



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

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

**Dydd Mercher, 30 Mawrth 2011  
Wednesday, 30 March 2011**

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

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Alun Davies	Llafur Labour
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Rhodri Morgan	Llafur Labour
Janet Ryder	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

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

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

*Dechreuodd y cyfarfod am 10.29 a.m.*  
*The meeting began at 10.29 a.m.*

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

[1] **Janet Ryder:** Welcome, everyone—Members, officials and members of the public—to the final meeting of the Constitutional Affairs Committee of this Assembly. I remind Members that, in an emergency, ushers will indicate the nearest safe exit and that headsets are available for translation and amplification. I remind everyone to switch off all mobile devices completely. We have received apologies from Kirsty Williams, who cannot be with us this morning.

10.30 a.m.

**Offerynnau Na Fydd y Cynulliad yn Cael ei Wahodd i Roi Sylw Arbennig iddynt o dan Reolau Sefydlog Rhifau 15.2 a 15.3 ac Offerynnau sy'n Agored i Gael eu Dirymu yn unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)**  
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[2] **Janet Ryder:** We do not have many items to consider this morning, so we will start straight away with CA579, which is the Assembly Learning Grants and Loans (Higher Education) (Wales) (No. 2) Regulations 2011. Gareth has spent quite some time looking at these regulations in draft form, so I hope that he will give us a report on them. This is Gareth's final meeting and more or less his final day in the Assembly, as it is for many of us.

After today, he will be returning to Morgan Cole, and I hope that he will be taking back a wealth of experience with him. Gareth, would you like to tell us about the Assembly learning grants and loans regulations?

[3] **Mr Howells:** Diolch i'r pwyllgor am adael i mi fynychu ei gyfarfodydd am y chwe mis diwethaf. Dyma'r rheoliadau mawr blynyddol sydd yn darparu cymorth ariannol i fyfyrwyr. Mae'r rhain ar gyfer y flwyddyn academaidd sydd yn dechrau ym mis Medi 2012. Mae un rheoliad pwysig newydd sydd yn gwarchod myfyrwyr rhag ffioedd dysgu ychwanegol hyd at y mwyafswm o £9,000 y flwyddyn. Nid oes pwyntiau i'w hadrodd.

**Mr Howells:** I thank the committee for allowing me to attend committee meetings for the past six months. These are the major annual regulations that provide financial support for students. These are for the academic year beginning September 2012. There is one new important regulation, which protects students from additional learning fees up to the maximum of £9,000 a year. There are no reporting points.

[4] **Rhodri Morgan:** Come on, Gareth.

[5] Dere lan â rhywbeth.

Come up with something.

[6] **Janet Ryder:** You have worked extensively with the department on the draft form of these regulations, have you not?

[7] **Mr Howells:** Yes, and we also got these in draft. As I said, there is one new regulation, namely regulation 20, and there would have been a reporting point on that, but we discussed the draft with the Government beforehand.

[8] **Janet Ryder:** One of the recommendations that this committee has made is that we should see pieces of legislation in draft and then we could prevent many mistakes from coming through later in the process. Thank you very much for that report, Gareth. Are Members content with that? I see that you are.

10.32 a.m.

**Offerynnau y Caiff y Cynulliad ei Wahodd i Roi Sylw Arbennig iddynt o dan Reolau Sefydlog Rhifau 15.2 a/neu 15.3 ac Offerynnau sy'n Agored i Gael eu Dirymu yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)**  
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[9] **Janet Ryder:** That takes us on to CA578, the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011. Bethan has been looking at this.

[10] **Ms Roberts:** There are reporting points on this legislation. No draft was provided beforehand, which might explain why there are so many reporting points. There are 11 technical reporting points, nine of which are for defective drafting and translation issues and two of which are just for defective drafting.

[11] These regulations make provision for the making of direct payments in respect of a person securing the provision of certain social care services. Under previous arrangements under the Health and Social Care Act 2001, if a person lacked capacity, they could not enter into direct payments arrangements, but these regulations extend the availability of direct payments to include the intervention of a suitable person. So, if a person lacks capacity, they

can take part in direct payments.

[12] I will give the committee some quick examples of the reporting points that I have found. The first is a translation issue, relating to a difference between the English and Welsh versions. The English-language version refers to section 57(1A) of the Health and Social Care Act 2001. The Welsh-language version refers to that and also section 17A(1) of the Children Act 1989. You might wonder what the significance of that is, and it is that the Welsh-language version allows for payments to be made to a person who is a parent with parental responsibility for a disabled child, a disabled person with parental responsibility for a child, or a disabled child aged 16 or 17. As the English-language version has omitted that provision, payments would not be made in that scenario. So, even though it is a translation issue, it makes a significant difference. That is one reporting point.

[13] The second example relates to a person who cares for a person whose needs need to be met by social services. The Welsh-language version does not include persons who are living in the same household, although it goes on to list persons who have a relationship with the person whose needs need to be met by the social services. The English-language version includes people living in the same household, but goes on to list the relationships that people must secure in order to care for the person whose needs need to be met by social services. Again, you may wonder what the consequence of that is, and it is that the provision under the Welsh-language version is not limited to the same extent as in the English-language version. As the Welsh-language version does not include the equivalent word to 'household', the direct payments, the arrangements to be made and the care that would be given would be more extensive. Under the English-language version, it is limited to people living in the same household. So, again, there is a difference.

[14] On a direct translation issue, another reporting point revolves around the word 'lladmerydd'. The English version of the text uses the word 'surrogate'. I understand that the word 'lladmerydd' would mean something akin to an interpreter, an advocate or a deputy. In the context of these regulations, the word 'lladmerydd' would suggest someone representing a person or acting as their deputy rather than someone who would completely take over that role, which is perhaps what 'surrogate' would suggest.

[15] I have heard back from the Government on all 11 points. I will not expand on them further. The Government accepts all 11 reporting points and will issue new regulations revoking these regulations within the next three months.

[16] **Rhodri Morgan:** It is an interesting point on translation. I assume that this is of quite a high significance legally, because a surrogate in this sense means a person who is given legal responsibility for the other person and who can make decisions on his or her behalf. Is that the point? It is not an advocate. If you are incapable for whatever reason of making your own decisions, someone can apply to act for you. People often do that for their very elderly parents or severely disabled children, once they become adults. Is that the point?

[17] **Ms Roberts:** Yes, that is right.

[18] **Rhodri Morgan:** It is certainly not an advocate.

[19] **Ms Roberts:** No, not in that sense. It is an intermediary to enable direct payment arrangements where a person lacks the capacity to act for themselves. We felt that the word 'surrogate' did not reflect the Welsh terminology. The Government has agreed. I do not know what it is going to come up with in its place.

[20] **Rhodri Morgan:** Which is right? What is the Government really intending? I am trying to remember what the term is. William will know, I am sure. What happens if you have an elderly parent and you have to apply to become the person with full control of their bank account and so

on?

[21] **William Graham:** Do you mean power of attorney?

[22] **Rhodri Morgan:** Yes, that is right. It gives you control over the bank account and anything and everything—*[Interruption.]* You knew that. Right. Fine. *[Laughter.]*

[23] **Janet Ryder:** I know this is our last meeting, but let us have a bit of order.

[24] **Rhodri Morgan:** Anyhow, is that the concept we are talking about here?

[25] **Ms Roberts:** It does relate to an enduring power of attorney, but not to the extent that the person would go to court and represent their interests.

[26] **Rhodri Morgan:** I do not mean just in court, but in all dealings with the bank accounts, or anything really.

[27] **Janet Ryder:** There is obviously an issue with regard to the wrong words being used initially, but the Government has accepted all of the recommendations that Bethan has made and will bring forward an amending Order within the next three months.

[28] **Rhodri Morgan:** Can we just be satisfied about the idea in Welsh and English? What is the nearest common or garden term that would be used for the idea? We are satisfied that it is not ‘advocate’ but we are also saying that it is not ‘surrogate’. Are we saying that it is a person who has the nearest equivalent to power of attorney?

[29] **Ms Roberts:** Yes, it is someone who would look after the individual’s bank accounts and deal with things of that nature.

[30] **Rhodri Morgan:** I am not sure what the right word is in Welsh or English.

[31] **Janet Ryder:** Well, there will be an amending Order. A report has been tabled this morning, which you have before you, relating to this matter. It contains the Government’s response. It has said that it will bring forward amending legislation at the earliest opportunity and, in any event, within three months of the regulations coming into force. So, hopefully, we will see all of those issues put right.

[32] **Mr Griffiths:** Mae pwyntiau ychwanegol yn ymddangos yn yr adroddiad drafft sydd ger eich bron ynglŷn â deddfwriaeth sy’n effeithio yn bennaf ar yr Alban, lle nad yw’n amlwg i ni fod y ddeddfwriaeth honno mewn grym, naill ai oherwydd nad yw wedi ei chychwyn neu oherwydd ei bod wedi’i diddymu. Mae’r Llywodraeth wedi ymateb, gan esbonio bod deddfwriaeth yn diddymu’r materion hynny, ond efallai fod materion sy’n cadw’r peth mewn grym at ddibenion penodol, er enghraifft, materion sy’n parhau, neu am nad yw’r Gorchymyn sy’n diddymu rhywbeth wedi ei gychwyn. Derbyniwn felly ymateb y Llywodraeth ar y pwyntiau hynny. Yr 11 pwynt cyntaf yn unig yn yr adroddiad drafft, sydd ger eich bron, yr ydym yn argymhell eu cynnwys yn adroddiad y pwyllgor i’r

**Mr Griffiths:** Additional points appear in the draft report before you with regard to legislation that mainly affects Scotland, where it is not clear to us that that legislation is in force, either because it has not been commenced or because it has been repealed. The Government has responded, explaining that there is legislation to annul those issues, but there may be certain issues keeping it in force for specific purposes in relation to persistent issues, for example, or because the Order repealing something has not been commenced. We therefore accept the Government’s response on those points. We recommend putting only the first 11 points in the draft report that is before you in the committee report to the Assembly.

Cynulliad.

[33] **Janet Ryder:** Are Members content with that? I see that you are.

[34] That brings us on to CA580, the National Assembly for Wales (Letters Patent) Order 2011.

[35] **Ms Roberts:** This Order has some historical significance, as it follows the 'yes' vote delivered on 3 March in the referendum to give further law-making powers to the National Assembly. As a result of that, this letters patent Order has been prepared. It makes provision as to the form, manner of preparation and publication of letters patent to be signed by the Queen's own hand under the Welsh seal to signify her Assent to Bills passed by the National Assembly for Wales. This Order is required to enable Royal Assent to be given to Assembly Bills.

[36] Legal notice of the Bills passed will then be put into the requisite gazettes, namely *The London Gazette*, *The Belfast Gazette*, and *The Edinburgh Gazette*. A positive merits point has been raised in relation to this Order, which on this occasion has been provided bilingually by the Privy Council. Members may wish to compare it with the National Assembly for Wales (Disqualification) Order 2006, which had a not-so-positive merits point as, on that occasion, it was provided in English only.

[37] **Janet Ryder:** Are Members content to accept that? I see that you are.

10.44 a.m.

### **Offerynnau a Osodwyd gerbron y Cynulliad yn Rhy Hwyr i Gael eu Hystyried gan y Pwyllgor**

#### **Instruments Laid before the Assembly Too Late for Committee Consideration**

[38] **Janet Ryder:** I am sure that Members will appreciate that a number of pieces of legislation has been tabled in the last few days. Some of these instruments have been laid before the Assembly, but too late for this committee to consider them. Steve, if you outline the issue for us first of all, we will then go on to deal with the pieces of legislation.

[39] **Mr George:** Currently, six items of legislation have been laid before the Assembly but are not formally included on the agenda for this meeting, either because they have been received as recently as yesterday, or because the legal team and I have not had a chance to consider them properly to give you proper advice on them for this meeting. I understand that Gwyn and his team have now had a chance to look at three of them, but we still have not had a chance to look at the remaining three.

[40] We understand that more statutory instruments are likely to be laid today and tomorrow, and they will be added to the list. We therefore suggest that, simply in order to draw this matter to the attention of incoming Assembly Members, you agree a standard merits report that states simply that, because of when these instruments were laid, and because it is unlikely that an incoming committee will be established until around late May to mid June, it is likely that we will be unable to consider these instruments within the 20-day deadline. It is possible that we will not even be able to consider them within the 40-day deadline. Our suggestion is therefore just a device for drawing these instruments to the attention of incoming Assembly Members through a standard merits report. As I said, Gwyn has an update on three of them.

[41] **Janet Ryder:** If Members are content to proceed in that way, I will ask Gwyn to go through those pieces of legislation. I see that Members are content.

10.45 a.m.

[42] **Mr Griffiths:** Fel y clywsoch, yr ydym wedi cael cyfle i edrych ar dri o'r offerynnau sydd ar y rhestr, sef y tri olaf. Yn gyntaf, mae CA584, Rheoliadau Codi Ffioedd am Wasanaethau Gofal Cymdeithasol (Adolygu Penderfyniadau ar Godi Ffioedd) (Cymru) 2011. Mae'r rhain yn ymwneud â thaliadau am ffioedd ac adolygu'r broses o wneud penderfyniad i wrthod gwneud taliad. Mae'r ymgeisydd wedyn yn gallu galw am adolygiad, ac mae'r rheoliadau hyn yn gosod y broses ar gyfer ystyried adolygiad o'r fath. Cawsom olwg ar y rhain ddoe, ac yr ydym yn gallu eu cymeradwyo i'r pwyllgor fel rheoliadau nad oes angen gwneud adroddiad yn eu cylch.

**Mr Griffiths:** As you heard, we have had an opportunity to look at three of the instruments that are on the list, which are the final three. First, there is CA584, the Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011. These relate to social care charges and to reviewing the process whereby decisions are made to refuse to make a payment. The applicant would be able to call for a review, and these regulations set out the process for considering such a review. We had sight of these yesterday, and we can approve them to the committee as regulations that do not need to be reported upon.

[43] **Janet Ryder:** So, are Members content to accept those pieces of legislation and for the committee to lay a report relating to the other three pieces of legislation?

[44] **Mr Griffiths:** Gadeirydd, efallai dylem gyfeirio at y ddau arall hefyd. Yr ail yw CA585, Rheoliadau Ardrethu Annomestig (Casglu a Gorfodi) (Rhestr Lleol) (Diwygio) (Cymru) 2011. Mae'r rhain yn caniatáu i fusnesau sy'n gyfrifol am dalu biliau trethi, oherwydd newid mewn rhestr yn mynd yn ôl i 2005, dalu unrhyw arian sy'n parhau'n ddyledus mewn rhandaliadau. Bydd hynny'n parhau os yw'r newid wedi digwydd cyn 1 Ebrill 2011. Eto, nid oes pwyntiau technegol yn codi.

**Mr Griffiths:** Chair, perhaps I should refer to the other two as well. The second is CA585, the Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (Wales) Regulations 2011. These allow businesses that are responsible for paying rate bills, because of changes to lists going back to 2005, to make any payments that remain to be paid in instalments. That will continue if the change has happened before 1 April 2011. Again, no technical points arise.

[45] **Janet Ryder:** Iawn. A yw pawb yn hapus â hynny? Gwelaf eich bod.

**Janet Ryder:** Okay. Is everyone content with that? I see that you are.

[46] **Mr Griffiths:** Gareth sydd wedi edrych ar y trydydd.

**Mr Griffiths:** Gareth has looked at the third.

[47] **Mr Howells:** Y trydydd yw CA586, Gorchymyn Cyngor Cyllido Addysg Uwch Cymru (Swyddogaethau Atodol) 2011. Mae'r Gorchymyn hwn yn rhoi swyddogaethau i Gyngor Cyllido Addysg Uwch Cymru ynghylch talu grantiau i sefydliadau addysg uwch ac i adennill y grantiau hynny os bydd angen. Nid oes pwyntiau yn codi.

**Mr Howells:** The third is CA586, the Higher Education Funding Council for Wales (Supplementary Functions) Order 2011. This Order places functions on the Higher Education Funding Council for Wales with regard to paying grants to higher education institutions and to reclaim those grants should that be necessary. There are no points to report.

[48] **Janet Ryder:** A yw pawb yn hapus â hynny? Gwelaf eich bod.

**Janet Ryder:** Is everyone content with that? I see that you are.

[49] We will suitably deal with the other pieces of legislation. That brings us to see the end of this committee.

[50] I would like to take this opportunity of thanking, as Chair—I am sure that I speak for the rest of the committee as well—all the officers who have supported us. This committee has grown substantially since 2007—it was the Subordinate Legislation Committee when I joined it in 1999—and we have dealt with a number of crucial points, which will hopefully point the Assembly in the right direction in dealing with full law-making powers.

[51] I thank the clerks, all the lawyers and the research team. Indeed, Members will remember that, when we started, we did not have a research team, so the research team has grown as the committee's responsibility has grown. It has been a great help and support to us while we have been drawing up some of our most recent reports, so thank you. I thank the Members present and Kirsty, who is not here, for their regular and prompt attendance and for the diligent way in which we have undertaken our business. I wish everyone well for the future.

[52] **Alun Davies:** I wish to thank you as well, Janet, as Chair of the committee for these past few years, after taking over from Dai Lloyd two or three years ago. I have enjoyed the work and we are all very grateful for your leadership.

[53] **Janet Ryder:** Thank you.

[54] **Rhodri Morgan:** I must say that I have enjoyed my 15 months on this committee.

[55] **Janet Ryder:** I am looking forward, Rhodri, to see changes in the Standing Orders, particularly if your recommendation was to be taken on board that First Ministers—although I would extend that to all Cabinet members—should spend some time on this committee to learn what actually happens.

[56] **Rhodri Morgan:** Good. I have enjoyed my time on the committee.

[57] **Janet Ryder:** Good. It has been wonderful having your experience on this committee; it has been very valuable.

[58] **William Graham:** I would like to wish you well for the future as well, Janet. Thank you for all that you have done on this committee.

[59] **Janet Ryder:** Thank you. I now draw this committee to a close.

*Daeth y cyfarfod i ben am 10.49 a.m.  
The meeting ended at 10.49 a.m.*