



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

## **Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol The Constitutional and Legislative Affairs Committee**

**Dydd Llun, 19 Medi 2011  
Monday, 19 September 2011**

### **Cynnwys Contents**

- 2      Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant  
Introduction, Apologies, Substitutions and Declarations of Interest
- 2      Offerynnau nad ydynt yn Cynnwys unrhyw Faterion i'w Codi o dan Reol Sefydlog  
Rhif 21.2 neu 21.3  
Instruments that Raise no Reporting Issues under Standing Order No. 21.2 or 21.3
- 3      Offerynnau sy'n Cynnwys Materion i'w Codi gyda'r Cynulliad o dan Reol Sefydlog  
Rhif 21.2 neu 21.3  
Instruments that Raise Issues to be Reported to the Assembly under Standing Order  
No. 21.2 or 21.3
- 10     Gohebiaeth y Pwyllgor  
Committee Correspondence

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynnddi 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**

|                |   |
|----------------|---|
| Suzy Davies    | Ceidwadwyr Cymreig (yn dirprwyo ar ran Antoinette Sandbach)<br>Welsh Conservatives (substitute for Antoinette Sandbach) |
| David Melding  | Y Dirprwy Lywydd a Chadeirydd y Pwyllgor<br>The Deputy Presiding Officer and Committee Chair                            |
| Eluned Parrott | Democratiaid Rhyddfrydol Cymru<br>Welsh Liberal Democrats   |
| Jenny Rathbone | Llafur (yn dirprwyo ar ran Julie James)<br>Labour (substitute for Julie James)  |
| Simon Thomas   | Plaid Cymru<br>The Party of Wales   |

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

|                |   |
|----------------|---|
| Steve George   | Clerc<br>Clerc                                      |
| Gwyn Griffiths | Uwch-gynghorydd Cyfreithiol<br>Senior Legal Adviser |
| Olga Lewis     | Dirprwy Glerc<br>Deputy Clerk                       |

*Dechreuodd y cyfarfod am 2.31 p.m.*  
*The meeting began at 2.31 p.m.*

**Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant**  
**Introduction, Apologies, Substitutions and Declarations of Interest**

**David Melding:** Good afternoon. I welcome everyone to this meeting of the Constitutional and Legislative Affairs Committee. As usual, we start with the housekeeping arrangements. Should we hear an alarm, please follow the instructions of the ushers who will help us to leave the building safely. Our proceedings are conducted in Welsh and English, and, when Welsh is spoken, there is a translation available on channel 1 of the headsets. Channel 0 will amplify the proceedings. Please switch off all mobile phones and other electronic equipment.

With regard to apologies and substitutions, I welcome Jenny Rathbone, who is substituting for Julie James, and Suzy Davies, who is substituting for Antoinette Sandbach. Suzy, I think that you are likely to become a permanent member of this committee, so we very much welcome your presence and look forward to working with you.

2.32 p.m.

**Offerynnau nad ydynt yn Cynnwys unrhyw Faterion i'w Codi o dan Reol**  
**Sefydlog Rhif 21.2 neu 21.3**  
**Instruments that Raise no Reporting Issues under Standing Order No. 21.2 or**  
**21.3**

**David Melding:** These are listed. Do any Members wish to raise any issues before we note these negative resolution instruments? Members do not seem to have any concerns.

**Offerynnau sy'n Cynnwys Materion i'w Codi gyda'r Cynulliad o dan Reol  
Sefydlog Rhif 21.2 neu 21.3  
Instruments that Raise Issues to be Reported to the Assembly under Standing  
Order No. 21.2 or 21.3**

**David Melding:** I will take these instruments in sequence, starting with CLA17. There is a merits report that we will wish to note, but do any Members have issues for clarification?

**Suzy Davies:** Are we satisfied that six months is a long enough delay, bearing in mind the level of detail that still seems to be required according to the merits report?

**David Melding:** I turn to Gwyn. These are amendments, are they not?

**Mr Griffiths:** They are indeed, but they are amendments to the principal regulations, which the committee reported on at the time as having been subject to a very thorough consultation. Those of you who were here at the last meeting of last term will remember that I had done a very quick technical scrutiny of these regulations and found no technical faults. However, because an issue arose with regard to the way in which the regulations were made, the reporting was delayed until this meeting so that you could consider a merits report on the basis that, having assured the Assembly previously that consultation had been adequate, the Government was now postponing the introduction of these proposals for six months because, it would appear, consultation had been inadequate in relation to cross-border issues. The Government has obviously come to the conclusion that six months is an adequate extension. We have no information on which we can judge whether that is right or wrong.

**Suzy Davies:** Right, thank you.

**David Melding:** We do invite the Assembly to pay special attention to these regulations, which is our amber warning, I suppose. It is probably the extent of what we can do in dealing with the matter at this stage. Are Members content with our report? I see that you are.

**Mr George:** Perhaps we should write to the Minister as well, to draw attention to this.

**David Melding:** Yes. We will also write to the Minister, and attention can be drawn to the verbatim record of this committee in terms of our concerns about the six-monthly reporting or consultation.

Is there any issue to report with CLA19, the Head Teachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011, Gwyn?

**Mr Griffiths:** Mae un pwynt technegol, nad yw'n gŵyn am y ffordd y deliodd y Llywodraeth â hyn. Darganfu'r Llywodraeth nad oedd y diffiniad blaenorol o gymhwysedd ar gyfer bod yn brifathro yn gweithio yn sgîl adroddiad gan Estyn, felly mae wedi newid y drefn. Yn yr achos hwn, yr ydym yn argymhell bod y pwyllgor yn tynnu sylw'r Cynulliad at yr offeryn hwn, er mwyn nodi ei fod yn rhoi adroddiad gan Estyn ar waith ac nid fel cwyn am yr hyn sy'n digwydd.

**Mr Griffiths:** There is one technical point, which is not a complaint about how the Government has dealt with this issue. The Government discovered that the previous definition of eligibility to be a headteacher was not working in light of a report by Estyn, so it has made changes. In this case, we recommend that the committee draws the Assembly's intention to this instrument, to note that it gives effect to a report from Estyn and not as a complaint about what is occurring.

**Simon Thomas:** Mae hwn yn newid eithaf

**Simon Thomas:** This is quite a substantial

sylweddol. Yn y bôn, mae'n newid yr hyfforddiant i gymhwyso fel pennaeth ysgol yng Nghymru. Fel y dywedasoch, daw hyn yn sgîl adroddiad gan Estyn a oedd yn dangos nad oedd y system yn ddigonol. Eto i gyd, mae wedi mynd drwyddo dan broses y penderfyniad negyddol. A oes gennym y gallu fel pwyllgor i fynegi pryder ynglŷn â hynny? Byddech yn meddwl y byddai angen craffu ar rywbeth sy'n dileu cwrs sydd i fod i gyflawni rhywbeth a rhoi gofynion gan Weinidog yn ei le. Nid oes cyfle wedi bod i'r Cynulliad fynegi barn ar hyn. Gadeirydd a Gwyn, a yw hyn yn fater y gallwn ddweud rhywbeth yn ei gylch? Hefyd, mae'n fater i ni fel aelodau'r pwyllgor benderfynu a ddylem ddweud rhywbeth neu beidio.

change. Essentially, it changes the training to become qualified as a headteacher in Wales. As you said, it comes on the back of a report by Estyn that showed that the system was inadequate. However, it has gone through under the negative resolution procedure. Can the committee express concern about that? You would think that something that withdraws a course that is supposed to achieve something and replaces it with requirements set by the Minister needs to be scrutinised. There has been no opportunity for the Assembly to express its opinion about this. Chair and Gwyn, is this a matter on which we can express a view? Also, as committee members, should we do that?

**David Melding:** I will move on to Jenny in a moment, but I suspect that the original regulations were dealt with in the previous Assembly.

**Mr Griffiths:** Gwnaed y rheoliadau sy'n cael eu diwygio yn 2005 ac mae'r pwerau yn deillio o Ddeddf Addysg 2002. Y Ddeddf honno a fyddai'n nodi pa broses a fyddai'n briodol ar gyfer y rheoliadau hyn. Fel yr ydym yn gwneud bob amser, yr ydym yn gwneud yn siŵr eu bod yn dilyn y broses gywir. Mater i'w ddiwygio drwy Fil yn y Cynulliad yn y man a fyddai hynny os nad ydych yn fodlon gyda'r broses. Fodd bynnag, mae wedi ei osod yn gywir yn Neddf 2002, sydd yn nodi hawl y Gweinidog i bennu pa gymwysterau neu gyrsiau sydd yn briodol.

**Mr Griffiths:** The regulations that are being amended were made in 2005 and the powers emanate from the Education Act 2002. That is the Act that would note which process would be appropriate for these regulations. As always, we ensure that they follow the appropriate process. It could, in the future, be amended through an Assembly Bill if you are not content with the process. However, it is properly set out in the 2002 Act, which notes the Minister's right to decide which qualifications or courses are appropriate.

**Jenny Rathbone:** What we are trying to do is ensure that we have high levels of leadership competency in all our schools. Where is this pilot scheme being carried out and when might it be completed? At the bottom of page 11, it says that:

'A pilot for the revised NPQH began earlier this year.'

**David Melding:** If we have that information—

**Mr Griffiths:** I am afraid that I do not have it.

**David Melding:** The policy, and its merits or otherwise, is not something that we reflect on.

**Jenny Rathbone:** Okay.

**David Melding:** It is an issue of whether there has been an appropriate opportunity for scrutiny and whether any merit or technical points arise. The negative procedure, as Gwyn has just mentioned, is a procedure that is available to the Minister. However, we are marking this as something to which the Assembly should pay special attention. The negative procedure can still be used; there is still a mechanism for Assembly Members to bring these matters to the attention of the Assembly and to bring them to a vote, potentially. It is for AMs, in

reflecting on our report, to make that judgment.

**Eluned Parrott:** My query is about the timescale, in that we are being asked to agree to something while a pilot scheme is under way. Should we not, in fact, ask for the regulations to be referred back to the Assembly when we have been informed by the results of that study?

**David Melding:** On the issue of the appropriateness of using evidence that is gained in the pilot scheme, it is up to the Government to use various mechanisms. We are looking at the legislative process, and as far as I can ascertain, and from what is said in the report that Gwyn and the secretariat have prepared, there is nothing irregular in the procedures. We are using the powers that we have through the reporting mechanism.

**Mr George:** I do not think that the regulations get rid of the requirement for qualifications to be in place; they are enabling a different route to be followed. However, when we write to the Minister, we can include our comments and ask him to comment on the timescale, how much time the pilot scheme has left and the other issues that Members have raised. In due course, there will be nothing to stop us from referring the matter to the education committee, for instance, so that it can consider it for a longer period of time than we have available.

**David Melding:** Okay. I sense that we are happy with the report.

We now move to CLA20, the Beef and Pig Carcase Classification (Wales) Regulations 2011.

**Mr Griffiths:** Mae'r rheoliadau hyn yn gwneud newidiadau i'r drefn ar gyfer categoreiddio carcassau eidion a moch. Mae dau bwynt technegol wedi'u nodi. Y cyntaf yw bod y cyfeiriad at reoliadau a ddiddymir yn anghywir, ac mae'r Llywodraeth wedi derbyn hynny. Dywedodd y byddai'n cywiro hynny wrth gyhoeddi'r rheoliadau. Edrychais arnynt y bore yma, a gwelais eu bod wedi'u cywiro.

**Mr Griffiths:** These regulations make changes to the procedure for classifying beef and pig carcasses. Two technical points have been noted. The first is that the reference to regulations that are revoked is incorrect, which the Government has acknowledged. It said that it would correct the error on publication of the regulations. I checked them this morning, and saw that they had been corrected.

Yn ail, diffinnir rhywbeth yn y fersiwn Saesneg na ddiffinnir yn y fersiwn Gymraeg. Mae'r Llywodraeth yn derbyn hynny ac yn dweud y bydd yn cywiro'r gwall cyn gynted ag y bo modd. Sefydlodd rhagflaenydd y pwyllgor hwn yr egwyddor ei fod yn disgwyl i'r Llywodraeth bennu cyfnod penodol ar gyfer cywiro—tri mis fel arfer; os oedd rheswm penodol, gallai fod hyd at chwe mis—yn hytrach na dweud 'cyn gynted ag y bo modd'. Yn yr achos hwn, nid oes gennym syniad pryd y bydd yn cael ei wneud; felly, os ydym yn ysgrifennu at y Gweinidog, dylid gofyn pryd y gallwn ddisgwyl i hynny ddigwydd.

Secondly, there is a definition in the English version that is not in the Welsh version. The Government has acknowledged that and has said that it will correct the error as soon as possible. The committee's predecessor established the principle that it expected the Government to give a clear time frame for correction—it was usually three months; it could be up to six months if there was a particular reason—rather than saying 'as soon as possible'. In this instance, we have no idea when it will be done; therefore, if we write to the Minister, we should ask when we can expect that to happen.

Hoffwn hefyd dynnu eich sylw at frawddeg olaf ymateb y Llywodraeth, sy'n ymwneud â phwyntiau cyhoeddi. Mae'n dweud:

I would also like to draw your attention to the last sentence in the Government's response, which relates to publication points. It says:

'Bydd y pwyntiau a godwyd fel rhai sy'n

'The points raised as being suitable for

addas i'w cywiro wrth i'r Rheoliadau hyn gael eu cyhoeddi yn cael eu gweithredu hefyd.'

correction upon publication will also be actioned.'

Er gwybodaeth, gan nad oedd yr un ohonoch yn aelod o'r Pwyllgor Materion Cyfansoddiadol yn ystod y trydydd Cynulliad, y drefn yw, os ydym yn dod o hyd i wallau syml iawn wrth graffu ar ddeddfwriaeth o'r math hwn—gwallau sillafu ydynt fel arfer—ein bod yn dweud wrth y Llywodraeth ac yn awgrymu y dylai gywiro'r mater wrth gyhoeddi yn hytrach na bod y mater yn dod gerbron y pwyllgor i gael ei drafod. Yn yr achos hwn, cafwyd enghraifft o gamrifo. Mae hynny'n digwydd o dro i dro oherwydd y gyfundrefn gyfrifiadurol. Mewn achos o'r fath byddem yn gofyn i'r Llywodraeth sicrhau bod y fersiwn a argreffir yn gywir, yn hytrach na dod â'r mater gerbron y pwyllgor.

As none of you were members of the Constitutional Affairs Committee in the third Assembly, I would just inform you that the procedure is that, if we come across minor errors in scrutinising legislation of this kind—they are usually spelling errors—we inform the Government and suggest that the error should be corrected upon publication rather than the matter being brought to the committee for discussion. In this instance, the wrong reference number appeared. That happens occasionally as a result of computer error. When that is the case, we would ask the Government to ensure that the printed version is correct, rather than the matter being brought before the committee.

**David Melding:** Are there any further issues? We should emphasise the issue relating to the period of three months and when the change is to be actioned in writing to the Minister.

Therefore, if we are content with the report, we shall move on to CLA31.

2.45 p.m.

**Mr Griffiths:** Hoffwn sôn am CLA31 a CLA32 ar yr un pryd, oherwydd yr un pwynt sy'n codi ynddynt. Nid oes unrhyw beth o'i le â hwy yn dechnegol, ac nid oes unrhyw beth o'i le â hwy o ran rhinwedd ychwaith, ond yr hyn sydd yma yw pŵer anghyffredin dros ben ac oherwydd hynny yr wyf yn argymhell eich bod yn tynnu sylw'r Cynulliad atynt. Mae'r rheoliadau hyn yn cael eu gwneud o dan y pŵer yn adran 108(11) Deddf Addysg 2002, sy'n nodi:

**Mr Griffiths:** I will refer to CLA31 and CLA32 at the same time, if I may, because the same point arises in both. There is nothing technically wrong with them, and there is nothing wrong with them in terms of merit either, but what we have is a very unusual power and because of that I recommend that you draw the Assembly's attention to them. These regulations are made under the power in section 108(11) of the Education Act 2002, which states:

'An order under subsection (2)(b)(iii) or (3)(c) may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order...as appear to the Welsh Ministers to be expedient; and any provisions made under such an order shall, on being published as specified in the order, have effect for the purposes of this Part as if made by the order.'

Y canlyniad, felly, yw y gall Gweinidogion ddiwygio effaith y Gorchymyn hwn heb fynd drwy'r broses deddfwriaethol arferol, ond drwy wneud trefniadau o dan y pŵer hwn yn unig. Fel y dywedais, nid oes unrhyw beth o'i le gyda'r hyn y mae'r Gweinidogion yn ei wneud; yn wir, defnyddiwyd y pŵer hwn pan oedd y Cynulliad yn gorff unedig yn y

The result of that, therefore, is that Ministers can amend the effect of this Order without going through the usual legislative process, but by making arrangements under this particular power. As I said, there is nothing wrong with what the Ministers are doing; indeed, this power was used when the Assembly was a corporate body in the first

Cynulliad cyntaf a'r ail. Wedi dweud hynny, gan ei fod yn bŵer mor anghyffredin, mae'n werth tynnu sylw'r cynulliad ato. Felly, dyna'r hyn a argymhellaf yn yr achos hwn a'r nesaf.

and second Assemblies. Having said that, given that it is such an unusual power, it is worth drawing the Assembly's attention to it. So, that is what I recommend in this case and the next.

**David Melding:** Is this a mini Henry VIII clause? Is that not what they used to call these kinds of things that did not need a specific—

**Mr Griffiths:** Yes, but it is more than that, because this can be done without legislation.

**David Melding:** Okay. That has got us going. I will call Simon first, then Jenny.

**Simon Thomas:** Derbyniaf y pwynt a'r ffaith mai tynnu sylw'r Cynulliad at hyn yw'r unig beth y gallwn ei wneud ar hyn o bryd. Fodd bynnag, mae cwestiwn yn codi i mi. Wrth inni symud ymlaen yn awr fel Senedd i ddeddfu, mae'r cysyniad o greu llyfr statud wedi datblygu fel bod pawb yng Nghymru yn gwybod beth yw'r gyfraith, fel eu bod yn gwybod, os ydynt yn torri'r gyfraith—ac fe fyddwn yn dod at fagiau plastig yn y man—bod deddfwriaeth yn bodoli ac felly nad oes esgus ganddynt. Fodd bynnag, pe byddai Gweinidog yn penderfynu amrywio defnydd y grym hwn, sut fyddai hynny'n gweithio? Ni fyddai'n rhaid iddo ef neu hi ddod i'r Cynulliad i ni graffu ar hynny, ond sut fyddai hynny'n cael ei gofnodi? A fyddai ef neu hi'n gorfod gwneud rhyw fath o offeryn arall, neu gallant, yn syml, wneud y newidiadau?

**Simon Thomas:** I accept the point and the fact that all we can do at this point is to draw it to the Assembly's attention. However, a question arises for me. As we now progress as a legislative Assembly, the concept of creating a statute book has developed so that everyone in Wales knows what the law is, so that they know, if they break the law—and we will come to plastic bags later on—that there is legislation and therefore they will have no excuse. However, if a Minister decided to vary the use of this power, how would that work? He or she would not have to come to the Assembly for scrutiny, but how would it be recorded? Would he or she have to create another instrument or could they simply make the changes?

**Mr Griffiths:** Nid oes unrhyw beth yn dweud bod offeryn yn angenrheidiol. Yr hyn y gallem ei wneud, efallai, yn y llythyr arferol at y Gweinidog yn tynnu ei sylw at hyn, fyddai gofyn iddi wneud adroddiad neu ddatganiad i'r Cynulliad os yw'r pŵer hwn yn cael ei ddefnyddio i ddiwygio darpariaethau'r offeryn hwn, neu ysgrifennu at y pwyllgor, wrth gwrs.

**Mr Griffiths:** There is nothing to say that an instrument is required. What we could do, perhaps, in our usual letter to the Minister, drawing her attention to this point, would be to ask her to provide a report or a statement to the Assembly if this power were to be used to amend the provisions of this instrument, or to write to the committee, of course.

**Simon Thomas:** Mae'n fy nharo yn beth da i'r pwyllgor hwn gynnig naill ai i'r Llywydd neu i'r Dirprwy Lywydd, naill ai drwy Reolau Sefydlog neu ryw broses arall, bod rhyw fath o drefn yn cael ei sefydlu fel ei fod yn cael ei adrodd i'r Cynulliad pan fod y grym hwn yn cael ei ddefnyddio. Fe welwch pam ei fod yno—ac mae yn y Ddeddf wreiddiol—oherwydd mae'n galluogi'r Gweinidog i gymryd y camau hyn, ond byddai'n annoeth, o safbwynt datblygiad democratiaeth, i golli golwg ar yr hyn mae

**Simon Thomas:** It strikes me that it would be a good thing for this committee to suggest to the Presiding Officer or the Deputy Presiding Officer, either through Standing Orders or through some other process, that some sort of system could be put in place so that it is reported to the Assembly when this power is used. You can see why it is there—and it is in the original Act—because it enables Ministers to take these steps, but it would be unwise, with regard to the development of democracy, to lose sight of

Gweinidogion yn ei wneud mewn gwahanol ddulliau. Mae hyn yn rhoi hawl i Weinidog anfon llythyr at bobl a dweud, 'Fel hyn yr wyf eisiau ei wneud o hyn ymlaen'. Dylai hynny gael ei adlewyrchu naill ai yn y Rheolau Sefydlog, neu o leiaf mewn cyd-ddealltwriaeth rhwng y Senedd a'r Llywodraeth, fel bod rhyw fath o broses o adrodd yn ôl ar y defnydd o'r pŵer hwn.

what Ministers are doing utilising various means. This gives the power to a Minister just to write a letter to people to say, 'This is how I want to do things from now on'. That should either be reflected in our Standing Orders, or at least in some sort of concordat between the Senedd and the Government, so that there is some sort of reporting process on the use of this power.

**David Melding:** We might be able to touch on the latter point in our inquiry, which will commence shortly. With regard to immediate action, I agree with Gwyn's suggestion about inviting the Minister to agree to inform us if these provisions are ever invoked, so that we would then at least have on record that that responsibility has been undertaken. We could possibly then write to the First Minister to ask for this to be accepted as a precedent with regard to the application of a process to amend legislation should it occur in other portfolio areas.

**Jenny Rathbone:** My question refers to CLA32. On page 70, there is an explanation that 'tymor yr haf' means the summer term, which is the final term in a school year, but I cannot see anywhere in the proposed legislation that states that the assessment must be carried out in the summer term. What is to prevent the teacher doing it in the autumn term or the spring term, which would quite substantially change the assessment? It says that it has to be done no later than 20 working days before the end of the summer term, but I could not see anywhere where it specified that this was something that should be carried out in the summer term.

**Mr Griffiths:** I think that it is implicit because it says 'before the end of', which means during the summer term.

**Jenny Rathbone:** Why does it not say that then?

**Mr Griffiths:** You are quite right; it does not say specifically that it must be done 'during the summer term'.

**Jenny Rathbone:** Is there a reason for that? It is normal for these tests to be carried out. Obviously, children are of different chronological ages, but it is normal for these tests to be carried out roughly at the end of that academic year so that you are actually capturing what the child has learned up to and including that year.

**Mr Griffiths:** I am quickly scanning through the relevant section that gives the power to make these regulations and it does not specify that it must be within that term, so, yes, you are right.

**Jenny Rathbone:** I would have thought that that was desirable. I cannot imagine why teachers would want to do it earlier because it would then look as if the children had not made as much progress as their peers had made by the time that they were assessed in the summer term. I would have thought that that was the intention, but it does not actually say it.

**David Melding:** The letter that will be drafted from this committee, which I will sign, could raise the fact that this possible ambiguity was discussed and we could see whether the Minister responds. Again, it is very nearly a policy issue rather than whether, technically, the law is in good order, but it is far from being a secondary point because it does have implications, as you say, for the timing of assessments.

**Eluned Parrott:** I just wanted to add that clarification would be helpful although there might



be practical and management reasons why a school would choose to manage its assessments in different ways, for example, to fit in with other kinds of assessment routines in the school year, which are all concentrated in the summer term. So, there may be practical and management reasons why schools would value that flexibility, but it would be nice to know from the Minister whether that flexibility was intentional or accidental.

**David Melding:** Okay. Otherwise, are we happy with those two items and the report? I see that you are. We will now move on to CLA36, the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011.

**Mr Griffiths:** Mae'r pwynt yn yr achos hwn yn amlwg i unrhyw un sy'n edrych ar y ddeddfwriaeth, sef ei bod wedi'i gwneud yn Saesneg yn unig. Y rheswm am hynny yw bod y Gorchymyn hwn wedi'i wneud ar y cyd rhwng Gweinidogion Cymru a'r Ysgrifennydd Gwladol. Mae'r esboniad wedi'i gynnwys yn ymateb y Llywodraeth, sef ei bod yn gwneud diwygiadau i Ddeddf sydd yn gymwys i Gymru a Lloegr. Mae hynny'n glir, ond nid yw hynny'n ei gwneud hi'n amhosibl i'r Llywodraeth wneud y Gorchymyn ar wahân, ac felly byddai fersiwn Cymru yn gallu cael ei gwneud yn ddwyieithog.

Wedi dweud hynny, wrth gwrs, diben y Gorchymyn hwn yw diwygio Atodlenni i'r Ddeddf, ac mae'r Ddeddf yn Saesneg a Lladin yn unig. Felly, gan nad oes unrhyw Gymraeg yn y Ddeddf, ychydig iawn o Gymraeg a fyddai yn yr offeryn hwn, heblaw'r rhagymadrodd ynglŷn â'r pwerau. Fodd bynnag, mae'n ddyletswydd arnom i nodi nad yw wedi'i wneud yn ddwyieithog, a dyna mae'r adroddiad drafft hwn yn ei wneud.

**David Melding:** Are we content with that? I see that we are. Finally under this item, we turn to CLA37, the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011.

**Mr Griffiths:** Unwaith eto, nid oes pwyntiau technegol yn codi, ond mae pwyntiau i'w hadrodd o ran craffu ar rinweddau. Nid oes dim yn arbennig o'i le yn y fan hon ac mae'r newidiadau yn ymateb i rai o'r pryderon a fynegwyd yn gynharach. Yr unig broblem yw bod y rheoliadau hyn yn cael eu gwneud mor agos i'r adeg pan fo'r prif reoliadau yn dod i rym. Fel y gwelwch, ymateb y Llywodraeth i hynny yw ei bod wedi gwneud yn siŵr fod y bobl a fydd yn cael eu heffeithio gan y newidiadau yn gwybod hynny cyn i'r rheoliadau hyn ddod i rym.

**Mr Griffiths:** The point in this case is clear to anyone who looks at the legislation, namely that it has been made in English only. The reason for that is that this Order was made jointly between Welsh Ministers and the Secretary of State. The explanation has been included in the Government's response, which is that it is making amendments to an Act that applies to England and Wales. That is clear, but that does not make it impossible for the Government to make the Order separately, and therefore the Welsh version could be made bilingually.

Having said that, of course, the purpose of this Order is to amend Schedules to the Act and the Act is in English and Latin only. Therefore, as there is no Welsh in the Act, there would be very little Welsh in the Order, apart from in the preamble relating to powers. However, it is our duty to report that it has not been made bilingually, and that is what this draft report does.

**Mr Griffiths:** Once again, there are no technical points arising, but there are merit scrutiny points to report. There is nothing particularly amiss here and the changes respond to some of the concerns expressed earlier. The only problem is that these regulations are being made so close to the time when the main regulations come into force. As you will see, the Government's response to that is that it has ensured that those who will be affected by these changes have been made aware of that before these regulations come into force.

**David Melding:** Are there any comments on that?

**Eluned Parrott:** There is a massive amount of work to do to make this legislation work in practice. I am sure that we all have constituents in retail businesses who are writing to us in some state of panic about how this is being implemented and how it will work when it comes into force. We have two weeks to bottom it out, and it is not enough.

**David Melding:** I note what you say, but we are here to pass judgment on the technical issues. This has been a long-running debate and the Government has its line that it will follow through. However, in terms of our report and the invitation to pay special attention, are we content? I see that we are.

### **Gohebiaeth y Pwyllgor Committee Correspondence**

**David Melding:** There has been quite a lot of correspondence over the summer period, as you would imagine.

The first item of correspondence is on the Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011. I do not think that any further action is proposed regarding this exchange of correspondence. Are Members content? I see that you are.

The next item of correspondence is on the Waste (Miscellaneous Provisions) (Wales) Regulations 2011. The First Minister said that where discretion is given to Welsh Ministers as to the actual procedure to be applied, he agrees that the reasons for whatever procedure being selected should be given. I think that that is very helpful and it is something that we urge. I cannot remember which Minister stated to us why he was proceeding in a certain way, but we wanted to commend that as good practice and it seems to have been followed up.

The next item of correspondence is on the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. Again, this is an issue that touches on something that Gwyn has already raised with us.

**Mr Griffiths:** Mae un pwynt pwysig i'w nodi yn y fan hon, sef bod llythyr y Gweinidog yn Gymraeg yn anghywir. Nodwyd yn yr adroddiad fy mod am i'r Cynulliad dalu sylw i'r peth oherwydd ei fod o bwys cyfreithiol neu wleidyddol, neu'n codi pwyntiau sy'n debyg o fod o ddiddordeb i'r Cynulliad. Mae'r llythyr yn Saesneg yn gywir o ran esbonio'r rhesymeg honno, ond mae'r fersiwn Gymraeg yn dweud:

'Rwy'n nodi bod y Pwyllgor wedi adrodd o dan Reol Sefydlog 21.3 ar y sail nad yw o bwys gwleidyddol na chyfreithiol nac yn arwain at faterion o bolisi cyhoeddus...'

Felly, mae'r hyn sydd yn y llythyr yn Gymraeg yn gwbl gwrthdweud yr hyn sydd yn y llythyr yn Saesneg. Felly, dylai'r pwyllgor nodi mai'r ateb yn Saesneg sy'n

**Mr Griffiths:** There is one important point to note here, namely that the Minister's letter in Welsh is incorrect. It was noted in the report that I wished for the Assembly to pay attention to it because it is of political or legal importance or gives rise to issues likely to be of interest to the Assembly. The letter in English is correct in explaining that rationale, but the Welsh version says:

I note that the committee has reported under Standing Order 21.3 on the grounds that it is not of political or legal importance or does not give rise to issues of public policy...

So, the letter in Welsh completely contradicts what is said in the letter in English. Therefore, the committee should note that the response in English is correct.

gywir.

**Simon Thomas:** Mae'n eironig achos un o'r pethau a godwyd gennym oedd y ffaith nad oedd y rheoliadau yn ddwyieithog. Fodd bynnag, yn y copi Saesneg o'r ateb a gawsom gan John Griffiths mae'n dweud:

**Simon Thomas:** It is ironic, because one of the things that we raised was that the regulations were not bilingual. However, in the English copy of the response that we received from John Griffiths it says:

'I am not aware of any instances in which general Statutory Instruments which apply to both England and Wales have been made bilingually.'

3.00 p.m.

Yn gyntaf, a yw hyn yn wir?

First, is this true?

**Mr Griffiths:** Yr ydym wedi chwilio amdanynt, ond nid ydym wedi dod o hyd i unrhyw un sy'n gwbl ddwyieithog, er bod llawer o offerynnau yn delio â ffurflenni ac yn y blaen.

**Mr Griffiths:** We have searched for them, but we have not found one that is completely bilingual, even though many instruments deal with forms and so on.

**Simon Thomas:** Dyna'r cwestiwn yr oeddwn am ei godi. Mae offerynnau sy'n cynnwys y math o ffurflen sydd i'w defnyddio, ac mae'r ffurflenni hyn ar gael yn Gymraeg ac yn Saesneg, onid ydynt?

**Simon Thomas:** That is the question that I was going to raise. There are instruments that contain the type of form that is to be used, and these forms are available in Welsh and English, are they not?

**Mr Griffiths:** Mae'r ffurflenni ar gael yn Gymraeg, ond nid, er enghraifft, y rhagymadrodd na'r nodyn esboniadol.

**Mr Griffiths:** The forms are available in Welsh, but not, for example, the preamble or the explanatory note.

**Simon Thomas:** Mae hi'n drueni mawr nad yw'r Llywodraeth yn awyddus i wneud yr offerynnau yn ddwyieithog. Un peth yw dweud nad ydynt ar gael hyd yn hyn, ond peth arall yw dweud bod hynny'n rheswm dros beidio â'u cynhyrchu yn y dyfodol. Credaf y dylai'r pwyllgor barhau i roi pwysau er mwyn sicrhau bod deddfwriaeth yng Nghymru yn ddwyieithog yn naturiol: y rhai yr ydym yn eu pasio a'r rhai sy'n cael eu gwneud gan Weinidogion.

**Simon Thomas:** It is a great pity that the Government is not keen to make the instruments bilingually. It is one thing to say that they are not available to date, but it is quite another to say that that is a reason for not producing them in the future. I think that the committee should continue to apply pressure to ensure that legislation in Wales is bilingual as a matter of course: those that we pass and those that are made by Ministers.

**David Melding:** I agree. We should always make a point of reporting when that is not the case. We should keep plugging away and wryly commenting when it responds in a Welsh version and it is incorrect, which implies a certain lack of rigour on the Welsh drafting side in general, potentially. If it cannot get the correspondence to us right, it speaks to a lack of capacity, perhaps, to be able to reflect fully the bilingual nature of our work. It is very important, so we will keep making these observations.

Moving on to item 4.4, you may recall that there was an issue here with a heavy burden falling on local authorities. Ian Medlicott wrote to us on behalf of the Association of Council Secretaries and Solicitors. He now wants to make a similar point about education regulations, which came thick and fast just before the beginning of term. Once again, he makes the point that there is often very little notice for those who are responsible for implementing the various

changes in policy contained in these regulations. I suggest that we note the further correspondence from Mr Medlicott. We have already reflected his concerns, but we may need to do so again in the future. It does not strictly relate directly to our work, I suppose, but we should occasionally observe the burden that this places on those responsible for implementation under these regulations, or in any changes to the law, when these things are taken forward with such haste that there is very little time for them to read and absorb them and then to train and instruct those who need to ensure that public policy is being implemented as is proper under law.

**Mr Griffiths:** Perhaps I could remind the committee that Standing Orders state that the committee may consider and report on

‘any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers’.

So, this is a matter that we can keep an eye on and look into further if it happens every summer.

**David Melding:** Okay. That is on the record and we will continue to keep an eye on that and ensure that Mr Medlicott is kept informed of our proceedings and discussions.

Moving on to item 4.5, under this item, we just need to note the Minister’s reply.

Moving on to item 4.6, it is a slightly different matter. This is correspondence from the Presiding Officer relating to the restructuring of the committee system, which is very different from that of the third Assembly. There will be a review of the new system and the way in which it operates after 12 months. Our committee will be part of that review. It is interesting to note that, as there is no longer a European committee, there is an issue about how European matters will be scrutinised effectively. We have been reflecting on this point with regard to how legislation is examined, and the European dimension of that process. So, I suggest that we note that, and we will continue with the work with regard to how we will see proper scrutiny of those directives from the EU that we are likely to identify as requiring attention here in the Assembly. I think that that is very much part of what the Presiding Officer means in terms of the scrutiny of European matters. Do Members have any further views on that? It is something that I am quite concerned about and want to take forward as Chair with you, obviously, and discuss with you as appropriate.

**Jenny Rathbone:** Clearly, needing to be up to date on what European legislation is saying and how it affects Wales is extremely important. Might it be appropriate for this committee to doing that? We cannot amend European legislation, but it might inform our need to introduce Welsh legislation to reflect it.

**David Melding:** I think the issue is that in the third Assembly almost every significant directive or draft directive would have gone to the European committee and either have been dealt with there or posted to another committee if it was of such significance that it needed that attention. Obviously, that did not mean that each and every directive was examined or that the draft was examined, but there was a process and people had to make a judgment. So, if the committee thought it was an important area to look at, then it would make a decision and do the work or would decide not to do the work. However, we at least knew that someone had made the judgment as to whether it should be scrutinised. The issue now, as we do not have a European committee, is who makes this judgment that something seems, on the face of it, to need scrutiny and who scrutinises it. We have already identified that this is an issue that needs further examination and that it might be appropriate for this committee to make a judgment on such issues in terms of draft directives and any other significant European legislation and either refer it to a committee for scrutiny or for its decision not to scrutinise it.

I do not think that we can take on the workload, because we would then turn into the European committee and that would overwhelm us. However, there needs to be some sort of structure and this is clearly a concern for the Presiding Officer. So there is an open door for us to establish a system that has the necessary rigour so that we can ensure that these matters do not fall between the cracks.

**Mr Griffiths:** I just wanted to add something on the specific point that Jenny raised. In terms of implementing European legislation, as opposed to influencing it before it is made, part of the work that we do in checking the statutory instruments is to ensure that they comply with the directives that they purport to be implementing and we bring it to the attention of the committee if something either does not implement correctly or, indeed, misses the deadline, which happens from time to time.

**Simon Thomas:** Mae drafftiau o ryw elfen o ddeddfwriaeth Ewrop yn cael eu anfon at seneddau yn awr. Nid ydynt o reidrwydd yn cyrraedd y Cynulliad, ond maent yn sicr yn cyrraedd San Steffan. Mae San Steffan i fod i'w rhannu gyda ni er mwyn i ni gael cip arnynt o fewn 40 diwrnod—credaf mai dyna'r cyfnod. Nid oes gennyf syniad a yw hynny'n mynd i weithio neu beidio, ond mae'n amlwg fod elfen ychwanegol i'r gwaith a oedd yn cael ei wneud yn yr hen Gynulliad, sef nid dim ond edrych ar offerynnau sy'n gweithredu deddfwriaeth Ewropeaidd, ond edrych ar y cynigion ar gyfer deddfwriaeth hefyd. Fel y dywedoch, Gadeirydd, nid oes modd i ni wneud hynny, ond, o bosibl, wrth i ni fel pwyllgor edrych ar sut mae'r broses hon yn gweithio—mae pob un ohonom ar bwyllgorau eraill hefyd—os gwelwn mewn rhyw chwe mis nad yw'r broses yn gweithio tu mewn i'r Cynulliad, efallai y byddai modd inni gael un sesiwn i edrych ar hyn ac efallai i gynhyrchu adroddiad bach i ddweud ble mae pethau'n mynd o'u lle, os ydynt yn mynd o'u lle. Wrth gwrs, y syniad yw bod y ddeddfwriaeth hon yn dod gerbron y pwyllgor pwnc perthnasol, ond mae'n bosibl bod arbenigrwydd Ewropeaidd wedi glastwreiddio cymaint nad yw pobl yn sylwi ar bwysigrwydd rhai o'r cynigion. Cawn weld.

**Simon Thomas:** Drafts of an element of European legislation are now sent to parliaments. They do not necessarily reach the Assembly, but they certainly reach Westminster. Westminster is supposed to share them with us so that we can take a look at them within 40 days—I think that that is the period. I have no idea whether that will work or not, but it is clear that there is an extra element to the work that was done in the previous Assembly, namely to look at not only instruments that implement European legislation, but the proposals for legislation. As you said, Chair, we do not have the means to do that, but, perhaps, as we as a committee look at how this process works—all of us are on other committees as well—if we see in six months' time that the process is not working effectively within the Assembly, then perhaps we could have one session to look at this and perhaps produce a short report to say where things are going wrong, if they are going wrong. Of course, the idea is that this legislation will come before the relevant subject committee, but it is possible that European expertise has been spread so thinly that people do not realise the importance of some of the proposals coming forward. We shall see.

**David Melding:** I completely agree. The committee may want to examine this issue further.

The final piece of correspondence, item 4.7, is a letter from the chair of the Commission on a Bill of Rights, Sir Leigh Lewis. You will note that the commission would like to meet with us. I am keen to hear your views. The slot is 31 October or 1 November, because the commission will be meeting with the Government. Our options are to have the commission before us for a discussion, or to meet informally.

**Mr George:** To give a bit more information, the local government committee—I will call it

that, as I cannot remember its full title—has already arranged some sort of meeting with Sir Leigh and his team, which I understand will be held informally, so that they can have a fairly open and non-public discussion about the commission's work. It seems to me that that is the most sensible way to proceed. If the committee thereafter feels that it wants to present ideas formally, then that could be done in writing, or we could arrange a session later on.

**David Melding:** Has a date been fixed for that?

**Mr George:** Yes, 1 November is the date for that, but it may be that 31 October would be more convenient for us.

**David Melding:** Will all committee members receive an invitation?

**Mr George:** Yes.

**David Melding:** I will certainly prioritise it and attend, and I would recommend that other members of the committee do so as well. It is a significant issue, obviously, given its implications for compliance with regard to Assembly legislation, and is very different from the current approach to incorporating the European convention on human rights into UK law. Then, reflecting on that session, we might want to submit formal evidence, which I suggest that we do after a committee discussion, should we feel that there is a need for it. Are members of the committee happy with that? I see that you are. Excellent.

That concludes the agenda. Our next meeting will be on 3 October, so we are not meeting next week—we have a week off to get ready for the full labours that are ahead of us in terms of our committee work. We have quite a heavy agenda for the term, but I am sure that it will be an exciting one as well, given the nature of the work and the inquiry that we are taking on. The time and place of that meeting on 3 October are to be confirmed. Thank you very much for your attendance this afternoon, and I thank the officials for that also. That concludes our proceedings.

*Daeth y cyfarfod i ben am 3.13 p.m.  
The meeting ended at 3.13 p.m.*