Offthalmig Cyffredinol) a (Ffioedd a Thaliadau Optegol) (Diwygio) (Cymru) 2008, ac SLC204 yw Rheoliadau'r Gwasanaeth Iechyd Gwladol (Treuliau Teithio a Pheidio â Chodi Tâl) (Cymru) (Diwygio) (Rhif 2) 2008.

David Lloyd: Joanest has been scrutinising SLC201 and SLC204. SLC201 is the National Health Service (General Ophthalmic Services) and (Optical Charges and Payments) (Amendment) (Wales) Regulations 2008, and SLC204 is the National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No.2) Regulations 2008.

[6] Joanest, a ydych am ychwanegu at y adroddiad sydd gerbron, gan ddechrau gydag SLC201?

Joanest, do you want to add anything to the report before us, starting with SLC201?

[7] **Ms Jackson:** On SLC201, you will note that we have reported this as the amendments are written in gender specific terms, and you will also note from the papers that were forwarded for this meeting that the Government accepts the point, but makes comments regarding the use of gender specific language. It states that the language is justified in this case as the regulations amend other regulations that were made before the original devolution settlement, which are written in gender specific terms, and it claims that writing the amendments in non-gender specific language could cast doubt on the remaining provisions of the ophthalmic services regulations.

[8] This point has been debated on numerous occasions by this committee and its predecessor committees. I cannot recall from memory, but I would be surprised if the committee had not in the past recommended that the solution to this would be to consolidate these regulations, which are now over 20 years old and have been amended numerous times—simple amendments are made every year to raise the value of the optical vouchers and so on. That is all that I wanted to add.

[9] **Alun Davies:** Nid wyf yn derbyn y cyfiawnhad hwnnw. Cawsom sgwrs go debyg yr wythnos diwethaf wrth siarad am bolisi iaith y Llywodraeth. Mae gan y Llywodraeth bolisiâu ar iaith fel hyn, felly dylem ddweud wrth y Llywodraeth y dylai gadw at y polisiâu sydd ganddi.

Alun Davies: I do not accept that justification. We had a similar discussion last week when we talked about the Government's language policy. The Government has policies on this sort of language, so we should tell the Government that it should keep to its policies.

[10] **Eleanor Burnham:** Cytunaf, yn enwedig gan fod Joanest newydd egluro bod y rheoliadau hyn wedi eu newid gymaint. Yr wyf yn credu'n gryf y dylem argymhell yr hyn a nodwyd.

Eleanor Burnham: I agree, particularly as Joanest has just explained that these regulations have been changed so much. I strongly feel that we should make that recommendation.

8.50 a.m.

[11] **Joyce Watson:** I just think that the explanation is so weak; what it is really saying is, 'This is how we have always done it; this is how we will continue to do it, although this legislation states that you do not use gender-specific language'. The Government cannot be

above the rules that it makes other people follow. In this case, it needs to follow them sooner rather than later.

[12] **Mark Isherwood:** I have a question regarding the provisions of the Interpretation Act 1978. What does that say in this respect?

[13] **Ms Jackson:** In general terms, the Interpretation Act would say that where you have 'he' it also includes 'she', and vice versa, and that the singular includes the plural, and vice versa. However, in adopting a policy of not using gender-specific language, the Assembly, effectively, sets the provisions of the Interpretation Act aside. The Government's argument is that because the Interpretation Act would apply to the remainder of the regulations, it applies only if there is no doubt placed upon its application, and the Government claims that to write in some non-gender-specific language could cast doubt on the remainder of the regulations.

[14] **Mark Isherwood:** The Government also states that it cannot be done:

[15] 'without major amendments to the text for which there was no time in the circumstances'.

[16] I would not want discriminatory language used, but it is a matter of clarity and understanding. It would be rather pointless, and would be to throw out the baby with the bathwater, if we were to destroy the meaning for the lay reader.

[17] **Ms Jackson:** One issue is that we, and the predecessor committees, have probably discussed the point in relation to these or very similar regulations on numerous occasions. In my opinion, this is only one reason for suggesting that these regulations should now be consolidated, because they have been amended on so many occasions. The principal regulations are well over 20 years old, and there have been numerous changes in policy relating to ophthalmic services and the terms and conditions of those who provide these services. This is not the only reason, although it is, in itself, a very good reason for recommending or pressing for consolidation.

[18] **Alun Davies:** Joanest appears to be recommending that we say that to the Government, and, if so, I would support that. I think that we should recommend to the Government that this needs consolidation. In doing so, I think that there is a wider point: the Government and legislatures expect other people to work in a particular way. We are talking about gender-specific language here; it is only right and proper that the Government does not use it. I simply do not accept these almost weasel words about it potentially leading to confusion. I think that it is quite clear that where the Government is making rules and regulations under a new regime, that that new regime will determine the nature of the language used. As a result of that, I simply do not accept the explanation of the Government.

[19] **David Lloyd:** Indeed. We will come to what we will do now. Eleanor?

[20] **Eleanor Burnham:** I think that we should insist that the Government does as it expects others to do. It should set a good example, because if it does not do so, it rather defeats the object.

[21] **David Lloyd:** Indeed. We will write to the Government along the lines suggested by Joanest in terms of a reporting point on the gender-specific language, and also suggest that it takes the opportunity to consolidate these regulations. If memory serves me, we have probably had this debate about these regulations every year, because the amendments just update the level of fees, and that is an annual update. We have several similar discussions throughout the year whenever fees need to be updated. The reason always given for the use of gender-specific language or for the legislation not being in Welsh is that the legislation has

come from pre-devolution days, but it is time to move on.

[22] **Alun Davies:** I agree, although I would probably be slightly stronger on the second point about rewriting regulations. When the Assembly was established in 1999, it inherited the powers of a single person—the Secretary of State for Wales. However, if regulations were written to be used by a Minister rather than by a Government, I assume that they would have been written in a very different way and we certainly would not adopt those regulations immediately if we were starting again. Therefore, I think that there should be a wider point about looking at pre-devolution regulations and saying that we need regulations that reflect the current 2006 settlement and not the pre-1999 settlement.

[23] **David Lloyd:** Fine. I think that we have taken all of that on board.

[24] **Mark Isherwood:** Would there be an explanatory note for the lay reader to understand about reading ‘he’ as ‘he and she’?

[25] **Ms Jackson:** It would be up to the drafting lawyer to decide what he or she considered to be in the best interests of the clarity of the regulations. To go back to what Alun said, the gender-specific language in this relates to the person entitled to the benefit and not to the person or body making the regulation.

[26] **Alun Davies:** Yes, I understand that.

[27] **Ms Jackson:** I just wanted to make that clear.

[28] **David Lloyd:** There should be clarity, Mark, to try to answer Mark’s specific point on the work of the drafting lawyer—the very stuff of drafting lawyers’ existence is to ensure that explanatory memoranda are clear and I would imagine that this point would be covered as a drafting point.

[29] A yw pawb yn hapus gydag SLC201? Is everyone happy with SLC201? I see that
Gwelaif eich bod, felly ysgrifennwn at y you are, so we will write to the Government
Llywodraeth ar hyd y llinellau a awgrymwyd along the lines that have already been
eisoes. suggested.

[30] Joanest, a oes gennyh unrhyw beth Joanest, do you have anything to say about
i’w adrodd ar SLC204? SLC204?

[31] **Ms Jackson:** I have a small point to make. It is a very technical drafting point, and it does not affect the clarity of the regulations or how anyone would understand the effect of these regulations, which is to increase the list of persons who are entitled to benefit under these regulations. It does not appear to me that this provision has been drafted adopting what is becoming the drafting convention or practice in the Government. Normally, when you have an expression that is drafted in terms of another instrument made in English only, and it has also been adopted in respect of transposition of European directives, it is the practice to state that the Welsh term, for example, in this instance, ‘teulu’, has the meaning given to ‘family’ in the relevant English-only provisions. The definition has sort of been translated in these regulations. This issue will not have an effect on the clarity and application of the regulations, but I raise it as a technical point. The Government acknowledges that it will not affect the use of the regulations, but does not agree with the point for the reasons set out in its report, that is:

[32] ‘The substantive definition has been translated into Welsh and it was considered that any addition or amendment to that definition should therefore also be in Welsh.’

[33] The Government also states:

[34] ‘Additionally, the amendment refers the reader to, but does not quote directly from, the Employment and Support Allowance Regulations 2008’.

[35] Those are the regulations in relation to which the definition of ‘family’ has been translated in our regulations. As I say, it is a very technical point and the effect of the regulations is not affected at all.

[36] **Eleanor Burnham:** It is a point of clarity, again. Let us be frank, some of these regulations pertaining to allowances and benefits and so on are pretty complex in themselves. We should follow the lead and ensure that everything is as clear as possible. If there is any difficulty with a lack of clarity in the Welsh language, we should ensure that it is totally clear.

[37] **Ms Jackson:** I am not so concerned about a lack of clarity in these regulations, but it possibly departs from the convention and practice that people are coming to expect when they read Assembly legislation. However, I do not have any concerns about the application or the comprehensibility for the user of the regulations.

[38] **David Lloyd:** Diolch Joanest. **David Lloyd:** Thank you, Joanest. We will report along the lines that you have suggested about the minor technical point, but we will be content with the regulations as they stand apart from that point.

8.59 a.m.

Unrhyw Fater Arall Any Other Business

[39] **David Lloyd:** A oes unrhyw fater arall? Gwelaf nad oes. **David Lloyd:** Is there any other matter? I see that there is not.

Dyddiad y Cyfarfod Nesaf Date of Next Meeting

[40] **David Lloyd:** Dyddiad y cyfarfod nesaf yw dydd Mawrth nesaf, 21 Hydref. Bydd y cyfarfod yn dechrau am 8.15 a.m. gan fod dau dyst yma o Gymdeithas y Cyfreithwyr i roi tystiolaeth fel rhan o’n hadolygiad. **David Lloyd:** The date of the next meeting is next Tuesday, 21 October. The meeting will start at 8.15 a.m., as two witnesses from the Law Society will give evidence as part of our inquiry.

[41] **Joyce Watson:** You and I will not be here, Chair.

[42] **David Lloyd:** That is right; we will be representing the Assembly on the British-Irish Inter-Parliamentary Body. We will sort out substitutes. Thank you, Joyce—I think one day ahead.

[43] Diolch am eich presenoldeb a diolch i’r cyfieithwyr. Mae’r cyfarfod ar ben. **David Lloyd:** I thank you for your attendance and I also thank the interpreters. The meeting is ended.

*Daeth y cyfarfod i ben am 9.00 a.m.
The meeting ended at 9.00 a.m.*