



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

**Y Pwyllgor Offerynnau Statudol
The Committee on Statutory Instruments**

**Dydd Mercher, 22 Mehefin 2011
Wednesday, 22 June 2011**

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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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Julie James	Llafur Labour
David Melding	Y Dirprwy Lywydd, Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) The Deputy Presiding Officer, Welsh Conservatives (Committee Chair)
Simon Thomas	Plaid Cymru The Party of Wales

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

Stephen Davies	Cynghorydd Cyfreithiol Legal Adviser
Stephen George	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk
Bethan Roberts	Cynghorydd Cyfreithiol Legal Adviser

Dechreuodd y cyfarfod am 8.59 a.m.
The meeting began at 8.59 a.m.

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

[1] **The Deputy Presiding Officer:** Good morning and welcome to the Committee on Statutory Instruments. This is our first meeting, and probably our last meeting in this guise. I welcome all Members, officials and members of the public who may be watching proceedings. In an emergency, please follow the instructions of the ushers. We do not expect a standard fire drill, so follow the ushers' instructions if the bell sounds. Headsets are available for translation and amplification. On channel 1 you get translation, and on channel 0 you will get amplification. I am sure that you have switched off your mobile phones and other electronic devices. There are no apologies, so we can move on to our first substantive item.

8.59 a.m.

Cylch Gwaith y Pwllgor
Remit of the Committee

[2] **The Deputy Presiding Officer:** We have a paper before us, which I invite you to note. As I hinted earlier, the remit of this committee is likely to change next week. I think that the motion to widen our remit has been tabled for deliberation in the Assembly next week. I therefore suggest that we ask for another paper on the remit of the committee as it will probably be constituted next week. However, if Members want to flag anything up now, please do so.

[3] **Peter Black:** On this paper?

[4] **The Deputy Presiding Officer:** Yes, or hint at or clarify anything about the likely future remit. However, we will have a chance to return to this, so it would be best to avoid an extended discussion at the moment. It is not for me as Chair to deflect anyone, but I do not think that Members need to discuss this widely.

9.00 a.m.

**Offerynnau Statudol a Osodwyd Cyn neu yn Ystod Diddymiad y Trydydd
Cynulliad
Statutory Instruments Laid Before or During the Dissolution of the Third
Assembly**

[5] **The Deputy Presiding Officer:** This item deals with statutory instruments laid during what is obviously a tricky time, when Government needs to go on but the normal procedures cannot be followed. I think that we have all had a chance to look at the paper. I have instructed the clerk to supply a hard copy of a letter that we have just received from Mr Medlicott, who speaks for the legal advisers to local authorities and the like, about the effect on their workload of the statutory instruments that are passed late in an Assembly and that then get implemented very quickly or need to be implemented fairly soon. I suggest that we note that and perhaps bring it to the attention of the Counsel General. I do not know whether you think that that would be appropriate, Gwyn. It is an issue more for the end of this Assembly in five years' time, but I think that a similar problem can occur as we approach the recess, when there can be a bit of a rush. So, it is quite an important point.

[6] **Julie James:** I was a member of that organisation for some considerable time, and it really does cause a lot of problems. It is not just about the workload of the legal advisers, but the effect on the whole of the local authority during what can also be a recess for it. It affects the way in which public authorities work in Wales; sometimes it is quite a severe effect, so I would like it to be drawn to the attention of whoever is appropriate—I am not quite sure who that is either.

[7] **The Deputy Presiding Officer:** Yes, it is important that we do that.

[8] **Simon Thomas:** I would just like to echo that. I understand that there were two pieces of legislation on social care payments that were significant and which would have merited some sort of attention by the wider Assembly. Although this will perhaps not directly arise for several years, I think that there is a tendency to forget, so I think that we should show as strongly as possible that Government should have thought this through a little better and be prepared to bring forward legislation a little earlier to allow time for proper consideration by the Assembly.

[9] **The Deputy Presiding Officer:** Excellent. We will do that, and we will also write to Mr Medlicott to say that we have acted on his letter and to thank him for bringing this important matter to our attention.

9.03 a.m.

**Offerynnau na fyddai wedi Codi Materion i fod yn Destun Adroddiad o dan
Reolau Sefydlog Rhif 21.2 neu 21.3
Instruments that would not have Raised Issues to be Reported under Standing
Order Nos. 21.2 or 21.3**

[10] **The Deputy Presiding Officer:** Are we content to note these? I see that Members do not wish to raise anything.

9.03 a.m.

**Offerynnau a fyddai wedi Codi Materion i fod yn Destun Adroddiad o dan
Reolau Sefydlog Rhif 21.2 neu 21.3
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[11] **The Deputy Presiding Officer:** I think that our legal adviser wants to make the point on CA581 that criteria were given for why the Government used the negative procedure. Gwyn or Steve, does one of you wish to comment?

[12] **Mr Davies:** These regulations transpose for Wales a limited part of an EC directive known as the revised waste framework directive. There are no technical points to report on, but there were a few merits issues. The first was that these regulations were not implemented by the European deadline, which was 10 December 2010. They were not even laid until late February 2011. Therefore, we are at risk of infraction proceedings. However, they were supplementary to the Waste (England and Wales) Regulations 2011, which transposed the major elements of the revised waste framework directive. The reasons given for missing the deadline, and consequently also breaching the 21-day rule in the Assembly in having them laid and come into force the very next day, was that they were waiting for the regulations to be drafted in Whitehall first. Those regulations were late, therefore there was a knock-on effect on the regulations made here. The regulations are minor in that they only make consequential amendments to Welsh SIs and they do not transpose the major parts of the directive, but it would still leave the Assembly open to infraction proceedings and breaches the 21-day rule.

[13] The other merits point that was picked out was that, under the powers used to make this regulation, the Welsh Ministers have the discretion to make them by affirmative or negative resolution. In this instance, it was by negative resolution. The reason given was that these regulations only made consequential amendments and did not make substantive changes to the law. However, it was interesting that, on this occasion, they did give an explanation and some criteria for why they picked that particular process. That does not usually happen, and I thought it would be quite useful to write to the Minister to see whether we could have, on every occasion, an explanation as to why they have picked the affirmative or negative procedure. It would be useful if that could be done, but that may be wishful thinking.

[14] **The Deputy Presiding Officer:** Gwyn, did you want to come in on this?

[15] **Mr Griffiths:** Gwnaf bwynt cyffredinol. Mae'r rheoliadau hyn, a rhai eraill sydd ger eich bron y bore yma, yn deillio o ddeddfwriaeth Cymru a Lloegr. Mae amryw o bwyntiau'n codi y bydd y pwyllgor efallai am sylwi arnynt fel mae pethau'n

Mr Griffiths: I will make a general point. These regulations, and others before you this morning, emanate from England and Wales legislation. A number of points arise that the committee may want to take note of as matters progress. We have noted a pattern

mynd ymlaen. Yr ydym wedi nodi patrwm dros y blynyddoedd bod mwy o fân wallau mewn is-ddeddfwriaeth sydd wedi'i drafftio yn Llundain ac wedyn wedi'i haddasu. Mae cwestiynau'n codi ynglŷn ag amseru is-ddeddfwriaeth, oherwydd, o ran materion Ewropeaidd fel hyn, gwelwch yn eithaf cyson eu bod yn mynd i'r terfyn amser o ran gwneud yr is-ddeddfwriaeth yn San Steffan. Os ydym wedyn yn addasu a chyfieithu'r is-ddeddfwriaeth yng Nghymru, weithiau yr ydym yn cael mwy fyth o broblemau amseru. Mae hynny'n fater arall sydd wedi bod o ddi-ddordeb i'r pwyllgor dros y blynyddoedd. Weithiau, mae hynny'n golygu nad yw is-ddeddfwriaeth yn cael ei chyfieithu, ac, wrth gwrs, mae hynny'n fater arall y bydd y pwyllgor am edrych arno.

over the years of more minor errors in subordinate legislation that has been drafted in London and then adapted. Questions arise in relation to the timing of subordinate legislation, because, with regard to European issues such as this, you will see quite regularly that they go to the deadline for making the subordinate legislation in Westminster. If we then adapt and translate the legislation in Wales, sometimes we have even more problems in relation to timings. That is another issue that has been of interest to the committee over the years. Sometimes, that means that subordinate legislation is not translated, and, of course, that is another issue that the committee will want to consider.

[16] **Peter Black:** This is a fairly academic question, but you mentioned infraction proceedings against the Assembly. Should that not be against the Welsh Government? We are not a corporate body anymore.

[17] **Mr Davies:** The infraction proceedings would be against the UK Government, but, as a devolved part of the UK Government, the Assembly would be open to pay a percentage of whatever fine there was, if it came to that.

[18] **Peter Black:** The Welsh Government would pay the percentage, you mean?

[19] **Mr Davies:** Yes, sorry. It would be the Welsh Government, not the Assembly.

[20] **Simon Thomas:** Byddai hynny o'r bloc grant Cymreig, wrth gwrs. Mae'n siŵr gennyf fod gan Ewrop bysgod mwy i'w ffrio ar hyn o bryd, yn enwedig yng ngwlad Groeg ac yn y blaen. Fodd bynnag, mae dau beth sydd wedi eu nodi y byddai'n werth i'r pwyllgor eu hystyried. Yn gyntaf, o ran fy mhrofiad i ar ochr arall y llen fel petai, mae meddwl y tu ôl i ddewis y weithdrefn gadarnhaol neu negyddol, a byddai'n bwysig ceisio cael mwy o fanylion oddi wrth Weinidogion ynglŷn â pham maent wedi dewis y naill neu'r llall. Mae meddwl y tu ôl i'r peth gan amlaf ac felly byddai gwerth i gael esboniad ar hynny er mwyn sicrhau atebolrwydd a bod mor agored ag sy'n bosibl.

Simon Thomas: That would be from the Welsh block grant, of course. I am sure that Europe has bigger fish to fry at the moment, particularly in Greece and so on. However, two things have been noted that it would be worth the committee considering. First, from my experience on the other side of the bridge, as it were, there is thought behind the choosing of the affirmative or negative procedure, and it would be important to try to get more information from Ministers as to why they have chosen one or the other. There is usually thought behind it, so it is worth getting an explanation of that for the sake of accountability and being as open as possible.

[21] Yr ail broblem yw'r hyn soniodd Gwyn amdano, sef bod llawer o oedi ac aros i Whitehall wneud rywbeth, ac wedyn, yn sydyn, mae pethau'n cael eu rhuthro i ddeddfwriaeth. Ni wn beth yw'r ateb i'r sefyllfa hon. Pan fyddwn yn ymdrin â deddfwriaeth sylfaenol, byddwn yn gallu

The second problem is the one that Gwyn mentioned, which is that there is a lot of delay and waiting for Whitehall to do something, and then, suddenly, things are rushed into legislation. I do not know what the answer is to this situation. When we deal with primary legislation, we will be able to

defnyddio cynnig Sewel i ganiatáu i use a Sewel motion to allow Whitehall to Whitehall ddeddfu ar ein rhan. Nid yw'r legislate on our behalf. That process is not so broses honno mor briodol ar gyfer is- appropriate for subordinate legislation. ddeddfwriaeth. Serch hynny, ar ddechrau'r However, at the outset of the first Assembly Cynulliad hwn, sef y Cynulliad cyntaf i gael to have full legislative powers, the committee pwerau deddfu llawn, dylai'r pwyllgor godi'r should raise this matter now, so that it can be mater hwn yn awr, fel y gellir ei fonitro dros monitored over the next five years. y pum mlynedd nesaf.

[22] **The Deputy Presiding Officer:** Okay. I believe that we agree to report on this item, as indicated, and invite the Assembly to pay special attention to these regulations. We will write to the Minister to commend the practice of providing the criteria for the decision on whether the procedure is affirmative or negative. We will also write to the Counsel General to say that we commend this procedure. I am quite keen to give them credit for doing this, rather than demanding that they follow this course of action. It seems to be a softer approach—initially, at least—to say ‘well done’ and to ask them to keep doing it, as it will aid our scrutiny considerably.

[23] We will now go through each item separately, starting with CA582, the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011. Is there anything specific to say on these? I believe that there are some technical points that Bethan may want to elaborate on.

[24] **Ms Roberts:** These regulations fall under section 1 of the Social Care Charges (Wales) Measure 2010. They give local authorities discretionary powers to impose reasonable charges upon adult recipients of non-residential social care services. Local authorities already have wide discretion in this field. However, at the moment, the delivery of the charging policy by local authorities throughout Wales is very varied. These regulations aim to try to attain some form of consistency.

[25] I would like to draw your attention to a technical reporting point on these regulations, which relates to translation. Regulation 7 concerns the invitation to request a means assessment—that invitation would be given to the service user. I believe that the English version of the regulation is correct. It states, for example, that the details to be included in the invitation are

[26] ‘details of the maximum reasonable charge for services that may be imposed’.

[27] The Welsh translation of the regulations mentions the details of the maximum reasonable charge, but it does not mention that that it is imposed in relation to the services provided. The details of the maximum reasonable charge may be quite self-explanatory in terms of the reason for it being imposed. Nevertheless, there is a discrepancy. The English version mentions services and the Welsh version omits the reference to services in this case. Therefore, there is a lack of clarity and it could be argued that this is slightly ambiguous. The Government has responded to this reporting point. It has agreed that there is a discrepancy and it has stated that it will bring forth amending legislation within the next three months to correct the matter.

[28] **Simon Thomas:** Would that be next month?

[29] **Ms Roberts:** Yes.

[30] **The Deputy Presiding Officer:** Okay. I believe that we need to point out, at a very early stage, that the Welsh translation needs to be completely accurate, especially on things such as what constitutes a flat rate and so on. This is very significant and it is not something

that the Government should get wrong. It should pay very particular attention to this, as it should throughout, obviously. There is a need to be very thorough on these issues. These kinds of discrepancies can creep in quite a bit. During my previous experience of serving on predecessor committees, these issues were raised all too often. Are Members content with the report that is to be made on that? I see that they are.

[31] We now move on to CA583, the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011.

[32] **Mr Griffiths:** Mae'r rheoliadau hyn yn rhan o'r un pecyn o is-ddeddfwriaeth â'r rheoliadau yr ydym newydd eu trafod. Gwelwch yn yr adroddiad drafft bod saith o fân bwyntiau drafftio i'w hadrodd, a bod chwech ohonynt yn ymwneud ag anghysondebau rhwng y Gymraeg a'r Saesneg. Mae'r Llywodraeth, unwaith eto, wedi derbyn y pwyntiau hyn ac wrthi'n brysur yn drafftio'r is-ddeddfwriaeth a fyddai'n gwneud y cywiriadau angenrheidiol. Mae'r Llywodraeth wedi ymgynghori â ni ynglŷn â'r ddeddfwriaeth a fydd yn gwneud y cywiriadau, felly yr ydym yn hyderus y byddant yn barod o fewn yr amserlen y mae'r Llywodraeth wedi ei nodi.

Mr Griffiths: These regulations are part of the same package of subordinate legislation as those that we just discussed. You can see in the draft report that there are seven minor reporting points, and that six of those are to do with inconsistencies between the Welsh and English versions. The Government, once again, has accepted these points and is busily drafting the subordinate legislation that would make the necessary corrections. The Government has consulted us on the legislation that will make those corrections, so we are confident that they will be ready within the timetable that the Government has noted.

9.15 a.m.

[33] **The Deputy Presiding Officer:** Are Members content? I see that you are.

[34] We now move to CA593, the Reporting of Prices of Milk Products (Wales) Regulations 2011.

[35] **Mr Griffiths:** Mae'r rhain yn rheoliadau technegol sy'n deillio o ail-wneud deddfwriaeth Ewropeaidd ar y pwnc hwn. Mae un pwynt o sylwedd yn yr achos hwn, sef bod cam-groesgyfeirio mewn darpariaeth sy'n ymwneud â throseddau. Fel arfer, byddwn yn eithaf bodlon bod cam-groesgyfeirio yn cael ei gywiro wrth gyhoeddi'r rheoliadau, os oedd yn weddol amlwg beth ddylai fod. Fodd bynnag, yn yr achos hwn, mae'n ymwneud â chreu trosedd ac mae'n bosibl y gall problem gyda hanes offeryn statudol beri trafferthion mewn unrhyw achos llys a fyddai'n deillio o'r drosedd honno. Yn ei hymateb, mae'r Llywodraeth yn esbonio pam ei bod yn meddwl bod y fersiwn gywir yn amlwg, ac mae'n dweud y gall hyn gael ei gywiro wrth gyhoeddi. Edrychais ar wefan legislation.gov.uk a gallaf gadarnhau bod y fersiwn sydd wedi'i chyhoeddi yn dangos y

Mr Griffiths: These are technical regulations that derive from the remaking of European legislation on this subject. There is one substantial point in this case, namely that there is an incorrect cross-reference in a provision that relates to offences. Usually, I would be quite willing for an incorrect cross-reference to be corrected on publication, if it was quite obvious what it should be. However, in this case, it relates to the creation of an offence and it is possible that a problem with the history of a statutory instrument could give rise to problems in a court case resulting from that offence. In its response, the Government provides an explanation as to why it believes that the correct version is obvious, and it states that this could be corrected on publication. I have looked at the legislation.gov.uk website and I can confirm that the published version shows the correct cross-reference. However, that

croesgyfeiriad cywir. Fodd bynnag, nid was not the version that came before the
dyna'r fersiwn a ddaeth gerbron y pwyllgor. committee.

[36] **The Deputy Presiding Officer:** Okay. Are Members content to agree that report? I see that you are.

[37] Finally, we turn to CA594, the Care Homes (Wales) (Miscellaneous Amendments) Regulations 2011.

[38] **Ms Roberts:** These regulations amend the Care Homes (Wales) Regulations 2002 to make it a requirement that the person who manages a care home possesses a minimum level of qualification to undertake that role and that such a person is registered with the Care Council for Wales. A merits point has been raised in relation to these regulations under Standing Order No. 21.3. In the light of recent public concerns that you may be aware of concerning these issues, it raises a point about the management and operation of care homes that provide services for adults. You may wish to note that these regulations introduce new arrangements to make it a legal requirement that all managers of care homes for adults register with the Care Council for Wales in order to undertake that role.

[39] **The Deputy Presiding Officer:** There is a merits point on this that relates to the sensitivity of this matter and you are invited to agree that. Despite the fact that these regulations have now been made, it still seems appropriate to flag it up in that manner to the Assembly. Do Members agree? I see that you do.

9.18 a.m.

Offerynnau Statudol a osodwyd yn Ystod y Pedwerydd Cynulliad: Offerynnau nad ydynt yn codi Unrhyw Faterion i fod yn Destun Adroddiad o dan Reolau Sefydlog Rhif 21.2 neu 21.3

Statutory Instruments Laid During the Fourth Assembly: Instruments that Raise No Reporting Issues Under Standing Order Nos. 21.2 or 21.3

[40] **The Deputy Presiding Officer:** We have finally reached matters that we can influence more directly. The first items before us, CSI3, the Assured Tenancies (Amendment of Rental Threshold) (Wales) Order 2011, and CSI4, the Food Additives (Wales) (Amendment) (No. 2) Regulations 2011, raise no reporting issues. Are Members content? I see that you are.

Offerynnau Statudol a osodwyd yn Ystod y Pedwerydd Cynulliad: Offerynnau sy'n Codi Materion a fydd yn Destun Adroddiad i'r Cynulliad o dan Reolau Sefydlog Rhif 21.2 neu 21.3

Statutory Instruments Laid During the Fourth Assembly: Instruments that Raise Issues to be Reported to the Assembly Under Standing Order Nos. 21.2 or 21.3

[41] **The Deputy Presiding Officer:** There are no instruments for discussion that would be subject to a negative resolution, but there are two that would be subject to an affirmative resolution. First, we turn to CSI1, the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011, which I suspect we discussed in the Assembly yesterday, if these are the same ones.

[42] **Mr Davies:** These are composite regulations, in that they are made for both Wales and England. These regulations provide for the Secretary of State and Welsh Ministers to make schemes for the adoption by sewerage undertakers in England and Wales of private

sewers and private lateral drains. There is one technical point to report and then there are a couple of merits points. The technical point is that these regulations have not been made bilingually, which is contrary to Standing Order No. 21.2. These are composite regulations that have been drafted in Whitehall. However, the Welsh Government had the power to make these regulations itself. Instead, it chose to make them jointly, with the consequence that they have been drafted in English only. The Welsh Government responded to this point. It said that these composite regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament. Therefore, it is not considered reasonably practical for these regulations to be laid in draft or made bilingually.

[43] **Simon Thomas:** There is a technical term for that, but I am not supposed to say it.

[44] **Mr Davies:** There are a couple of merits points in relation to these regulations as well, as you may have discussed yesterday in Plenary. The first is that these regulations give rise to issues of public policy that are likely to be of interest to the Assembly. It has been estimated that 50 per cent of properties in Wales are connected to a private sewer in one form or another. As a result, responsibility for those sewers is shared by the owners. These regulations will transfer that legal responsibility for maintenance to the water and sewerage companies, therefore it makes a substantial change to the law in Wales.

[45] The remaining point is that there was an error contained in the regulatory impact assessment within the explanatory memorandum. This point has been raised and the Government has acknowledged the error; however, it says that as it does not directly affect the regulations, it will not be taking corrective action on this occasion.

[46] **The Deputy Presiding Officer:** These are reporting issues, but the regulations were discussed yesterday in the Assembly. I suggest that we should still lay the report, although we may want to tweak it slightly to say that these were important matters, as the Assembly has already noted. I will come on to the issue about the sunset clause and the regulatory impact assessment separately. Gwyn, do you have a point on this?

[47] **Mr Griffiths:** Mae gennyf bwynt cyffredinol. Mae'r rheoliadau hyn wedi eu gwneud ar y cyd gyda Gweinidogion yn Llundain. Y rheoliadau hyn yw'r esiampl gyntaf o reoliadau sydd wedi eu gwneud ar y cyd i ddod gerbron pwyllgor y Cynulliad. Yr oedd yr hen bwyllgorau is-ddeddfwriaeth a materion cyfansoddiadol wedi eu gwahardd gan y Rheolau Sefydlog rhag edrych ar faterion y byddai'r Cyd-bwyllgor Offerynnau Statudol yn San Steffan yn craffu arnynt. Newidiwyd y Rheolau Sefydlog yn yr adolygiad diweddar i ganiatáu'r pwyllgor hwn i edrych arnynt. Felly, yr ydym yn braenaru tir newydd yn yr achos hwn, ond bydd y rhai ohonom sy'n cynghori'r pwyllgor hwn yn trafod gyda'n cyd-swyddogion sy'n cynghori'r Cyd-bwyllgor Offerynnau Statudol i geisio sicrhau eich bod yn cael cyngor cyson ynglŷn â'r is-ddeddfwriaeth.

Mr Griffiths: I have a general point. These regulations have been made jointly with Ministers in London. These regulations are the first example of such joint working that has come before an Assembly committee. The former subordinate legislation and constitutional affairs committees were prohibited by Standing Orders from looking at issues that would be scrutinised by the Joint Committee on Statutory Instruments in Westminster. The Standing Orders were changed in the recent review to allow this committee to scrutinise them. We are therefore breaking new ground in this instance, but those of us who advise this committee will discuss issues with our colleagues who advise the Joint Committee on Statutory Instruments to try to ensure that you receive consistent advice on subordinate legislation.

[48] **The Deputy Presiding Officer:** I am glad to hear it, as we want to maintain our highest standards even when we are breaking new ground. Perhaps our legal advisers can give us an indication on this next point. The sunset clause is significant, even if it is for 2018. The

regulatory impact assessment says that there is no sunset clause, and quite a lot of people might read the regulatory impact assessment and not the full instrument. So, I think that we need to say something about that. How concerned were you about that? The UK Government's response seems to have been, 'It doesn't really matter; fair cop, but we're not going to do much about it'.

[49] **Mr Davies:** It was confusing, because the regulations contain a sunset clause that says that this law will cease to have effect on a date in 2018. That is because these regulations just set up the ability for the Government to set up adoption schemes for the various water and sewerage companies. Once that is done, these regulations have no further effect and that is why the sunset clause is in there. So, that is not a concern in itself. However, the explanatory memorandum says that there is a sunset clause, but the regulatory impact assessment in the schedule of the explanatory memorandum says that there is not, and it gave a reason as to why that was so. So, it was confusing. I brought that to the attention of the lawyer, they held their hands up and said that it was a mistake and that it should not have been left in, but, as they said, it does not have a direct impact on these regulations. However, if a member of the public or a stakeholder were to pick up the explanatory memorandum and read it, it would be confusing.

[50] **The Deputy Presiding Officer:** It is regrettable. If we have impact assessments in there, they should be accurate.

[51] **Simon Thomas:** Yn gyntaf oll, dylwn ddatgan buddiant achos yr wyf yn ofni ei fod yn bosibl bod carthffosiaeth breifat yng nghyffiniau fy nhŷ i, gan fod hwn yn gymwys ar gyfer 50 y cant o eiddo ac yn arbennig o gyffredin yng Ngheredigion.

Simon Thomas: First of all, I should declare an interest, because I fear that there may be private sewerage somewhere in the vicinity of my house, as this applies to up to 50 per cent of properties and is especially common in Ceredigion.

[52] Hoffwn godi tri pheth. Tybed a ddylem dynnu sylw yn yr adroddiad at y pwynt a wnaeth Gwyn ynglŷn â'r ffaith mai dyma'r tro cyntaf i offeryn gael ei graffu yn y modd hwn yn y ddau le? Efallai byddai gwerth i dynnu sylw at hynny.

I would like to make three points. I wonder whether we should draw attention in the report to Gwyn's point regarding the fact that this is the first time that an instrument has been scrutinised in this way in both places. Perhaps it would be worth drawing attention to that.

[53] Mae'r pwynt am y Gymraeg yn nonsens llwyr. Yn y gorffennol, yr wyf wedi gweld llawer o ddeddfwriaeth a oedd yn mynd drwy San Steffan yn unig, pan nad oedd y Cynulliad yn gallu deddfu, a oedd yn cynnwys offerynnau dwyieithog. Yr wyf yn meddwl yn arbennig am ddeddfwriaeth ynglŷn â chaniatâd i agor tafarndai ac ati neu geisiadau i gadw lleoedd ar agor a chael cerddoriaeth byw yno a phethau felly. Yr oedd yr offerynnau yn cael eu gwneud yn ddwyieithog oherwydd eu bod yn cael eu defnyddio gan awdurdodau lleol yng Nghymru. Felly, mae San Steffan yn gallu trin offeryn sy'n cael ei drafod ar y cyd yn y ddwy iaith. Mae'n bwysig ein bod yn gwneud y pwynt ein bod yn disgwyl, pan fo rhywbeth yn cael ei wneud ar y cyd gyda San Steffan, y

The point relating to the Welsh language is complete nonsense. In the past, I have seen a lot of legislation going through Westminster only, when the Assembly could not legislate, that included bilingual instruments. I am thinking particularly of legislation related to permission to open public houses and so on, or applications to keep places open and have live music there and such things. The instruments were made bilingually, because they were used by local authorities in Wales. Therefore, Westminster is able to deal with instruments that are discussed in both languages at the same time. It is important that we make the point that, when something is done jointly with Westminster, we expect it to be done bilingually and that it is the responsibility of the Government here to

dylai gael ei wneud yn ddwyieithog ac mai ensure that that takes place.
cyfrifoldeb y Llywodraeth yma yw sicrhau
bod hynny'n digwydd.

[54] Ynglŷn â'r cymal machlud, mae'n On the sunset clause, it is important that there
bwysig bod wastad ymwadiad nad yw is always a disclaimer that an explanatory
memorandwm esboniadol yn rhan o'r memorandum is not part of the legislation.
ddeddfwriaeth. Felly, dylech ddarllen y Therefore, you should read the legislation to
ddeddfwriaeth i gael y darlun cyflawn. Fodd get the full picture. However, we should
bynag, yn sicr dylem dynnu sylw at y diffyg certainly draw attention to this deficiency,
hwn, achos mae'n rhan o fod yn agored a because it is part of being open and clear
chilir am eich cymhellion. about your motives.

[55] **The Deputy Presiding Officer:** I think that it is a significant thing to get wrong. We
are intelligent laypeople, are we not? One could get confused, I guess.

[56] **Peter Black:** I support that. It is important that we put down a marker early in the
process that we expect legislation to be bilingual, even if it is being made in Westminster
first. The other point that struck me about the sunset clause was, given the speed of
government, whether 2018 was a realistic target.

[57] **The Deputy Presiding Officer:** Someone has whispered into my ear that we do not
get into policy too readily.

[58] **Peter Black:** I know, but I thought that I would put that in, anyway.

[59] **The Deputy Presiding Officer:** The officials have heard the weight that we want to
place upon that issue, and we have agreed the basis of the report.

[60] Let us move to CSI2, the Welsh Language Commissioner (Appointment) Regulations
2011. Steve, do you have anything specific to raise this morning?

[61] **Mr Davies:** These regulations are the first to be made under the Welsh Language
(Wales) Measure 2011. They deal with the procedure that is to be followed by the First
Minister in appointing the Welsh language commissioner. There are no technical points, but a
few merits points were raised. As I said, these are the first regulations to be made under the
Measure. The appointment arrangements for the commissioner were considered in the third
Assembly by both the Constitutional Affairs Committee and Legislation Committee No. 2 as
part of their Stage 1 scrutiny of the proposed Measure. Both committees drew attention to the
appointment arrangements and raised concerns over the perceived independence of the
commissioner, as the commissioner was to be appointed by the First Minister. Legislation
Committee No. 2 recommended that the National Assembly for Wales should have the
responsibility for the commissioner's appointment. I will read a quick excerpt from the
Constitutional Affairs Committee's report:

[62] 'We do not believe it is part of our remit to comment on whether the appointment
arrangements in this case strike the right balance between political direction and
independence. However, we believe that the issue will be a key factor in establishing the
credibility of the Commissioner in due course. We believe it is an area where Members of the
National Assembly should have the opportunity to consider and decide whether the
arrangements that are finally proposed get this balance right. For this reason we believe that
the relevant appointment regulations should be made by the affirmative resolution procedure.'

9.30 a.m.

[63] The Government subsequently took those comments into account. It did not take up the recommendation made by Legislation Committee No. 2 that the commissioner should be appointed by the Assembly, but it conceded that these regulations should be made by the affirmative procedure and that a Member of the Assembly should be appointed to the selection panel. Those recommendations have been included in these regulations. It is not clear, however, how this will work in practice. The regulations define a ‘relevant committee’, as

[64] ‘a committee of the National Assembly for Wales invited by the Welsh Ministers to make a nomination’.

[65] The regulations do not provide any guidance as to which committee Ministers may invite to nominate a member of the panel, and practical difficulties may arise, as it is anticipated that the role of the Welsh language commissioner will be advertised in July and the appointment will be made in October. So, it is possible that the selection panel will be formed during the recess period when there are no committees. The committee may wish to seek an explanation from the Ministers as to how they intend to apply this provision.

[66] Finally, the committee may wish to note that paragraph 3(1)(b) of Schedule 1 to the Proposed Welsh Language (Wales) Measure 2011 states that the First Minister

[67] ‘must take account of the recommendations made by the selection panel in relation to the appointment’.

[68] Therefore, that safeguard is included in the Measure.

[69] **Peter Black:** In the days when we had Assembly-sponsored bodies, the situation arose where committees appointed members to statutory panels, and that sometimes happened over the summer recess. When I was the Chair of the education committee in a previous Assembly, I was involved in the appointment of the chair of Estyn, I think. So, it can happen. What I find most bizarre is that the Government’s response states that

[70] ‘in anticipation of a situation where no such Committee’—

[71] that is, in relation to the Welsh language—

[72] ‘is in existence regulation 2(d) is drafted to provide a degree of flexibility for Welsh Ministers’.

[73] My understanding is that the Standing Orders, and possibly the Government of Wales Act 2006 as well, state that all scrutiny committees must cover every aspect of the Welsh Government’s responsibility. So, I cannot envisage a situation where a committee would not be in existence to cover the Welsh language, given that there is a legal requirement to do so.

[74] **Simon Thomas:** The same applies to sustainable development.

[75] **The Deputy Presiding Officer:** Presumably, from next week there will be a relevant committee. So, are we content to agree a report and emphasise that point in particular, that it is not helpful to be so confusing?

[76] **Simon Thomas:** Hoffwn fynegi un pwynt, er credaf ei fod yn mynd ychydig y tu hwnt i gylch gwaith y pwyllgor hwn. Felly, yng nghyd-destun yr hyn a ddywedwyd gan y pwyllgor a ragflaenodd y pwyllgor hwn, **Simon Thomas:** I would like to make one point, although I think that it may go slightly beyond this committee’s remit. So, in the context of what the predecessor committee to this one said, it would have been more

byddai wedi bod yn fwy priodol i ofyn i'r Cynulliad enwebu pwyllgor a fyddai'n enwebu person ar gyfer rôl y comisiynydd, yn hytrach na rhoi'r dyletswydd, fel y deallaf o'r offeryn, ar y Gweinidog. Mae'n cyfeirio at bwyllgor:

appropriate to ask the Assembly to nominate the committee that would nominate an individual for the role of commissioner, rather than placing the duty, as I understand it from the instrument, on the Minister. It refers to a committee:

[77] 'invited by the Welsh Ministers to make a nomination'.

[78] Byddai wedi bod yn fwy priodol rhoi dyletswydd ar y Cynulliad i wneud yr enwebiad hwnnw. Yr wyf yn gwneud y pwynt hwnnw wrth fynd heibio, oherwydd mae'n siŵr y bydd hyn yn cael ei drafod yn y Cynulliad yr wythnos nesaf.

It would have been more appropriate to place a duty on the Assembly to make that nomination. I am just making that point in passing, because I am sure that this will be discussed in the Assembly next week.

[79] **The Deputy Presiding Officer:** I will say in passing that, in my past life in the third Assembly, I agreed with you. We are drifting into a policy issue here, and the Government has decided that it should have the responsibility for the appointment and not the Assembly. However, the merits part of the report is focused and it is appropriate that we lay that. I do not see that any Member disagrees. That concludes our business for today.

9.34 a.m.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[80] **The Deputy Presiding Officer:** We do not know the date of the next meeting, although it will probably be next Wednesday at 9 a.m.. As you will know, the whole timetable for the committees is being discussed. I suspect that it will not apply next week, but it is likely to apply thereafter. Therefore, our next meeting is still likely to be in this slot, but do not assume that that is permanent.

[81] **Peter Black:** It is not the next meeting, as it will be a different committee.

[82] **The Deputy Presiding Officer:** Yes. Thank you, Peter. Our successor committee is likely to meet next week.

[83] **Peter Black:** Presumably, the committee timetable will not kick in until the week after.

[84] **The Deputy Presiding Officer:** I suspect that that is right.

[85] **Peter Black:** The Business Committee needs to consider the timetable on Tuesday.

[86] **The Deputy Presiding Officer:** However, we will inform you as soon as we know what slot we will have next week. That concludes our proceedings. Thank you very much for your attention and attendance this morning.

*Daeth y cyfarfod i ben am 9.35 a.m.
The meeting ended at 9.35 a.m.*