

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

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Alun Cairns AM
Chair
Proposed Learner Travel (Wales) Measure Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

22 May 2008

Dear Alun

PROPOSED LEARNER TRAVEL (WALES) MEASURE

Evidence to the Subordinate Legislation Committee – 6 May 2008

Under SO 15.6 (ii), the remit of the Subordinate Legislation Committee allows it to consider “the appropriateness of provisions in proposed Assembly Measures...that grant powers to make subordinate legislation to the Welsh Ministers...”.

At its meeting on 22 April 2008 the Subordinate Legislation Committee considered the Proposed Learner Travel (Wales) Measure (see Annex). Following the Members’ decision to invite the Deputy First Minister for Wales and Minister for Economy and Transport Ieuan Wyn Jones AM to provide further information and views on the subordinate legislation provisions of the proposed Measure, the Deputy First Minister gave evidence to the Committee on 6 May 2008.

As the Chair of the Subordinate Legislation Committee I would like to inform you that, having scrutinised the subordinate legislation provisions and the rationale behind the choice of procedure applying to these provisions, the Members were satisfied with the information and explanations provided.

I would like to bring to your attention the transcript of the session which may inform the work of your Committee:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm?act=dis&id=84374&ds=5/2008>

Yours sincerely,

Dr Dai Lloyd AM
Chair, Subordinate Legislation Committee

Annex

Subordinate Legislation Committee

SLC(3) 09-08 (p1)

Meeting Date: 22 April 2008
Meeting Time: 8.45 – 9:15am
Meeting Venue: Committee Room 2, Senedd

PROPOSED LEARNER TRAVEL (WALES) MEASURE

Paper to the Subordinate Legislation Committee in relation to delegated powers – for consideration by the Committee pursuant to Standing Order 15.6(ii)

Purpose

1. Under Standing Order 15.6(ii) the Committee may consider the appropriateness of provisions in proposed Assembly Measures that grant powers to make subordinate legislation to the Welsh Ministers. This paper outlines the subordinate legislation provisions in the proposed Learner Travel (Wales) Measure for the Committee's consideration.

Background

2. The Assembly Government issued a consultation document in June 2007 about its proposed Measure in relation to Learner Travel. The deadline for observations was 28 September 2007. The Enterprise and Learning Committee considered the consultation document, and took evidence from interested parties, including the Deputy First Minister. Although it did not pay particular attention to the technical aspects of delegated powers, it did recommend "We recommend that the current non statutory Guidance on contracts be placed on a statutory basis and that it should include a standard draft tender document."

The report can be accessed at

<http://www.cynulliadcymru.org/cr-ld6874.pdf> [Welsh]

<http://www.assemblywales.org/cr-ld6874.pdf> [English]

3. The Deputy First Minister and Minister for Economy and Transport, Ieuan Wyn Jones AM, laid before the Assembly the proposed Learner Travel (Wales) Measure 2008 on 15 April, accompanied by an Explanatory Memorandum and Explanatory Notes. The Stage 1 Consideration of General Principles debate will be held on 29 April.

Legislative Competence

4. The power to make this Measure is contained in section 93 of the Government of Wales Act 2006 and the Assembly's competence to legislate on this matter is to be found in Matter 5.10 in field 5 of Schedule 5 to that Act.

5. The matter in question is –

Provision about the travel of persons receiving primary, secondary or further education or training to and from the schools or other places where they receive it.

6. It is subject to the following exceptions –

This does not include provision about any of the following—

(a) the regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used;

(b) road traffic offences;

(c) driver licensing;

(d) driving instruction;

(e) insurance of motor vehicles;

(f) drivers' hours;

(g) traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits;

(h) public service vehicle operator licensing;

(i) the provision and regulation of railway services, apart from financial assistance which—

(i) does not relate to the carriage of goods,

(ii) is not made in connection with a railway administration order, and

(iii) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No 1893/91 on public service obligations in transport;

(j) transport security;

(k) shipping, apart from financial assistance for shipping services to, from or within Wales;

(l) navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation;

(m) technical and safety standards of vessels;

(n) harbours, docks, piers and boatslips, apart from those used or required wholly or mainly for communications between places in Wales;

(o) registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

Policy Background

7. The contents of the Measure are summarised in the Government's Explanatory Memorandum as follows –

“1. Description

1.1 *The Measure will make law for the travel of school pupils and young people in education or training aged 16-19 in Wales. It replaces the law for travel for learners in Wales set out in the Education Act 1996 (as amended) and consolidates and simplifies current statutory provisions. The Measure, essentially, will:*

- *increase entitlement to free transport to school for primary school children if they live two miles or further away;*
- *re-enact entitlement for free transport for secondary school children if they live three miles or further away from the nearest suitable school;*
- *introduce a specific requirement to assess and provide for the needs of looked after children and to clarify related payment arrangements between local authorities in Wales;*
- *require local authorities and the Welsh Ministers, when exercising their functions under the Measure, to promote access to Welsh medium education;*
- *require Welsh Ministers to make a code of conduct in relation to travel to and from places of learning and require this to become part of a school’s behaviour policy; and*
- *give local authorities the power to change school session times if that can improve transport arrangements or environmental sustainability.*

The Measure will also provide the means for Welsh Ministers to issue statutory guidance and to make future provision for young people in post-16 learning and children in nursery education.”

Subordinate Legislation Powers

8. The Government has summarised the proposals in relation to subordinate legislation in Section 5 of the Explanatory Memorandum as follows –

“5. Power to make subordinate legislation

5.1 *Sections 2(1)(c), 3(9), 7, 8, 12(3)(c), 16, 21(2) and 28(2) contain powers to make subordinate legislation. These powers are all conferred on the Welsh Ministers, and are powers to make regulations or orders by statutory instrument (see section 27(1)).*

Regulation Making Power for Entitlement

5.2 *The Measure contains an enabling power that will permit Welsh Ministers to make regulations for children’s entitlement to travel (section 3(9)). The power is intended to give Welsh Ministers the means to replace, add to, or alter the entitlement to free transport granted by the Measure to primary and secondary school children.*

5.3 Welsh Ministers have concluded that entitlement of primary and secondary school children to transport is determined best by reference to their age and the distance from home to school. Over time this may change and another arrangement, or different age and / or distance limits might be preferable. The power will enable Welsh Ministers to update and develop the law for entitlement to free or subsidised travel in line with developments in education or travel policy. It is considered appropriate to do this by regulations in order to respond quickly and flexibly to a need to change the entitlements. Regulations made under section 3(9) could therefore amend or repeal the provisions governing the circumstances and conditions that apply in respect of the local authority's duty to make travel arrangements, and could also make incidental, supplementary, transitional, saving or consequential provision including amendments to other legislation (see section 27(2), (3) and (4)).

5.4 There are also powers to enable Welsh Ministers to make regulations about travel arrangements for children in nursery education and for young people in post-16 learning (sections 7 and 8). Regulations made under section 7 and 8 can also make incidental, supplementary, transitional, saving or consequential provision including amendments to other legislation (see section 27(2), (3) and (4)).

5.5 In relation to nursery education (section 8), the regulations may require or permit a local authority to make travel arrangements; specify the kinds of place to and from which travel arrangements may or must be made; specify the travel arrangements that may or must be made as well as matters that must be taken into account in making decisions about travel arrangement; make provision about charges; and require information and assistance to be given to the local authority. The regulations could reflect the type of provision made in the Measure in relation to children of compulsory school age. It is considered appropriate to place duties on or give powers to local authorities because they are best placed to make arrangements on the basis of the assessment of needs they will have carried out under section 2 of the Measure.

5.6 In relation to post 16 learners, the regulations may confer powers on Welsh Ministers, local authorities and/or institutions in the further education sector because all three may have a role. The regulations may specify the kinds of place to and from which travel arrangements may or must be made; specify the travel arrangements that may or must be made as well as matters that must be taken into account in making decisions about travel arrangement; make provision about charges; require information and assistance to be given to other persons in connection with the performance of functions under the regulations (this is particularly relevant as local authorities will have gathered key information as a result of the assessment of needs they are required to carry out under section 2 of the Measure); and make provision about standards of behaviour expected while travelling to and from places of learning (so enabling provision to be made about the enforcement of the Travel Behaviour Code made under section 12).

5.7 The transport requirements for children in nursery education and young people in post-16 learning are complex and pose different issues from children in primary and secondary school. Welsh Ministers acknowledge that availability and cost of transport can be a factor for these learners or their parents.

However, Welsh Ministers want to scope options for providing entitlement to transport for these groups and research costs, benefits and practicalities carefully. This will take time and needs to take account of a review of pilot projects. For these reasons, regulations for entitlement to travel for these groups will not be available for consideration during the passage of the Measure. It is considered appropriate to have a power to make regulations in relation to these groups so that once the options have been considered, then if it is concluded that provision should be made to confer entitlements on these groups, this can be done in a flexible and prompt manner.

5.8 It is likely that any provisions made using the powers in sections 7 and 8 would be about:

- duties on bodies to provide or make arrangements for transport of children and young people (see in particular section 7(2) and (3)(a) in relation to travel arrangement for learners in post 16 education or training and section 8(1) and (2) (a) and (b) in relation to travel to and from nursery education); or*
- the groups of children and young people entitled to transport (using section 7(2) in relation to travel arrangement for learners in post 16 education or training or section 8(1) in relation to travel to and from nursery education).*

5.9 Welsh Ministers will commission impact and cost – benefit studies of any proposals before proposing regulations under section 3(9) or sections 7 or 8. Under section 27(7) these regulations will be subject to the affirmative resolution procedure and a regulatory impact assessment will be undertaken. This is because the regulations confer a significant discretion on Welsh Ministers and they could also amend other provisions in the Measure and in other legislation. In those circumstances it is considered appropriate for the Assembly to scrutinise the regulations before they are made.

Other Regulation and Order Making Powers

5.10 The Measure enables Welsh Ministers to make regulations about other aspects of the Measure as follows:

- prescribing other learners to be included in assessment of travel needs (section 2(1)(c)) and other learners to whom the travel behaviour code will apply (section 12(3)(c));*
- the publication of information about assessments, travel arrangements and the travel behaviour code (section 16); and*
- the procedures to be followed when a local authority uses its powers to change school start and finish times (section 21 - amendments to Education Act 2002).*

5.11 The regulations will also be able to make different provision for different cases or areas, make provision generally or in relation to specific cases, and

make incidental, supplementary, transitional or saving provision including amendments to other legislation (see section 27(2) and (4)).

5.12 Regulations under these powers will relate to matters which are technical or procedural in nature or will set out detail. The nature and content of the provisions made by any such regulations would not appropriate to be included on the face of the Measure. It is also desirable that the Welsh Ministers have the flexibility to amend provisions about matters such as the timing of publication of information quickly.

5.13 Under section 27(5) the negative resolution procedure will apply to these regulations because their scope is limited and they are concerned with detail and process. The negative resolution procedure affords the Assembly a degree of scrutiny appropriate to the limited type of provision that can be made in these regulations. However if any regulations under these powers amend or repeal any provision of any Measure or Act of Parliament then, in accordance with section 27(7)(d), they will be subject to the affirmative resolution procedure as this higher level of scrutiny is considered appropriate for regulations that amend primary legislation.

5.14 Section 28(2) contains a power for the Welsh Ministers to make an order to commence provisions of the Measure. As is normal practice for commencement orders, no procedure will apply to such orders (unless they amend or repeal any provision of any Measure or Act of Parliament in which case, in accordance with section 27(7)(d), they will be subject to the affirmative resolution procedure as is appropriate for orders amending primary legislation)."

9. The powers to make statutory instruments referred to in the proposed Measure are explained in more detail in the Explanatory Notes on sections. An abbreviated version limited to those powers forms Annex 1 to this Committee paper.

Summary

10. Affirmative Assembly procedures would apply to all regulations made under
- section 3(9) (prescribing the circumstances and conditions in which children of compulsory school age would be entitled to free transport);
 - section 7 (about travel arrangements for post-16 learners);
 - section 8 (allowing the Welsh Ministers to make provision about the travel arrangements for nursery age children); and
 - those regulations that amend the provisions of an Assembly Measure or an Act of Parliament.
11. Otherwise the negative procedure will apply to other regulations and to orders. In accordance with normal practice no procedure applies to commencement orders.
12. For the sake of completeness, powers to give directions or issue guidance (which can sometimes constitute legislation) are included in the Annex, but no Assembly procedure would apply to them.

Action for the Committee

13. The Committee is invited to consider whether, and if so how, it wishes to give further consideration to the powers to be granted to Welsh Ministers to make subordinate legislation under this proposed Measure.

Legal Services
National Assembly for Wales
April 2008

Annex 1 – Extract from the Explanatory Notes

The text that follows is an adaptation of the Government's Explanatory Notes to the Measure. Only those sections directly relevant to an understanding of the powers to make delegated legislation that are being sought in the proposed Measure have been extracted below. The underlined comments are those of the Assembly's lawyers, and not of the Government.

Explanatory Notes

These Explanatory Notes are for the Learner Travel (Wales) Measure 2008 laid before the National Assembly for Wales on 15 April 2008. The Explanatory Notes should be read in conjunction with the Measure but are not part of it.

Commentary on Sections

[Section 1 – Main terms used in this Measure

Section 2 - Duty to assess learner travel needs]

Section 3 – Local authority duty to make transport arrangements

Section 3 places a duty on a local authority to make transport arrangements for children of compulsory school age in specified circumstances and subject to specified conditions.

Subsection (1) provides that the section applies to children of compulsory school age who are ordinarily resident in its area if the circumstances set out in column 1 of the table apply to the child and the conditions in column 2 are met.

Subsection (2) sets out the main duty of the local authority to make suitable transport arrangements to facilitate the attendance of a child to whom the section applies each day at the relevant places where the child receives education or training. A child's attendance is facilitated if arrangements are made for the child to travel from home to the place where they receive education or training and back home again.

The table after subsection (2) sets out the circumstances and conditions which lead to an entitlement to free transport arrangements.

Subsection (6) defines the suitability of education or training for the purpose of this section by reference to a child's age, ability and aptitude, and to any learning difficulties. Neither the child's or parent's language preference or mother tongue, nor religious faith or conviction of the child or his or her parent have any bearing on whether a school is suitable for the purpose of this section.

Subsection (7) specifies that the distances in the table are to be measured by the shortest available route. Availability of a route is dealt with in subsection (8) which sets out the circumstances when a child can be expected to walk to school.

The Welsh Ministers may make regulations under subsection (9) prescribing the circumstances and conditions in which children of compulsory school age would be entitled to free transport. Regulations may amend the table or subsections (6), (7) and (8) or entries in the table. For example, the Welsh Ministers could change the distance and age criteria that determine eligibility, provide local authorities with more or less discretion to operate their own transport policies. Any regulations made under this provision would be made using the affirmative resolution procedure and would be subject to a regulatory impact assessment and scrutiny by the National Assembly.

Regulations made under section 3(9) will be subject to an affirmative Assembly procedure (section 27(7)).

[Section 4 – Local authority duty to make other travel arrangements

Section 5 – Limits of learner travel duties

Section 6 – Power of local authorities to make learner travel arrangements]

Section 7 – Travel arrangements for learners in post -16 education or training

Welsh Ministers will be able to make regulations under this section about travel arrangements for post-16 learners who live in Wales and are attending courses in Wales or elsewhere where the education or training is funded by the Welsh Ministers.

The regulations could make provision similar to that made in the Measure in relation to children of compulsory school age. Provision could be made requiring or allowing the Welsh Ministers, local authorities or FE institutions to make travel arrangements and specifying the kind of matters to consider when making them. The regulations could also make provision about charging, could require cooperation between the persons involved in the arrangements, and could make provision about enforcing the travel behaviour code made under section 12 and which sets out standards of behaviour while travelling.

Regulations made under section 7 will be subject to an affirmative Assembly procedure (section 27(7)).

Section 8 – Travel arrangements to and from nursery education

Section 8 is a regulation making power allowing the Welsh Ministers to make provision about the travel arrangements for nursery age children. Under this power a local authority could be required by Welsh Ministers to make travel arrangements for children under compulsory school age who are in nursery education. Subsection (2) describes the scope of the regulation making powers. The regulations could make provision similar to that made in the Measure in relation to children of compulsory school age and could require any person to provide information and assistance that a local authority might reasonably require.

Regulations made under section 8 will be subject to an affirmative Assembly procedure (section 27(7)).

[Section 9 – Learner travel arrangements not to favour certain types of education or training

Section 10 – Promoting access to education and training through the medium of the Welsh language

Section 11 – Sustainable modes of travel]

Section 12 – Travel behaviour code

Section 12 requires Welsh Ministers to make and periodically review a travel behaviour code which sets out the standards of behaviour required of learners while travelling to and from their place of learning.

Although this code will be a form of subordinate legislation, it will not be a statutory instrument, and no Assembly procedure will apply to it. There is, however, an obligation to consult under section 12(6).

[Section 13 – Enforcement of travel behaviour code: pupils at relevant schools

Section 14 – Enforcement of travel behaviour code: withdrawal of travel arrangements]

Section 15 –Guidance and directions

When exercising any of their functions under the Measure, subsection (1) requires local authorities and governing bodies of maintained schools and further education institutions to have regard to guidance given by the Welsh Ministers.

Furthermore, Welsh Ministers may require authorities to make learner travel arrangements, or when making them, to comply with a direction (subsections (2) and (3)). Such directions can be given to one or more authorities or generally under subsection (4). This direction power is similar to that provided by sections 509(1) and 509AA(9) of the Education Act 1996. It permits Welsh Ministers to direct on individual cases or about more general policy matters. The power may be exercised irrespective of whether a local authority is in default of its duties. It does not take the place, or affect, the more general powers of direction that Welsh Ministers have under sections 496-497A of the Education Act 1996.

Although such guidance and directions may constitute subordinate legislation, it will not be a statutory instrument, and no Assembly procedure will apply to it.

Section 16 – Information about travel arrangements

The Welsh Ministers may make regulations requiring a local authority to publish information about the assessment under section 2, about the arrangements made by the authority or the Welsh Ministers for learner travel and about the travel behaviour code.

Regulations made under section 16 will be subject to a negative Assembly procedure (section 27(5)).

[Section 17 – Co-operation: information and other assistance

Section 18 - Payment of travel costs by a local authority which looks after a child

Section 19 – Determination of ordinary residence in particular circumstances

Section 20 – Amendments to the Education Act 1996]

Section 21 – Amendments to the Education Act 2002

Section 21 makes amendments for Wales to sections 32 and 210 of the Education Act 2002. Section 32 requires a school governing body to determine the times of school sessions. Subsection (3) of section 32 of the Education Act 2002 is a regulation making power governing the procedure for changing the times of school sessions and in Wales such changes are made in line with the Changing of School Session Times (Wales) Regulations 2000.

Subsection (2) inserts new subsections (5) to (10) into section 32 of the 2002 Act. Where a local authority is satisfied that changing a school's session time would promote sustainable modes of travel or would improve the efficiency and effectiveness of travel arrangements, it can change the session times. It will do so by giving notice to the governing body. Where a school has two sessions in a day, the local authority will decide the time at which the morning school session will start and the time the afternoon session will end. The governing body will retain the power to set the time of the end of the morning session and the start of the afternoon session. But if the school only has one session in a day, the authority will decide the time of its start and end.

The Welsh Ministers may make regulations under the new subsection (9) of section 32 of the 2002 Act about how a local authority should issue a notice and related matters about a notice's content. Under the new subsection (10) of section 32 the local authority will have to have regard to guidance given by the Welsh Ministers when using this new power.

Section 210 of the 2002 Act prescribes how orders and regulations under the 2002 Act are to be made. The amendment made by section 18(3) will have the effect of making the order making power inserted into section 32(8) exercisable by statutory instrument.

Section 210(6A) prescribes that any order made under section 32(8) is subject to the negative procedure. Section 210(6B) is a signpost to the effect of Schedule 11 to the Government of Wales Act 2006.

[Section 22 – Amendments to sections 455 and 456 of the Education Act 1996]

Section 23 – Amendments to the Education and Inspections Act 2006

Section 23 makes amendments to sections 162 and 181 of the Education and Inspections Act 2006 and inserts a new section 182A into that Act. Section 162 prescribes the power to repeal references to “local education authority” in Acts and in statutory instruments. The amendment made by section 23 will enable Welsh Ministers to amend references in Measures to “local education authority”.

Section 181 of the 2006 Act prescribes how orders and regulations under the 2006 Act are to be made. The amendment made by section 23 of the Measure will have the effect of making the order making power inserted into section 162 of the 2006 Act exercisable by statutory instrument.

The new section 182A(1) of the 2006 Act prescribes that any order made under section 162(5A) of the 2006 Act must be laid before and approved by resolution of the National Assembly (the affirmative procedure). The new section 182A(2) of the 2006 Act is a signpost to the effect of Schedule 11 to the Government of Wales Act 2006.

[Section 24– General interpretation

Section 25 – Minor and consequential amendments

Section 25 gives effect to Schedule 1 which contains minor and consequential amendments.

Section 26 – Repeals

Section 26 gives effect to Schedule 2 which contains repeals to other enactments as specified.]

Section 27 – Orders and regulations

This section makes provision in relation to any orders or regulations made by Welsh Ministers. They will be able to make different provisions for different situations, to make provisions for specific cases or to make them more generally and to make incidental, supplementary, transitional or saving provisions.

Section 27 also provides Welsh Ministers with the power to make consequential provision and to amend or repeal provisions of Assembly Measures, Acts or subordinate legislation made before the Measure. The purpose of subsection (3) is to permit Welsh Ministers to make changes they consider necessary, expedient or consequential to give effect to regulations made under sections 3(9), 7 or 8 of the Measure which concern the requirements on local authorities to arrange transport for school children, transport for learners in post-16 education or training and the provision for transport for children in nursery education.

Subsections (5) to (7) set out the procedures that will apply to any statutory instrument made under different sections of the Measure. Regulations that contain provisions listed in subsection (7) will have to be laid before and approved by resolution of the National Assembly (the affirmative resolution procedure). These are regulations that

amend the circumstances of learners entitled to transport under section 3, regulations about transport for learners in post-16 education or training under section 7, regulations about the travel arrangements for children in nursery education under section 8, and any regulations which amend an Act of Parliament or an Assembly Measure (a Henry VIII power). Subsection (5) provides for the negative resolution procedure to apply to any other regulations made under the Measure.

Section 28 – Commencement

77. Provisions of the Measure will come into force in accordance with a commencement order made by Welsh Ministers. Subsection (1) makes exceptions for sections 27 and 29 which will automatically come into force two months after the Measure is approved by Her Majesty in Council.

In accordance with standard practice no Assembly procedure will apply to commencement orders.

[Section 29 – Short title

Schedule 1

Schedule 1 is introduced by section 25. The Schedule makes minor and consequential amendments to various Acts of Parliament.

Schedule 2

Schedule 2 is introduced by section 26. The Schedule lists repeals to various provisions of Acts of Parliament.]

Annex A

Standing Order 15 - Subordinate Legislation Committee

15.1 There is to be a Subordinate Legislation Committee.

15.2 Subject to Standing Order 15.7, the Committee must consider all statutory instruments or draft statutory instruments required by any enactment to be laid before the Assembly and report on whether the Assembly should pay special attention to the instrument or draft on any of the following grounds:

- (i) that there appears to be doubt as to whether it is intra vires;
- (ii) that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made;
- (iii) that the enactment which gives the power to make it contains specific provisions excluding it from challenge in the courts;
- (iv) that it appears to have retrospective effect where the authorising enactment does not give express authority for this;
- (v) that for any particular reason its form or meaning needs further explanation;
- (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;
- (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts;
- (viii) that it uses gender specific language;
- (ix) that it is not made or to be made in both English and Welsh;
- (x) that there appears to have been unjustifiable delay in publishing it or laying it before the Assembly; or
- (xi) that there appears to have been unjustifiable delay in sending notification under section 4(1) of the Statutory Instruments Act 1946 (as modified).

15.3 Subject to Standing Order 15.7, the Committee may consider and report on whether the Assembly should pay special attention to any statutory instrument or draft statutory instrument required by any enactment to be laid before the Assembly on any of the following grounds:

- (i) that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly;

- (iii) that it is inappropriate in view of the changed circumstances since the enactment under which it is made or is to be made was itself passed or made;
- (iv) that it inappropriately implements European Union legislation; or
- (v) that it imperfectly achieves its policy objectives.

15.4 The Committee must make any report under Standing Order 15.2 or 15.3 in respect of any statutory instrument or draft statutory instrument no later than 20 days after the instrument or draft has been laid.

15.5 In calculating for the purposes of Standing Order 15.4 any period of days, no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than 4 days.

15.6 Subject to 15.7, the Committee may also consider and report on:

- (i) any other subordinate legislation laid before the Assembly;
- (ii) the appropriateness of provisions in proposed Assembly Measures and in Bills for Acts of the United Kingdom Parliament that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General;
- (iii) consequences for legislation subject to the consideration of the Assembly of draft orders under Part 1 of the Legislative and Regulatory Reform Act 2006;
- (iv) the exercise of commencement powers by the Welsh Ministers; or
- (v) any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers.

15.7 The Committee may not consider:

- (i) any draft legislative competence order; or
- (ii) any statutory instrument or draft statutory instrument that is required to be laid before Parliament.

Atodiad

Y Pwyllgor Is-ddeddfwriaeth

SLC(3) 09-08 (p1)

Dyddiad y cyfarfod: 22 Ebrill 2008
Amser y cyfarfod: 8.45am – 9.15am
Lleoliad y cyfarfod: Ystafell Bwyllgora 2, y Senedd

MESUR ARFAETHEDIG YNGHYLCH TEITHIO GAN DDYSGWYR (CYMRU)

Papur i'r Pwyllgor Is-ddeddfwriaeth mewn perthynas â phwerau dirprwyedig - i'w ystyried gan y pwyllgor yn dilyn Rheol Sefydlog 15.6(ii)

Diben

1. O dan Reol Sefydlog 15.6(ii) caiff y pwyllgor ystyried pa mor briodol yw darpariaethau mewn Mesurau Cynulliad arfaethedig sy'n rhoi pwerau i wneud is-ddeddfwriaeth i Weinidogion Cymru. Mae'r papur hwn yn amlinellu darpariaethau is-ddeddfwriaeth y Mesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru) i'r pwyllgor eu hystyried.

Cefndir

2. Cyhoeddodd Llywodraeth y Cynulliad ddogfen ymgynghori ym mis Mehefin 2007 ynghylch ei Mesur arfaethedig ynghylch Teithio gan Ddysgwyr. Y dyddiad cau ar gyfer derbyn sylwadau oedd 28 Medi 2007. Bu'r Pwyllgor Menter a Dysgu'n ystyried y ddogfen ymgynghori a chasglodd dystiolaeth gan bartïon â diddordeb gan gynnwys y Dirprwy Brif Weinidog. Er nad oedd yn talu sylw penodol i'r agweddau technegol ar y pwerau dirprwyedig, "Argymhellwyd y dylid rhoi'r Canllawiau anstatudol presennol ar gontractau ar sail statudol ac y dylai gynnwys dogfen dendr ddrafft safonol."

Gellir gweld yr adroddiad yn:

<http://www.cynulliadcymru.org/cr-ld6874.pdf> [Cymraeg]

<http://www.assemblywales.org/cr-ld6874.pdf> [Saesneg]

3. Gosododd Ieuan Wyn Jones AC, y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth, Fesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru) 2008 ar 15 Ebrill, ynghyd â Memorandwm Esboniadol a Nodiadau Esboniadol. Cynhelir y ddadl ar Gyfnod 1, sef ystyried yr egwyddorion cyffredinol, ar 29 Ebrill.

Cymhwysedd Deddfwriaethol

4. Mae'r pŵer i wneud y Mesur hwn wedi'i gynnwys yn adran 93 o Ddeddf Llywodraeth Cymru 2006 a gellir dod o hyd i gymhwysedd y Cynulliad i ddeddfu ar y mater hwn ym Mater 5.10, maes 5 o Atodlen 5 i'r Ddeddf honno.

5. Y mater dan sylw yw –

Darpariaeth ynghylch teithio gan bersonau sy'n cael addysg gynradd, addysg uwchradd neu addysg bellach neu hyfforddiant i ysgolion neu i fannau eraill lle y maent yn cael addysg neu hyfforddiant, ac oddi yno.

6. Mae'n ddarostyngedig i'r eithriadau a ganlyn –

Nid yw hyn yn cynnwys darpariaeth ynghylch y canlynol -

a) rheoleiddio defnyddio cerbydau modur ar ffyrdd, eu hadeiladwaith a'u hoffer a'r amodau y caniateir eu defnyddio felly odanynt;

b) tramgwyddau traffig ffordd;

c) trwyddedu gyrwyr;

ch) hyfforddiant gyrru;

d) yswiriant cerbydau modur;

dd) oriau gyrwyr;

e) rheoleiddio traffig ar ffyrdd arbennig, croesfannau i gerddwyr, arwyddion traffig a therfynau cyflymder;

f) trwyddedu gweithredwyr cerbydau gwasanaeth cyhoeddus;

ff) darparu a rheoleiddio gwasanaethau rheilffyrdd, heblaw cymorth ariannol-

(i) nad yw'n ymwneud â chludo nwyddau,

(ii) nad yw'n cael ei roi mewn cysylltiad â gorchymyn gweinyddu rheilffyrdd, a

(iii) nad yw'n cael ei roi mewn cysylltiad â Rheoliad y Cyngor (EEC) 1191/69 fel y'i diwygiwyd gan Reoliad y Cyngor (EEC) Rhif 1893/91 ynghylch rhwymedigaethau gwasanaeth cyhoeddus mewn trafndiaeth;

g) diogelwch trafndiaeth;

ng) llongau, heblaw cymorth ariannol i wasanaethau llongau i Gymru, o Gymru neu yng Nghymru;

h) hawliau a rhyddidau mordwyol, heblaw rheoleiddio gweithfeydd a allai rwystro mordwyo neu ei beryglu;

i) safonau technegol a safonau diogelwch llestri;

j) harbyrau, dociau, pierau a llithrfeydd cychod, heblaw'r rhai a ddefnyddir neu y mae eu hangen yn gyfan gwbl neu'n bennaf at gyfathrebu rhwng manau yng Nghymru;

l) cofrestru gwasanaethau bysiau lleol, a chymhwyso a gorfodi amodau rheoleiddio traffig mewn perthynas â'r gwasanaethau hynny.

Cefndir polisi

7. Mae cynnwys y Mesur wedi'i grynhoi ym Memorandwm Esboniadol y Llywodraeth fel a ganlyn –

“1. Disgrifiad

1.1 Bydd y Mesur yn gwneud cyfraith ynghylch teithio gan ddisgyblion ysgol a phobl ifanc 16-19 oed sy'n derbyn addysg neu hyfforddiant yng Nghymru. Mae'n disodli'r gyfraith ar gyfer teithio gan ddysgwyr yng Nghymru sydd wedi'i nodi yn Neddf Addysg 1996 (fel y'i diwygiwyd) ac mae'n cydgrynhoi ac yn symleiddio'r darpariaethau statudol presennol. Bydd y Mesur, yn ei hanfod:

- yn rhoi mwy o hawl i blant ysgolion cynradd gael cludiant am ddim i'r ysgol os ydynt yn byw ddwy filltir neu fwy o'r ysgol;
- yn ailddeddfu'r hawl i blant ysgolion uwchradd gael cludiant am ddim os ydynt yn byw dair milltir neu fwy o'r ysgol addas agosaf;
- yn cyflwyno gofyniad penodol i asesu anghenion plant sy'n derbyn gofal, ac i ddarparu ar eu cyfer, ac egluro'r trefniadau talu cysylltiedig rhwng yr awdurdodau lleol yng Nghymru;
- yn ei gwneud yn ofynnol i awdurdodau lleol a Gweinidogion Cymru, wrth arfer eu swyddogaethau o dan y Mesur, hybu mynediad i addysg drwy gyfrwng y Gymraeg;
- yn ei gwneud yn ofynnol i Weinidogion Cymru lunio cod ymddygiad mewn perthynas â theithio i fannau dysgu ac oddi yno ac yn ei gwneud yn ofynnol i'r cod hwnnw fod yn rhan o god ymddygiad ysgol; ac
- yn rhoi'r pŵer i awdurdodau lleol newid amserau sesiynau ysgolion os gall hynny arwain at welliannau o ran trefniadau cludo neu gynaliadwyedd amgylcheddol.

Bydd y Mesur hefyd yn gyfrwng i Weinidogion Cymru gyhoeddi canllawiau statudol a gwneud darpariaeth yn y dyfodol ar gyfer pobl ifanc 0-16 sy'n ddysgwyr a phlant sy'n derbyn addysg feithrin.”

Pwerau is-ddeddfwriaeth

8. Mae'r Llywodraeth wedi crynhoi'r cynigion mewn perthynas ag is-ddeddfwriaeth yn Adran 5 y Memorandwm Esboniadol fel a ganlyn –

“5. Pŵer i wneud is-ddeddfwriaeth

5.1 Mae pwerau yn adrannau 2(1)(c), 3(9), 7, 8, 12(3)(c), 16, 21(2) a 28(2) i wneud is-ddeddfwriaeth. Mae'r holl bwerau hyn yn cael eu rhoi i Weinidogion Cymru, a phwerau ydynt i wneud rheoliadau neu orchmynion drwy gyfrwng offerynnau statudol (gweler adran 27(1)).

Pŵer i Wneud Rheoliadau mewn perthynas â Hawl

5.2 Mae'r Mesur yn cynnwys pŵer galluogi a fydd yn caniatáu i Weinidogion Cymru wneud rheoliadau mewn perthynas â hawl plant i deithio (adran 3(9)). Bwriad y pŵer yw rhoi'r gallu i Weinidogion Cymru ddisodli'r hawl i gludiant am ddim a roddir gan y Mesur i blant ysgolion cynradd ac uwchradd, i ychwanegu at yr hawl honno neu i'w haddasu.

5.3 Mae Gweinidogion Cymru wedi dod i'r casgliad ei bod hi'n well penderfynu ar hawl plant ysgolion cynradd ac uwchradd i gael cludiant ar sail eu hoedran a'r pellter rhwng y cartref a'r ysgol. Mae'n bosibl y bydd hyn yn newid gydag amser ac efallai y byddai trefniadau eraill, neu wahanol derfynau o ran oedran a / neu bellter yn cael eu ffafrio. Bydd y pŵer yn galluogi Gweinidogion Cymru i ddiweddarau a datblygu'r gyfraith ar gyfer yr hawl i gael cludiant am ddim neu gludiant â chymhorthdal yn unol â datblygiadau mewn polisi addysg neu mewn polisi teithio. Bernir ei bod yn briodol gwneud hyn drwy gyfrwng rheoliadau er mwyn medru ymateb yn gyflym ac yn hyblyg i angen i newid yr hawliau. Felly, gallai rheoliadau a wneir o dan adran 3(9) ddiwygio neu

ddiddymu'r darpariaethau sy'n rheoli'r amgylchiadau a'r amodau sy'n gymwys mewn perthynas â dyletswydd yr awdurdod lleol i wneud trefniadau teithio, a gallent hefyd wneud darpariaeth gysylltiedig, atodol, drosiannol, arbed neu ganlyniadol, gan gynnwys diwygiadau i ddeddfwriaeth arall (gweler adran 27(2), (3) a (4)).

5.4 Mae pwerau hefyd i alluogi Gweinidogion Cymru i wneud rheoliadau ynghylch trefniadau teithio ar gyfer plant sy'n derbyn addysg feithrin ac ar gyfer pobl ifanc ôl-16 sy'n ddysgwyr (adrannau 7 ac 8). Gall rheoliadau a wneir o dan adrannau 7 ac 8 hefyd wneud darpariaeth gysylltiedig, atodol, drosiannol, arbed neu ganlyniadol, gan gynnwys diwygiadau i ddeddfwriaeth arall (gweler adran 27(2), (3) a (4)).

5.5 Mewn perthynas ag addysg feithrin (adran 8), caiff y rheoliadau ei gwneud yn ofynnol i awdurdod lleol wneud trefniadau teithio neu ganiatáu iddo wneud hynny; pennu'r mathau o fan y caniateir gwneud, neu y mae'n rhaid gwneud, trefniadau teithio yno ac oddi yno; pennu'r trefniadau teithio y caniateir, neu y mae'n rhaid, eu gwneud yn ogystal â'r materion y mae'n rhaid eu hystyried wrth wneud penderfyniadau am drefniadau teithio; gwneud darpariaeth ynghylch codi tâl; a'i gwneud yn ofynnol i roi gwybodaeth a chymorth i'r awdurdod lleol. Gallai'r rheoliadau adlewyrchu'r math o ddarpariaeth a wneir yn y Mesur mewn perthynas â phlant o oedran ysgol gorfodol. Bernir ei bod yn briodol gosod dyletswyddau ar yr awdurdodau lleol neu roi pwerau iddynt gan mai hwy sydd yn y sefyllfa orau i wneud trefniadau ar sail yr asesiad o anghenion y byddant wedi'i gynnal o dan adran 2 o'r Mesur.

5.6 O safbwynt dysgwyr ôl-16, caiff y rheoliadau roi pwerau i Weinidogion Cymru, i awdurdodau lleol a/neu i sefydliadau yn y sector addysg bellach oherwydd mae'n bosibl y bydd gan y tri ohonynt rôl i'w chwarae. Caiff y rheoliadau bennu'r mathau o fan y caniateir gwneud, neu y mae'n rhaid gwneud, trefniadau teithio yno ac oddi yno; pennu'r trefniadau teithio y caniateir, neu y mae'n rhaid, eu gwneud, yn ogystal â'r materion y mae'n rhaid eu hystyried wrth wneud penderfyniadau am drefniadau teithio; gwneud darpariaeth ynghylch codi tâl; ei gwneud yn ofynnol i roi gwybodaeth a chymorth i bersonau eraill mewn cysylltiad â chyflawni swyddogaethau o dan y rheoliadau (mae hyn yn arbennig o berthnasol gan y bydd awdurdodau lleol wedi casglu gwybodaeth o ganlyniad i'r asesiad o anghenion y mae'n ofynnol iddynt ei gynnal o dan adran 2 o'r Mesur); a gwneud darpariaeth ynghylch y safonau ymddygiad a ddisgwylir wrth deithio i fannau dysgu ac oddi yno (sy'n golygu y gellir gwneud darpariaeth ynghylch gorfodi'r Cod Ymddygiad wrth Deithio a wneir o dan adran 12).

5.7 Mae gofynion cludiant plant sy'n derbyn addysg feithrin a phobl ifanc ôl-16 sy'n ddysgwyr yn gymhleth ac mae materion gwahanol yn deillio ohonynt nag yn achos plant mewn ysgolion cynradd a phlant mewn ysgolion uwchradd. Mae Gweinidogion Cymru yn cydnabod y gall y cludiant sydd ar gael a'i gost fod yn ffactor i'r dysgwyr hyn neu eu rhieni. Serch hynny, mae Gweinidogion Cymru am edrych ar yr opsiynau ar gyfer rhoi'r hawl i'r grwpiau hyn gael cludiant ac am wneud gwaith ymchwil manwl ar y costau, y manteision a'r agweddau ymarferol. Bydd y gwaith hwn yn cymryd cryn dipyn o amser a bydd angen iddo ystyried adolygiad o brosiectau peilot. Am y rhesymau hyn, ni fydd y rheoliadau mewn perthynas â'r hawl i deithio ar gyfer y grwpiau hyn ar gael i'w hystyried yn ystod taith y Mesur. Bernir ei bod yn briodol cael pŵer i wneud rheoliadau mewn

perthynas â'r grwpiau hyn er mwyn medru gwneud darpariaeth i roi hawliau i'r grwpiau hyn mewn modd hyblyg a phrydlon, os deuir i'r casgliad, ar ôl ystyried yr opsiynau, mai dyna fyddai'n briodol.

5.8 Mae'n debygol y byddai unrhyw ddarpariaethau a wneir gan ddefnyddio'r pwerau yn adrannau 7 ac 8 yn ymwneud â'r materion a ganlyn:

- y dyletswyddau ar gyrrff i ddarparu neu i wneud trefniadau mewn perthynas â chludiant i blant a phobl ifanc (gweler yn benodol adran 7(2) a (3)(a) mewn perthynas â threfniadau teithio ar gyfer dysgwyr mewn addysg neu hyfforddiant ôl-16 ac adran 8(1) a (2) (a) a (b) mewn perthynas â theithio i fan lle y darperir addysg feithrin ac oddi yno; neu*
- y grwpiau o blant a phobl ifanc sydd â'r hawl i gael cludiant (gan ddefnyddio adran 7(2) mewn perthynas â threfniadau teithio ar gyfer dysgwyr mewn addysg neu hyfforddiant ôl-16 neu adran 8(1) mewn perthynas â theithio i fan lle y darperir addysg feithrin ac oddi yno).*

5.9 Bydd Gweinidogion Cymru yn comisiynu astudiaethau ar effaith a chost a budd unrhyw gynigion cyn cynnig rheoliadau o dan adran 3(9) neu adrannau 7 neu 8. O dan adran 27(7), bydd yn rhaid gwneud y rheoliadau hyn yn unol â'r weithdrefn penderfyniad cadarnhaol a bydd asesiad effaith rheoleiddiol yn cael ei gynnal, a hynny oherwydd bod y rheoliadau'n rhoi cryn ddisgresiwn i Weinidogion Cymru a gallent hefyd ddiwygio darpariaethau eraill yn y Mesur ac mewn deddfwriaeth arall. O dan yr amgylchiadau hynny, bernir ei bod yn briodol i'r Cynulliad graffu ar y rheoliadau cyn iddynt gael eu gwneud.

Pwerau Eraill ar gyfer Gwneud Rheoliadau a Gorchmynion

5.10 Mae'r Mesur yn galluogi Gweinidogion Cymru i wneud rheoliadau ynghylch agweddau eraill ar y Mesur fel a ganlyn:

- rhagnodi dysgwyr eraill i'w cynnwys wrth asesu anghenion teithio (adran 2(1)(c) a dysgwyr eraill y bydd y cod ymddygiad wrth deithio yn gymwys iddynt (adran 12(3)(c));*
- cyhoeddi gwybodaeth am asesiadau, trefniadau teithio a'r cod ymddygiad wrth deithio (adran 16); a*
- y gweithdrefnau i'w dilyn pan fydd awdurdod lleol yn defnyddio'i bwerau i newid amserau dechrau a gorffen ysgolion (adran 21 – diwygiadau i Ddeddf Addysg 2002).*

5.11 Bydd y rheoliadau hefyd yn gallu gwneud darpariaeth wahanol ar gyfer achosion neu ardaloedd gwahanol, gwneud darpariaeth yn gyffredinol neu mewn perthynas ag achosion penodol, a gwneud darpariaeth gysylltiedig, atodol, drosiannol neu arbed, gan gynnwys diwygiadau i ddeddfwriaeth arall (gweler adran 27(2) a (4)).

5.12 *Bydd rheoliadau o dan y pwerau hyn yn ymdrin â materion sy'n dechnegol neu'n weithdrefnol eu natur neu byddant yn nodi manylion. Byddai natur a chynnwys y darpariaethau a gâi eu gwneud drwy gyfrwng y cyfryw reoliadau yn golygu na fyddai'n briodol cynnwys y darpariaethau hynny yn y Mesur ei hun. Mae'n ddymunol hefyd fod gan Weinidogion Cymru yr hyblygrwydd i ddiwygio'n gyflym ddarpariaethau am faterion megis pryd i gyhoeddi gwybodaeth.*

5.13 *O dan adran 27(5), y weithdrefn penderfyniad negyddol a ddefnyddir mewn perthynas â'r rheoliadau hyn, a hynny am fod eu cwmpas yn gyfyng ac am eu bod yn ymdrin â manylion a phrosesau. Mae'r weithdrefn penderfyniad negyddol yn golygu bod y Cynulliad yn gallu craffu i'r graddau sy'n briodol ar gyfer y math cyfyngedig o ddarpariaeth y gellir ei wneud yn y rheoliadau hyn. Er hynny, os oes unrhyw reoliadau o dan y pwerau hyn yn diwygio neu'n diddymu unrhyw ddarpariaeth mewn unrhyw Fesur neu Ddeddf Seneddol yna, yn unol ag adran 27(7)(d), defnyddir y weithdrefn penderfyniad cadarnhaol oherwydd bernir mai'r lefel uwch hon o graffu sy'n briodol ar gyfer rheoliadau sy'n diwygio deddfwriaeth sylfaenol.*

5.14 *Mae pŵer yn adran 28(2) i Weinidogion Cymru wneud gorchymyn i gychwyn darpariaethau'r Mesur. Yn ôl y drefn arferol ar gyfer gorchymynion cychwyn, ni ddefnyddir gweithdrefn ar gyfer y cyfryw orchymynion (oni bai eu bod yn diwygio neu'n diddymu unrhyw ddarpariaeth mewn unrhyw Fesur neu Ddeddf Seneddol. Mewn achosion o'r fath, yn unol ag adran 27(7)(d), defnyddir y weithdrefn penderfyniad cadarnhaol oherwydd dyna sy'n briodol ar gyfer rheoliadau sy'n diwygio deddfwriaeth sylfaenol."*

9. Caiff y pwerau i wneud offerynnau statudol y cyfeirir atynt yn y Mesur arfaethedig eu hesbonio'n fanylach yn y Nodiadau Esboniadol ar adrannau. Ceir fersiwn gryno wedi'i chyfyngu i'r pwerau hynny yn Atodiad 1 i'r papur pwyllgor hwn.

Crynodeb

10. Bydd gweithdrefnau Cynulliad cadarnhaol yn gymwys i bob rheoliad a gaiff ei wneud o dan

- adran 3(9) (pennu'r amgylchiadau a'r amodau pan fyddai gan blant o oedran ysgol gorfodol hawl i gludiant am ddim);
- adran 7 (trefniadau teithio i ddysgwyr ôl-16);
- adran 8 (caniatáu i Weinidogion Cymru wneud darpariaeth ynghylch trefniadau teithio i blant o oedran ysgol feithrin); a
- y rheoliadau hynny sy'n diwygio darpariaethau Mesur Cynulliad neu Ddeddf Seneddol.

11. Fel arall, bydd y weithdrefn negyddol yn gymwys i reoliadau eraill a gorchymynion. Yn unol â'r drefn arferol, ni ddefnyddir gweithdrefn ar gyfer gorchymynion cychwyn.

12. Er mwyn sicrhau cyflawnrwydd, mae pwerau i roi cyfarwyddiadau neu i gyhoeddi canllawiau (a all fod yn deddfwriaeth weithiau) wedi'u cynnwys yn yr Atodiad, ond ni ddefnyddir gweithdrefn Cynulliad ar eu cyfer.

Cam i'r pwyllgor ei gymryd

13. Gwahoddir y pwyllgor i ystyried a yw am ystyried ymhellach y pwerau a roddir i Weinidogion Cymru wneud is-ddeddfwriaeth o dan y Mesur arfaethedig hwn, ac os felly, sut y mae am wneud hyn.

Y Gwasanaethau Cyfreithiol
Cynulliad Cenedlaethol Cymru
Ebrill 2008

Atodiad 1 – Detholiad o’r Nodiadau Esboniadol

Mae’r testun sy’n dilyn yn addasiad o Nodiadau Esboniadol y Llywodraeth i’r Mesur. Dim ond yr adrannau hynny sy’n uniongyrchol berthnasol i ddealltwriaeth o’r pwerau i wneud deddfwriaeth ddirprwyedig y mae’r Mesur arfaethedig yn eu ceisio sydd wedi’u nodi isod. Sylwadau cyfreithwyr y Cynulliad ac nid y Llywodraeth yw’r sylwadau sydd wedi’u tanlinellu.

Nodiadau Esboniadol

Nodiadau Esboniadol i’r Mesur Teithio gan Ddysgwyr (Cymru) 2008 a osodwyd gerbron Cynulliad Cenedlaethol Cymru ar 15 Ebrill 2008 yw’r rhain. Dylid darllen y Nodiadau Esboniadol ar y cyd â’r Mesur ond nid ydynt yn rhan ohono.

Esboniad o’r Adrannau

[Adran 1 – Y prif dermau a ddefnyddir yn y Mesur hwn

Adran 2 - Dyletswydd i asesu anghenion teithio dysgwyr]

Adran 3 – Dyletswydd awdurdod lleol i wneud trefniadau cludo

Mae adran 3 yn rhoi dyletswydd ar awdurdod lleol i wneud trefniadau cludo ar gyfer plant o oedran ysgol gorfodol mewn amgylchiadau penodedig ac yn ddarostyngedig i amodau penodedig.

Mae is-adran (1) yn darparu bod yr adran yn gymwys i blant o oedran ysgol gorfodol sy’n preswyllo fel arfer yn ardal yr awdurdod os yw’r amgylchiadau a nodir yng ngholofn 1 y tabl yn gymwys i’r plentyn ac os bodlonir yr amodau a geir yng ngholofn 2.

Mae is-adran (2) yn nodi’r brif ddyletswydd sydd ar yr awdurdod lleol i wneud trefniadau cludo addas i hwyluso’r ffordd i’r plentyn y mae’r adran yn gymwys iddo fynychu bob dydd y manau perthnasol lle y mae’r plentyn yn cael addysg neu hyfforddiant. Hwylusir y ffordd i’r plentyn fynychu’r manau hynny os gwneir trefniadau i’r plentyn deithio o’i gartref i’r man lle y mae’n cael addysg neu hyfforddiant ac yn ôl adref.

Mae’r tabl ar ôl is-adran (2) yn nodi’r amgylchiadau a’r amodau sy’n arwain at yr hawl i gael trefniadau cludo am ddim.

Mae is-adran (6) yn diffinio addasrwydd addysg neu hyfforddiant at ddiben yr adran hon drwy gyfeirio at oed plentyn, ei allu a’i ddoniau, ac at unrhyw anawsterau dysgu. Nid oes a wnelo dewis iaith, neu famiaith, na chredo neu argyhoeddiad crefyddol y plentyn neu’r rhiant, ddim ag addasrwydd ysgol at ddiben yr adran hon.

Mae is-adran (7) yn pennu bod y pellteroedd yn y tabl i’w mesur ar hyd y llwybr byrraf sydd ar gael. Ymdrinnir ag a oes llwybr ar gael yn is-adran (8) sy’n nodi’r amgylchiadau pan ellir disgwyl i blentyn gerdded i’r ysgol.

Caiff Gweinidogion Cymru wneud rheoliadau o dan is-adran (9) yn pennu'r amgylchiadau a'r amodau pan fyddai gan blant o oedran ysgol gorfodol hawl i gludiant am ddim. Caiff rheoliadau ddiwygio'r tabl neu is-adrannau (6), (7) ac (8) neu gofnodion yn y tabl. Er enghraifft, gallai Gweinidogion Cymru newid y meini prawf pellter ac oed sy'n penderfynu cymhwystra a darparu ar gyfer awdurdodau lleol fwy o ddisgresiwn neu lai i weithredu eu polisïau cludiant eu hunain. Byddai unrhyw reoliadau a wneid o dan y ddarpariaeth hon yn cael eu gwneud drwy'r weithdrefn penderfyniad cadarnhaol a byddent yn ddarostyngedig i asesiad effaith rheoleiddiol ac i graffu arnynt gan y Cynulliad Cenedlaethol.

Bydd rheoliadau a wneir o dan adran 3(9) yn ddarostyngedig i weithdrefn Cynulliad cadarnhaol (adran 27(7)).

[Adran 4 – Dyletswydd awdurdod lleol i wneud trefniadau teithio eraill

Adran 5 – Terfynau dyletswydd teithio gan ddysgwyr

Adran 6 – Pŵer awdurdodau lleol i wneud trefniadau teithio i ddysgwyr]

Adran 7 – Trefniadau teithio ar gyfer dysgwyr mewn addysg neu hyfforddiant ôl-16

Bydd Gweinidogion Cymru yn gallu gwneud rheoliadau o dan yr adran hon ynghylch trefniadau teithio ar gyfer dysgwyr ôl-16 sy'n byw yng Nghymru ac sy'n mynychu cyrsiau yng Nghymru neu yn rhywle arall lle y cyllidir yr addysg neu'r hyfforddiant gan Weinidogion Cymru.

Gallai'r rheoliadau wneud darpariaeth debyg i'r ddarpariaeth a wneir yn y Mesur mewn perthynas â phlant o oedran ysgol gorfodol. Gellid gwneud darpariaeth a fyddai'n ei gwneud yn ofynnol, neu'n caniatáu, i Weinidogion Cymru, i awdurdodau lleol neu i sefydliadau addysg bellach wneud trefniadau teithio, ac a fyddai'n pennu'r math o faterion i'w hystyried wrth wneud trefniadau. Gallai'r rheoliadau hefyd wneud darpariaeth ynghylch codi tâl, gallent fynnu bod cydweithredu â'r person sy'n gysylltiedig â'r trefniadau'n digwydd, a gallent wneud darpariaeth ynghylch gorfodi'r cod ymddygiad wrth deithio a wneir o dan adran 12 ac sy'n nodi safonau ymddygiad i'w harddel wrth deithio.

Bydd rheoliadau a wneir o dan adran 7 yn ddarostyngedig i weithdrefn Cynulliad cadarnhaol (adran 27(7)).

Adran 8 – Trefniadau teithio i fannau lle y darperir addysg feithrin ac oddi yno

Pŵer gwneud rheoliadau yw adran 8 sy'n caniatáu i Weinidogion Cymru wneud darpariaeth ynghylch trefniadau teithio i blant oed meithrin. O dan y pŵer hwn gallai Gweinidogion Cymru ei gwneud yn ofynnol i awdurdod lleol wneud trefniadau teithio i blant o dan oedran ysgol gorfodol sydd mewn addysg feithrin. Mae is-adran (2) yn disgrifio cwmpas y pwerau gwneud rheoliadau. Gallai'r rheoliadau wneud darpariaeth debyg i'r ddarpariaeth a wneir yn y Mesur mewn perthynas â phlant o oedran ysgol

gorfodol a gallent ei gwneud yn ofynnol i unrhyw berson ddarparu gwybodaeth a chymorth y gallai fod yn rhesymol bod ar awdurdod lleol eu hangen.

Bydd rheoliadau a wneir o dan adran 8 yn ddarostyngedig i weithdrefn Cynulliad cadanhaol (adran 27(7)).

[Adran 9 – Trefniadau teithio i ddysgwyr a'r rheini'n drefniadau nad ydynt i ffafrio mathau penodol o addysg neu hyfforddiant

Adran 10 – Hybu mynediad i addysg a hyfforddiant drwy gyfrwng y Gymraeg

Adran 11 – Dulliau teithio cynaliadwy]

Adran 12 – Cod ymddygiad wrth deithio

Mae adran 12 yn ei gwneud yn ofynnol i Weinidogion Cymru lunio ac adolygu o bryd i'w gilydd god ymddygiad wrth deithio sy'n nodi'r safonau ymddygiad y mynnir bod dysgwyr yn eu harddel wrth deithio i'r man lle y maent yn cael eu haddysgu ac oddi yno.

Er y bydd y cod hwn yn fath o is-ddeddfwriaeth, ni fydd yn offeryn statudol ac ni ddefnyddir gweithdrefn y Cynulliad ar ei gyfer. Fodd bynnag, mae'n ofynnol ymgynghori ar hyn o dan adran 12(6).

[Adran 13 – Gorfodi cod ymddygiad wrth deithio: dysgwyr mewn ysgolion perthnasol

Adran 14 – Gorfodi cod ymddygiad wrth deithio: tynnu'n ôl drefniadau teithio]

Adran 15 – Canllawiau a chyfarwyddiadau

Pan fydd awdurdodau lleol a chyrrff llywodraethu ysgolion a gynhelir a sefydliadau addysg bellach yn arfer unrhyw un o'u swyddogaethau o dan y Mesur, mae is-adran (1) yn ei gwneud yn ofynnol iddynt roi ystyriaeth i ganllawiau a ddyroddir gan Weinidogion Cymru.

At hynny, caiff Gweinidogion Cymru ei gwneud yn ofynnol i awdurdodau wneud trefniadau teithio i ddysgwyr, neu gydymffurfio â chyfarwyddyd pan fyddant yn eu gwneud (is-adrannau (2) a (3)). Gall cyfarwyddiadau o'r fath gael eu rhoi i un awdurdod neu fwy neu eu rhoi'n gyffredinol o dan is-adran (4). Mae'r pŵer hwn i roi cyfarwyddyd yn debyg i bŵer a ddarperir gan adrannau 509(1) a 509AA(9) o Ddeddf Addysg 1996. Mae'n caniatáu i Weinidogion Cymru roi cyfarwyddyd ar achosion unigol neu ynghylch materion polisi mwy cyffredinol. Caniateir i'r pŵer gael ei arfer ni waeth a yw awdurdod lleol wedi methu â chyflawni ei ddyletswyddau ai peidio. Nid yw'n disodli'r pŵerau cyfarwyddo mwy cyffredinol sydd gan Weinidogion Cymru o dan adrannau 496-497A o Ddeddf Addysg 1996, nac yn effeithio arnynt.

Er y gall canllawiau a chyfarwyddiadau o'r fath fod yn is-ddeddfwriaeth, ni fydd yn offeryn statudol ac ni ddefnyddir gweithdrefn Cynulliad ar eu cyfer.

Adran 16 – Gwybodaeth am drefniadau teithio

Caiff Gweinidogion Cymru wneud rheoliadau sy'n ei gwneud yn ofynnol i awdurdod lleol gyhoeddi gwybodaeth ynghylch yr asesiad o dan adran 2, ynghylch y trefniadau a wneir gan yr awdurdod neu gan Weinidogion Cymru ar gyfer teithio gan ddysgwyr ac ynghylch y cod ymddygiad wrth deithio.

Bydd rheoliadau a wneir o dan adran 16 yn ddarostyngedig i weithdrefn Cynulliad negyddol (adran 27(5)).

[Adran 17 – Cydweithredu: gwybodaeth a chymorth arall

Adran 18 - Talu costau teithio gan awdurdod lleol y mae plentyn yn derbyn gofal ganddo

Adran 19 – Penderfynu ar breswylfa arferol mewn amgylchiadau penodol

Adran 20 – Diwygiadau i Ddeddf Addysg 1996]

Adran 21 – Diwygiadau i Ddeddf Addysg 2002

Mae adran 21 yn gwneud diwygiadau ar gyfer Cymru i adrannau 32 a 210 o Ddeddf Addysg 2002. Mae adran 32 yn ei gwneud yn ofynnol i gorff llywodraethu ysgol benderfynu amserau sesiynau ysgol. Pŵer gwneud rheoliadau yw is-adran (3) o adran 32 o Ddeddf Addysg 2002 sy'n llywodraethu'r weithdrefn ar gyfer newid amserau sesiynau ysgol ac yng Nghymru gwneir newidiadau o'r fath yn unol â Rheoliadau Newid Amserau Sesiynau Ysgolion (Cymru) 2000.

Mae is-adran (2) yn mewnosod is-adrannau (5) i (10) newydd yn adran 32 o Ddeddf 2002. Pan fydd awdurdod lleol yn fodlon y byddai newid amser sesiynau ysgol yn hybu dulliau teithio cynaliadwy neu'n ychwanegu at effeithlonrwydd ac effeithiolrwydd trefniadau teithio, gall newid amserau'r sesiynau. Bydd yn gwneud hynny drwy hysbysu'r corff llywodraethu. Os oes gan ysgol ddwy sesiwn mewn diwrnod, bydd yr awdurdod lleol yn penderfynu faint o'r gloch y bydd sesiwn y bore'n dechrau a sesiwn y prynhawn yn gorffen. Bydd y corff llywodraethu'n cadw'r pŵer i bennu faint o'r gloch y bydd sesiwn y bore'n gorffen a sesiwn y prynhawn yn dechrau. Ond os un sesiwn yn unig sydd gan ysgol mewn diwrnod, yr awdurdod fydd yn penderfynu faint o'r gloch y bydd yn dechrau ac yn gorffen.

Caiff Gweinidogion Cymru wneud rheoliadau o dan is-adran (9) newydd o adran 32 o Ddeddf 2002 ynghylch sut y dylai awdurdod lleol ddyroddi hysbysiad ac ynghylch materion perthynol ynglŷn â chynnwys hysbysiad. O dan is-adran (10) newydd o adran 32 bydd yn rhaid i'r awdurdod lleol roi sylw i ganllawiau a roddir gan Weinidogion Cymru pan fydd yn defnyddio'r pŵer newydd hwn.

Mae adran 210 o Ddeddf 2002 yn rhagnodi sut y mae gorchmynion a rheoliadau o dan Ddeddf 2002 i'w gwneud. Effaith y diwygiad a wneir gan adran 18(3) fydd gwneud y pŵer gwneud gorchmynion a fewnosodir yn adran 32(8) yn arferadwy drwy offeryn statudol.

Mae adran 210(6A) yn rhagnodi bod unrhyw orchymyn a wneir o dan adran 32(8) yn ddarostyngedig i'r weithdrefn penderfyniad negyddol. Mae adran 210(6B) yn amlygu beth fydd effaith Atodlen 11 i Ddeddf Llywodraeth Cymru 2006.

[Adran 22 – Diwygiadau i adrannau 455 a 456 o Ddeddf Addysg 1996]

Adran 23 – Diwygio Deddf Addysg ac Arolygiadau 2006

Mae adran 23 yn gwneud diwygiadau i adrannau 162 a 181 o Ddeddf Addysg ac Arolygiadau 2006 ac yn mewnosod adran 182A newydd yn y Ddeddf honno. Mae adran 162 yn rhagnodi'r pŵer i ddiddymu cyfeiriadau at "awdurdod addysg lleol" mewn Deddfau ac mewn offerynnau statudol. Bydd y diwygiad a wneir gan adran 23 yn galluogi Gweinidogion Cymru i ddiwygio cyfeiriadau at "awdurdod addysg lleol" mewn Mesurau.

Mae adran 181 o Ddeddf 2006 yn rhagnodi sut y mae gorchmynion a rheoliadau o dan Ddeddf 2006 i gael eu gwneud. Effaith y diwygiad a wneir o dan adran 23 o'r Mesur fydd gwneud y pŵer gwneud gorchmynion a fewnosodir yn adran 162 o Ddeddf 2006 yn arferadwy drwy offeryn statudol.

Mae adran 182A(1) newydd o Ddeddf 2006 yn rhagnodi bod yn rhaid i unrhyw orchymyn a wneir o dan adran 162(5A) o Ddeddf 2006 gael ei osod gerbron y Cynulliad Cenedlaethol a'i gymeradwyo ganddo drwy benderfyniad (y weithdrefn penderfyniad cadarnhaol). Mae adran 182A(2) newydd o Ddeddf 2006 yn amlygu beth yw effaith Atodlen 11 i Ddeddf Llywodraeth Cymru 2006.

[Adran 24– Dehongli cyffredinol

Adran 25 – Mân ddiwygiadau a diwygiadau canlyniadol

Mae adran 25 yn rhoi effaith i Atodlen 1 sy'n cynnwys mân ddiwygiadau a diwygiadau canlyniadol.

Adran 26 – Diddymiadau

Mae adran 26 yn rhoi effaith i Atodlen 2 sy'n cynnwys diddymiadau i ddeddfiadau eraill fel a bennir.]

Adran 27 – Gorchmynion a rheoliadau

Mae'r adran hon yn gwneud darpariaeth mewn perthynas ag unrhyw orchymynion neu reoliadau a wneir gan Weinidogion Cymru. Bydd Gweinidogion Cymru yn gallu gwneud darpariaethau gwahanol ar gyfer sefyllfaoedd gwahanol, gwneud darpariaethau ar gyfer achosion penodol neu eu gwneud yn fwy cyffredinol a gwneud darpariaethau cysylltiedig, atodol, trosiannol neu arbed.

Mae adran 27 hefyd yn darparu'r pŵer i Weinidogion Cymru wneud darpariaeth ganlyniadol ac i ddiwygio neu i ddiddymu darpariaethau Mesurau Cynulliad, Deddfau neu is-ddeddfwriaeth a wnaed cyn y Mesur. Pwrpas is-adran (3) yw caniatáu i Weinidogion Cymru wneud newidiadau sydd yn eu barn hwy yn angenrheidiol i roi effaith i reoliadau a wneir o dan adrannau 3(9), 7 neu 8 o'r Mesur. Rheoliadau yw'r rhain ynghylch y gofynion sydd ar awdurdodau lleol i drefnu cludiant ar gyfer plant ysgol ac ynghylch trefniadau teithio i ddysgwyr mewn addysg neu hyfforddiant ôl-16 ac i blant mewn addysg feithrin.

Mae is-adrannau (5) i (7) yn nodi'r gweithdrefnau a fydd yn gymwys i unrhyw offeryn statudol a wneir o dan adrannau gwahanol o'r Mesur. Bydd yn rhaid i reoliadau sy'n cynnwys darpariaethau a restrir yn is-adran (7) gael eu gosod gerbron y Cynulliad Cenedlaethol a'u cymeradwyo ganddo drwy benderfyniad (y weithdrefn penderfyniad cadarnhaol). Rheoliadau yw'r rhain sy'n diwygio amgylchiadau dysgwyr y mae ganddynt hawl i gludiant o dan adran 3, rheoliadau ynghylch cludiant i ddysgwyr mewn addysg neu hyfforddiant ôl-16 o dan adran 7, rheoliadau ynghylch trefniadau teithio i blant mewn addysg feithrin o dan adran 8, ac unrhyw reoliadau sy'n diwygio Deddf Seneddol neu Fesur Cynulliad (pŵer Harri'r VIII). Mae is-adran (5) yn darparu bod y weithdrefn penderfyniad negyddol i fod yn gymwys i unrhyw reoliadau eraill a wneir o dan y Mesur.

Adran 28 – Cychwyn

Daw darpariaethau'r Mesur i rym yn unol â gorchymyn cychwyn a wneir gan Weinidogion Cymru. Mae is-adran (1) yn gwneud eithriadau i adrannau 27 a 29 a fydd yn dod i rym yn awtomatig ddeufis ar ôl cymeradwyo'r Mesur gan Ei Mawrhydi yn Ei Chyngor.

Yn unol ag arfer ni fydd unrhyw weithdrefn Cynulliad yn gymwys i orchmynion cychwyn.

[Adran 29 – Teitl byr

Atodlen 1

Cyflwynir Atodlen 1 gan adran 25. Mae'r Atodlen yn gwneud mân ddiwygiadau a diwygiadau canlyniadol i amryw Ddeddfau Seneddol.

Atodlen 2

Cyflwynir Atodlen 2 gan adran 26. Mae'r Atodlen yn rhestru diddymiadau o amryw o ddarpariaethau Deddfau Seneddol].