

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:
Ystafell Bwyllgora 1 – Y Senedd

Dyddiad:
Dydd Llun, 7 Tachwedd 2011

Amser:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



I gael rhagor o wybodaeth, cysylltwch a:

Steve George
Clerc y Pwyllgor
029 2089 8242
CLA.Committee@wales.gov.uk

Agenda

1. Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant

2. Offerynnau nad ydynt yn cynnwys unrhyw faterion i'w codi o dan Reol Sefydlog 21.2 neu 21.3

Offerynnau'r weithdrefn penderfyniad negyddol

Dim

Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

3. Offerynnau sy'n cynnwys materion i'w codi gyda'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3

Offerynnau'r weithdrefn penderfyniad negyddol

Dim

Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

4. Gohebiaeth y Pwyllgor

CLA43 – Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Rhif 2) (Cymru) 2011 (Tudalennau 1 – 2)

CLA(4)-10-11(p1) – Llythyr gan y Cadeirydd at y Gweinidog, dyddiedig 14 Hydref 2011

CLA(4)-10-11(p2) – Ymateb y Gweinidog, dyddiedig 28 Hydref 2011 (Saesneg yn unig)

CLA31 – Gorchymyn y Cwricwlwm Cenedlaethol (Trefniadau Asesu wrth Dderbyn i'r Cyfnod Sylfaen) (Cymru) 2011 (Tudalennau 3 – 8)

CLA31 – Gorchymyn y Cwricwlwm Cenedlaethol (Trefniadau Asesu wrth Dderbyn i'r Cyfnod Sylfaen) (Cymru) 2011

CLA32 – Gorchymyn y Cwricwlwm Cenedlaethol (Trefniadau Asesu Diwedd y Cyfnod Sylfaen a Dirymu Trefniadau Asesu'r Cyfnod Allweddol Cyntaf) (Cymru) 2011

Papurau:

CLA(4)-08-11(p3) – Llythyr gan y Cadeirydd at y Gweinidog, dyddiedig 27 Medi 2011(Saesneg yn unig)

CLA(4)-08-11(p4) – Ymateb y Gweinidog, dyddiedig 4 Hydref 2011(Saesneg yn unig)

CLA(4)-10-11(p3) – Llythyr gan y Cadeirydd at y Gweinidog, dyddiedig 19 Hydref 2011(Saesneg yn unig)

CLA(4)-10-11(p4) – Ymateb y Gweinidog, dyddiedig 31 Hydref 2011(Saesneg yn unig)

CLA(4)-08-11(p3) – Llythyr gan y Cadeirydd at y Gweinidog, dyddiedig 27 Medi 2011

CLA(4)-08-11(p4) – Ymateb y Gweinidog, dyddiedig 4 Hydref 2011

CLA(4)-10-11(p3) – Llythyr gan y Cadeirydd at y Gweinidog, dyddiedig 19 Hydref 2011

CLA(4)-10-11(p4) – Ymateb y Gweinidog, dyddiedig 31 Hydref 2011

5. Diffyg fersiynau Cymraeg o Offerynnau Statudol a gaiff eu gwneud ar y cyd â Gweinidogion y DU (Tudalennau 9 – 13)

CLA(4)-10-11(p5) – Llythyr gan y Cadeirydd i'r Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a Rhaglenni Ewropeaidd, dyddiedig 5 Hydref 2011(Saesneg yn unig)

CLA(4)-10-11(p5) – Atodiad (CLA38 – Rheoliadau Rhywogaethau Estron a Rhywogaethau sy'n Absennol yn Lleol mewn Dyframaethu (Cymru a Lloegr) 2011

CLA(4)-10-11(p6) – Llythyr y Prif Weinidog, dyddiedig 1 Tachwedd 2011(Saesneg yn unig)

6. Ymchwiliadau'r Pwyllgor: Ymchwiliad i roi pwerau i Weinidogion Cymru yn Neddfau'r DU (Tudalennau 14 – 15)

Mr Richard Parry, Darllenydd mewn polisi cymdeithasol, Ysgol y Gwyddorau Cymdeithasol a Gwleidyddol, Prifysgol Caeredin

CLA(4)-10-11(p7) - CLA GP - Mr Richard Parry

7. Dyddiad y cyfarfod nesaf (Tudalennau 16 - 17)

Papur i'w nodi:

CLA(4)-09-11 - Adroddiad ar y cyfarfod a gynhaliwyd ar 31 Hydref 2011

8. Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer yr eitemau a ganlyn:

Caiff pwyllgor benderfynu gwahardd y cyhoedd o gyfarfod neu unrhyw ran o gyfarfod:

(vi) lle mae'r pwyllgor yn cyd-drafod casgliadau neu argymhellion adroddiad y mae'n bwriadu ei gyhoeddi.

9. Trafod y dystiolaeth a gyflwynwyd i'r ymchwiliad hyd yma

Trawsgrifiad

[Trawsgrifiad o'r cyfarfod.](#)

Eitem 4.1

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Mr John Griffiths AC
Gweinidog yr Amgylchedd a Datblygu
Cynaliadwy
Llywodraeth Cymru
5ed Llawr
Tŷ Hywel
Bae Caerdydd
CF99 1NA



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

14 Hydref 2011

Annwyl Weinidog

CLA43 - Rheoliadau Sgil-gynhyrchion Anifeiliaid (Gorfodi) (Rhif 2) (Cymru) 2011

Bu'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn trafod y Rheoliadau uchod yn ei gyfarfod ar 10 Hydref 2011 a chytunwyd y dylwn ddwyn i'ch sylw adroddiad y Pwyllgor ar rinweddau'r Rheoliadau, a gyhoeddwyd o dan Reol Sefydlog 21.3.

Cytunodd y Pwyllgor y byddai'n gwahodd y Cynulliad i roi sylw arbennig i'r Rheoliadau hyn ar y sail "ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad" (Rheol Sefydlog 21.3(ii)).

Gosodwyd adroddiad y Pwyllgor ar y Rheoliadau yn y Swyddfa Gyflwyno ar 12 Hydref, ac mae wedi'i atodi er gwybodaeth. Byddwn yn ddiolchgar pe gallech ystyried yr adroddiad a rhoi gwybod i'r Pwyllgor beth yw eich ymateb.

Rwy'n anfon copi o'r adroddiad hwn at y Prif Weinidog er gwybodaeth, ac rwyf hefyd wedi gwneud trefniadau i ddwyn yr adroddiad a'r llythyr hwn i sylw Aelodau'r Cynulliad.

Yn gywir

David Melding AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

John Griffiths AC / AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref JG/06589/11

David Melding AM
Chair - Constitutional & Legislative Affairs Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

28 October 2011

committeebusiness@Wales.gsi.gov.uk

Dear David,

Thank you for your letter of 14 October about The Constitutional and Legislative Affairs Committee's report on the Animal By-Products (Enforcement) (No.2) (Wales) Regulations 2011.

I am grateful for the Committee's acknowledgement that the updated, bilingual regulations have addressed their previous concerns.

Best wishes
John

John Griffiths AC / AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development

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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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Llinell Ymholiadau Cymraeg 0845 010 4400
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Eitem 4.2

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Mr Leighton Andrews AC
Y Gweinidog Addysg a Sgiliau,
Llywodraeth Cymru
5ed Llawr
Tŷ Hywel
Bae Caerdydd
CF99 1NA



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

27 Medi 2011

Annwyl Weinidog

CLA31 - Gorchymyn y Cwricwlwm Cenedlaethol (Trefniadau Asesu wrth Dderbyn i'r Cyfnod Sylfaen) (Cymru) 2011

A

CLA32 - Gorchymyn Y Cwricwlwm Cenedlaethol (Trefniadau Asesu Diwedd y Cyfnod Sylfaen a Dirymu Trefniadau Asesu'r Cyfnod Allweddol Cyntaf) (Cymru) 2011

Bu'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn trafod yr offerynnau statudol uchod yn ei gyfarfod ar 19 Medi 2011 a chytunwyd y dylwn ddwyn i'ch sylw adroddiadau'r Pwyllgor ar rinweddau'r Rheoliadau, a gyhoeddwyd o dan Reol Sefydlog 21.3.

Cytunodd y Pwyllgor y byddai'n gwahodd y Cynulliad i roi sylw arbennig i'r offerynnau hyn ar y sail "eu bod o bwysigrwydd gwleidyddol neu gyfreithiol neu eu bod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad" (Rheol Sefydlog 21.3(ii)).

Gosodwyd adroddiadau'r Pwyllgor yn y Swyddfa Gyflwyno ar 23 Medi 2011, ac maent wedi'u hatodi er gwybodaeth. Byddwn yn ddiolchgar pe gallech ystyried yr adroddiad a rhoi gwybod i'r Pwyllgor beth yw eich ymateb.

Byddwch yn sylwi bod y Pwyllgor wedi dod i'r casgliad bod erthygl 5 y Gorchymyn yn cynnwys darpariaeth anghyffredin sy'n galluogi Gweinidogion Cymru i wneud darpariaeth bellach am y Gorchymyn heb yr angen i gyflwyno Gorchymyn diwygio y byddai'r Cynulliad yn gallu craffu arno. Byddai'r Pwyllgor yn gwerthfawrogi cael eglurhad ynghylch a oes unrhyw fwriad gan Weinidogion ar hyn o bryd i ddefnyddio'r pwerau o dan erthygl 5? Os yw'r pŵer yn cael ei ddefnyddio yn y dyfodol, a fydech yn ystyried hybsyu Aelodau'r Cynulliad drwy gyhoeddi datganiad ysgrifenedig ar y mater?

Rwy'n anfon copi o'r adroddiad hwn at y Prif Weinidog er gwybodaeth, ac rwyf hefyd wedi gwneud trefniadau i ddwyn yr adroddiad a'r llythyr hwn i sylw Aelodau'r Cynulliad.

Yn gywir

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail at the end of the word "Melding".

David Melding AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CLA31
Ein cyf/Our ref LA/06014/11

David Melding AM
Chair - Constitutional and Legislative Affairs Committee

committeebusiness@Wales.gsi.gov.uk

4 October 2011

David

CLA31 – the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

And;

CLA32 – the National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your letter of 27 September when you provided the Constitutional and Legislative Affairs Committee reports on the above Statutory Instruments.

I note that the Committee agrees that the power in article 5 of the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011 and in the National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011 is within the scope of section 108(11) of the Education Act 2002. I also note that the inclusion of the article 5 power in an order setting out assessment arrangements for the National Curriculum is not unusual. For example, this power is included in the National Curriculum (Key stage 2 Assessment Arrangements) (Wales) Order 2004 (S.I. 2004/2915) and also the National Curriculum (Key stage 3 Assessment Arrangements) (Wales) Order 2005 (S.I. 2005/1393). Indeed, earlier orders (now revoked) made under the Education Reform Act 1988 and the Education Act 1996 setting out the assessment arrangements for the Key Stages in the National Curriculum also contained this provision. I am not aware that the inclusion of this power in such orders has not been subject to similar comment previously.


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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

I note you state that whilst the use of the power is not unusual, you consider the power is itself unusual and therefore important. Whilst I agree the power is important and not that common, I would draw your attention to the fact that there is similar power for the Secretary of State to make such provision in section 87(11) and (12) of the Education Act 2002. In light of the above I consider the use of the power in the Order to be appropriate.

I do not currently have any plans to make use of the powers under article 5, but any future provision made under the power will be published on the internet.

Yours sincerely


Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

**Y Pwyllgor Materion
Cyfansoddiadol a
Deddfwriaethol**



**Constitutional and Legislative
Affairs Committee**

Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Leighton Andrews AM
Minister for Education and Skills
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

19 October 2011

Dear Minister

CLA31 - The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

CLA32 - The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your reply of 4 October to my letter of 27 September. The Constitutional and Legislative Affairs Committee considered your letter at its meeting on 17 October.

The Committee was grateful for your clarification that Ministers do not have any current intention to use the powers under article 5 and noted that any future provisions made using this power will be published on the internet. However, Committee Members also noted that this falls somewhat short of informing Assembly Members in a written statement as I suggested in my original letter.

The Committee agreed that I should ask you to ensure that, if this power is used, Ministers will write to the Chair of the Constitutional and Legislative Affairs Committee to inform him or her of its use. I hope you will be able to agree that this is neither an onerous nor an unreasonable request.

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CLA31 - CLA32
Ein cyf/Our ref LA/06202/11

David Melding AM
Chair - Constitutional & Legislative Affairs Committee
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31 October 2011

Dear David

CLA31 – the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

And;

CLA32 – the National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your letter of 19 October.

In my reply to your letter of 27 September I confirmed that I currently have no plans to use the powers under article 5 of the above Statutory Instruments and any further provision would be published on the internet.

I anticipate that any provision proposed under article 5 of the above statutory instruments would be the subject of consultation and consequently would appear on the Welsh Government internet site for public scrutiny. Through that consultation process the Constitutional and Legislative Affairs Committee would be free to consider and comment upon any proposed use of the provision. I, therefore, feel that it is unnecessary for me to write separately to the Chair of the Committee to inform him or her of its proposed use.

Yours sincerely

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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Eitem 5

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Constitutional and Legislative Affairs Committee

Alun Davies AM
Deputy Minister for Agriculture,
Fisheries, Food & European Programmes
Welsh Government
Floor 5, Tŷ Hywel
Cardiff Bay, CF99 1NA

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

5 October 2011

Dear Alun

CLA38 - The Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011

The Committee considered the above Statutory Instrument at its meeting on 3 October 2011. A copy of our report on the regulations, along with the Welsh Government response, is attached for information.

The Committee was very grateful for the undertaking given in the Government's response that a Welsh translation of instruments made jointly with the UK Parliament would be provided where possible in future. The Committee agreed that this was a welcome step forward. However, Committee Members noted that a Welsh translation would have no legal standing and would not address the fundamental issue that instruments made in English only do not comply with the Assembly's standing orders. The Committee will, therefore, continue to be required to report on such instruments under Standing Order 21.2 (ix).

The Committee was also grateful for the undertaking that in future Explanatory Memorandums for such instruments would be addressed to the relevant Assembly Committee and would include at least a Welsh Government perspective on the instrument in question. This is also a very welcome step forward.

The Committee asked me to clarify two further points with you. Firstly, are the undertakings given in this case made on behalf of all the Welsh Ministers? Secondly, has any assessment been made of the impact of these particular regulations on Wales alone and, if so, would you be able to publish the assessment for the public record?

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Adroddiad Drafft y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA38

Teitl: The Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 (Saesneg yn unig)

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn darparu ar gyfer gweithredu a gorfodi rhoi ar waith Reoliad y Cyngor (EC) Rhif 708/2007, ynghylch defnyddio rhywogaethau estron a rhywogaethau o du allan i'r ardal mewn dyframaethu.

Materion technegol: craffu

O dan Reol Sefydlog 21.2 bydd y Cynulliad yn cael ei wahodd i roi sylw arbennig i'r offeryn a ganlyn:

Cafodd y Rheoliadau hyn eu cynhyrchu yn Saesneg yn unig. Yn ogystal, ni chafwyd unrhyw esboniad dros y rheswm pan na chafodd y Rheoliadau hyn eu cynhyrchu'n ddwyieithog. Ymddengys mai'r rheswm dros hyn yw oherwydd mai Adran yr Amgylchedd, Bwyd a Materion Gwledig a baratodd y memorandwm esboniadol ac fe gaiff ei osod gerbron y Senedd ar Orchymyn Ei Mawrhydi. Gan hynny, ni chafwyd unrhyw ymgais i roi sylw i weithdrefnau ac arferion y Cynulliad yn y Memorandwm.

(Rheol Sefydlog 21.2 (ix) nad yw wedi'i wneud neu i'w wneud yn Gymraeg ac yn Saesneg).

Rhinweddau: craffu

Ni nodwyd unrhyw bwyntiau i fod yn destun adroddiad o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

Cynghorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Medi 2011

Mae'r Llywodraeth wedi ymateb fel a ganlyn:

Rheoliadau Rhywogaethau Estron a Rhywogaethau sy'n Absennol yn Lleol mewn Dyframaethu (Cymru a Lloegr) 2011

Mae Rheoliadau Rhywogaethau Estron a Rhywogaethau sy'n Absennol yn Lleol mewn Dyframaethu (Cymru a Lloegr) 2011 yn Rheoliadau cyfansawdd a fydd yn gymwys i Gymru a Lloegr, byddant yn ddarostyngedig i'r weithdrefn penderfyniad negyddol yng Nghynulliad Cenedlaethol Cymru ac yn Senedd y Deyrnas Unedig fel ei gilydd. Yn unol â hynny, nid ystyrir ei bod yn rhesymol ymarferol i'r offeryn hwn gael ei wneud yn ddwyieithog na'i osod felly. Yn y

dyfodol, mae'n ddymuniad gennym bod cyfieithiad cwrteisi i'r Gymraeg o offerynnau cyfansawdd fel hyn yn cael ei ddarparu gan Lywodraeth Cymru, ar ôl i'r offeryn priodol gael ei wneud, gan gydbwyso'r dymuniad hwnnw gyda'r defnydd mwyaf effeithlon o adnoddau er mwyn cyflawni amcanion polisi Llywodraeth Cymru.

Mae'r Memorandwm Esboniadol sydd wedi ei osod mewn cysylltiad â'r Rheoliadau hyn yn y fformad a fabwysiadwyd cyn y newidiadau diweddar i Reolau Sefydlog sy'n galluogi'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ystyried eitemau sydd hefyd yn ddarostyngedig i weithdrefnau Senedd y Deyrnas Unedig. O dan y Rheolau Sefydlog blaenorol, byddai Gweinidogion Cymru'n gosod Memorandwm Esboniadol o'r fath o'u gwirfodd i gynorthwyo'r aelodau wrth ystyried yr is-ddeddfwriaeth dan sylw. Yr ydym yn derbyn nad yw'r fformad hwn yn briodol bellach a sicrhawn fod staff yn ymwybodol o a) naill ai bod rhan Llywodraeth Cymru yn y gwaith o gynhyrchu'r Memorandwm Esboniadol yn cael ei gwneud yn eglur neu fod Memorandwm Esboniadol ar wahân yn cael ei gynhyrchu o ran Cymru i offerynnau cyfansawdd fel hyn; a b) yn y dyfodol dylai Memoranda Esboniadol gael eu cyfeirio at y Pwyllgor Cynulliad Perthnasol.



Ein cyf/Our ref: MB/FM/5937/11

Mr David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

| November 2011

Dear David

The Assembly's Standing Orders require the Constitutional and Legislative Affairs Committee to report on any instrument which is not in the Welsh language. The removal of the provision prohibiting your Committee's reporting on instruments also subject to a Parliamentary procedure means that, under the new Standing Orders any composite or joint instrument will also attract a report on those grounds.

Your Committee has reported on those grounds in respect of instruments also subject to a Parliamentary procedure on four occasions and I thought it would be helpful if I explained the Welsh Government's position with regard to the making of statutory instruments which are also subject to a Parliamentary procedure in order to inform the Committee's future consideration of such instruments.

I would firstly seek to assure you that where Welsh Ministers have the power to make subordinate legislation for Wales the presumption will be that, unless there are good reasons to do otherwise, that power will be exercised via a Wales-only Statutory Instrument, and that that instrument will be bilingual unless the criteria in the Welsh Ministers' Welsh Language Scheme under section 78 of the Government of Wales Act 2006 dictates otherwise

However, there are occasions where making instruments on a composite basis with the relevant UK Minister is the most appropriate approach. This may be, for example:

where separate England and Wales instruments would each have a cross-border effect that might lead to confusion for those affected;

for reasons of expediency, e.g. to facilitate the avoidance of infraction when transposing EU obligations in order to avoid infraction;

in cases of emergency where instruments must be brought into force very quickly;

or in cases where, because of the nature of the provision made by the instrument, the legislation is more accessible if made on an England and Wales basis.

As you are aware the UK Parliament will not scrutinise general statutory instruments in languages other than in English.

While the Government is committed to the making of legislation for Wales on a bilingual basis we also need to consider on occasion the option of making composite instruments where this represents the best use of limited and often stretched resources. For these reasons the presumption should also be that we will not produce retrospective Welsh translations which cannot have the force of law.

I hope that this letter clarifies the Government's position on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'C. Jones', with a stylized flourish at the end.

CARWYN JONES

EVIDENCE TO CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE ON THE GRANTING OF POWERS TO WELSH MINISTERS IN UK LAWS

Richard Parry, Reader in Social Policy, School of Social and Political Studies,
University of Edinburgh

1. The UK Public Bodies Bill raises questions for the National Assembly about how Welsh ministers would use powers they are being given by the UK Parliament. My purpose here is to provide a Scottish perspective, especially on the use by ministers of similar powers on the reorganization of public bodies in the Public Services Reform (Scotland) Act 2010.

2. The committee's investigation seems to me to relate to two areas of concern:

- i) the way that the definitive separation of executive and legislature in the Government of Wales Act 2006 and confirmed in the March 2011 referendum might lead ministers to behave in a 'heavy' manner, asserting executive prerogatives in relation to Assembly scrutiny;
- ii) the role of 'quango' bodies that are not departments under the direct control of ministers or local authorities, but have more arm's length governance structures, usually appointed boards. These are of particular sensitivity in Wales because devolution was meant to promote rationalisation and accountability in the 'quango state'.

3. The Public Bodies Bill has substantial content about Welsh bodies, and it might seem that the UK Parliament is granting powers directly to Welsh ministers and so implicitly bypassing the Assembly. It is more plausible to see the Bill as clearing up the legislative legacy of bodies that are cross-border or were specified in UK statute. The powers given to Welsh ministers are to make orders in respect of the bodies, and so the question becomes the way that these orders are scrutinized in the National Assembly. This is where Wales intersects with - and is free to embrace or resist - a UK policy agenda promoting a simplified approach to changing the structure and operation of quangos.

4. Under pressure to accelerate public sector reform, there is a UK legislative trend to withdraw the reshaping and direction of quangos from the arena of primary legislation. The Public Service Reform (Scotland) Act 2010 allowed the Scottish Government to approach rationalize quangos in some areas and have extensive rights to intervene in the business of those that remain. Section 14 allows quangos (as listed in schedule 5) to be abolished by order and the list of bodies includes the great majority of quangos targeted in the Scottish Government's *Simplifying Government* strategy.

5. These powers were part of a wider 'catch-all' provision (section 14 (1)) allowing ministers, in respect of bodies listed in schedule 5 to 'by order make any provisions which they consider would improve the exercise of public functions', having regard to efficiency, effectiveness and economy. Clause 8 of the UK Public Bodies Bill echoes this wording, adding 'securing appropriate

accountability' and it also recurs in clause 17 in relation to Welsh minister's order-making powers in the Bill. The 3 Es have economics definitions – economy is doing the same things more cheaply; efficiency is about producing more outputs with the same or fewer inputs; effectiveness is about the way that inputs, outputs produce desired outcomes. All public policy should 'have regard' to these considerations and it is difficult to see how ministers can be held to account about the propriety of their interventions under this wording. Safeguards in section 16 of the Scottish Act, including that the use of powers must be 'proportionate to the policy objective', are hard to evaluate and apply.

6. The key concept is 'by order' and here the debate shifts to the scrutiny of such secondary legislation. Here we can draw on Scottish experience. The first two orders made under the Act were the Public Services Reform (General Teaching Council) Order 2011 and the Public Services Reform (Agricultural Holdings (Scotland) Order 2011. These were considered thoroughly by the Subordinate Legislation Committee in its 58th report (2010) and its 19th report (2011), under a 'super-affirmative' procedure in which a draft order was tabled for consultation. Detailed questions were put to and answered by the Scottish Government. The Committee expressed reservations that the General Teaching Council order allowing the GTC to make rules about teacher qualification was an *ultra vires* law-making function. The Education, Lifelong Learning and Culture committee took oral evidence from the Minister on 2 March 2011, and, with some continuing reservations, recommended approval; the order was passed by resolution of the Scottish Parliament without plenary debate.

7. The Committee is also interested in Legislative Consent Orders. This is less an area of my own expertise but my perception of the Scottish Parliament's approach is that it was realised early on that the distinction between devolved and reserved functions was less clear-cut than might be thought and that there need be no qualms about letting Westminster legislation pick up usually small and consequential matters. But, unusually, at the moment two controversial legislative consent issues are in progress – on the Scotland Bill and the Welfare Reform Bill. In their report on the Scottish Government's legislative consent memorandum on the Welfare Reform Bill (27th report, 2011 session 3) the Subordinate Legislation Committee note that the power to make consequential provision in relation to the introduction of Universal Credit would be exercised by negative procedure in Scotland but by affirmative procedure in Wales.

10. The wider issue is about the use of secondary legislation in these matters. Wales has already been a pioneer in discussing how quango activity is to be brought under democratic control. Order-making power in Scotland and the UK has become a lesser stratum of democratic scrutiny, and despite well-working procedures in the Scottish Parliament there remains concern that the Government can have its way too easily on the reconstruction of public authorities. The Committee's present investigation is well-placed to investigate how this issue might play out in Wales.

26 October 2011



Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Adroddiad: CLA(4)-09-11 : 31 Hydref 2011

Mae'r Pwyllgor yn cyflwyno'r adroddiad a ganlyn i'r Cynulliad:

Offerynnau nad ydynt yn cynnwys unrhyw faterion i'w codi o dan Reol Sefydlog 21.2 neu 21.3

Offerynnau'r Weithdrefn Negyddol

CLA47 - Rheoliadau Marchnata Cynnyrch Garddwriaethol Ffres (Cymru) (Diwygio) 2011

Y weithdrefn: Negyddol.

Fe'u gwnaed: 18 Hydref 2011

Fe'u gosodwyd: 18 Hydref 2011

Yn dod i rym ar: 8 Tachwedd 2011

Busnes arall

Cynnig Cydsyniad Deddfwriaethol: Y Bil Addysg

Trafododd y Pwyllgor bapur gan Gynghorwyr Cyfreithiol y Pwyllgor ynghylch y Memorandwm Cydsyniad Deddfwriaethol Atodol ar gyfer diwygiadau i'r Bil Addysg, a osodwyd gan Leighton Andrews AC, y Gweinidog Addysg a Sgiliau. Cyfeiriodd y papur hefyd at Ddatganiad ysgrifenedig o dan Reol Sefydlog 30 ynghylch y pwerau y mae'n eu hargymell i'w rhoi i Weinidogion Cymru drwy'r Bil Lleoliaeth.

Nododd y Pwyllgor y byddai'r diwygiadau i'r Bil Addysg yn rhoi'r pwerau i Weinidogion Cymru ddeddfu mewn rhai materion sylweddol, ond bod y Bil wedi symud ymlaen i'r fath raddau nad oedd yn caniatáu i'r Cynulliad graffu arno mewn manylder.

Cytunodd y Pwyllgor y dylai'r Cadeirydd ysgrifennu at y Gweinidog Addysg a Sgiliau yn seiliedig ar y materion a nodir yn y papur a thrafodaeth y Pwyllgor. Cytunodd y Pwyllgor hefyd i gyflwyno'r llythyr i sylw Aelodau'r Cynulliad i lywio'r drafodaeth ar y Cynnig Cydsyniad Deddfwriaethol yn y Cyfarfod Llawn ar 1 Tachwedd.

Gohebiaeth y Pwyllgor

**CLA36 – Gorchymyn Deddf Bywyd Gwylt a Chefn Gwlad 1981
(Amrywio Atodlenni 5 ac 8) (Cymru a Lloegr) 2011**

Nododd y Pwyllgor ymateb y Gweinidog i lythyr y Cadeirydd dyddiedig 27 Medi 2011 ar rinweddau Gorchymyn Deddf Bywyd Gwylt a Chefn Gwlad 1981 (Amrywio Atodlenni 5 ac 8) (Cymru a Lloegr) 2011.

**CLA37 – Rheoliadau Codi Tâl am Fagiau Siopa Untro (Cymru)
(Diwygio) 2011**

Nododd y Pwyllgor ymateb y Gweinidog i lythyr y Cadeirydd dyddiedig 27 Medi 2011, a oedd yn mynegi pryder bod y Rheoliadau wedi cael eu gosod yn agos iawn at y dyddiad dod i rym ar gyfer polisi newydd mor bwysig a hysbysodd y Gweinidog am adroddiad y Pwyllgor ynghylch rhinweddau Rheoliadau Codi Tâl am Fagiau Siopa Untro (Cymru) (Diwygio) 2011.

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i roi pwerau i Weinidogion
Cymru yn Neddfau'r DU**

Clywodd y Pwyllgor dystiolaeth lafar gan Alan Trench, Uwch Gymrawd Ymchwil Anrhydeddus, yr Uned Gyfansoddiadol, Coleg Prifysgol Llundain.

Penderfyniad i gwrdd yn breifat

Yn unol â Rheol Sefydlog 17.42(vi) penderfynodd y Pwyllgor wahardd y cyhoedd o weddill y cyfarfod i drafod y dystiolaeth a gyflwynwyd hyd yn hyn i'r Ymchwiliad i roi pwerau i Weinidogion Cymru yn Neddfau'r DU.

David Melding AC

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

31 Hydref 2011