

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

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Kirsty Williams AM
Chair
Proposed Healthy Eating in Schools (Wales) Measure Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

22 May 2008

Dear Kirsty

PROPOSED HEALTHY EATING IN SCHOOLS (WALES) MEASURE 2008

Evidence to the Subordinate Legislation Committee – 20 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 15 April 2008 the Subordinate Legislation Committee considered the Proposed Healthy Eating in Schools (Wales) Measure 2008 (see Annex). Following the Members’ decision to invite the Assembly Member proposing this Measure to provide further information and views on the subordinate legislation provisions of the proposed Measure, Jenny Randerson AM gave evidence to the Committee on 20 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 that the transcript of the session will be shortly available on the Committee’s website:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm>

Yours sincerely,

Dr Dai Lloyd AM
Chair, Subordinate Legislation Committee

Subordinate Legislation Committee

SLC(3) 08-08 (p1)

Meeting Date: 15 April 2008
Meeting Time: 8.15 – 9:15am
Meeting Venue: Committee Room 2, Senedd

Proposed Healthy Eating in Schools (Wales) Measure 200-

Purpose

1. Under Standing Order 15.6(ii) the Committee may consider the appropriateness of provisions proposed Assembly Measures that grant powers to make subordinate legislation to the Welsh Ministers. This paper outlines the subordinate legislation provisions in the proposed Health Eating in Schools (Wales) 200- for the Committee's consideration.

Background

2. In June 2007 Jenny Randerson AM was successful in the first ballot held in the National Assembly for Wales for the right to seek agreement to introduce a Member proposed Assembly Measure (Standing Order 23.99).

3. On 19 September 2007 the Assembly agreed that the proposed Measure could be introduced for consideration by the Assembly (Standing Order 22.50).

4.. The Explanatory Memorandum to the proposed Measure states that its aim is to establish a comprehensive policy on nutrition which ensures that healthy eating is promoted and supported for all registered pupils of schools maintained by local education authorities in Wales. Healthy eating is defined in the proposed Measure as:

*"...eating (and drinking) food (and drink) whose nature, quality and quantity –
(a) benefit the health of the person consuming it;
(b) do not damage the health of the person consuming it; and
(c) cause as little damage as is reasonably possible to the environment during the course of its production, processing and distribution" (section 3)*

5. The proposed Measure intends to impose a duty on schools and local education authorities to promote healthy eating generally which would have implications for the curriculum. It also imposes duties on governing bodies (as party of their annual report to parents) to report on the promotion of healthy eating and requires the Welsh Ministers to report annually on the progress being made in relation to the promotion of healthy eating in schools. The proposed Measure also imposes a duty on schools and education authorities to encourage the uptake of school meals.

6. The proposed Measure does not set out in detail the content of food served in schools, including qualities of fat, sugar, salt and artificial additives; as nutritional requirements and guidelines change from one year to another this is to be done

through regulations made by the Welsh Ministers. It is envisaged that an incremental approach to the introduction of healthy nutritional standards will be used as the most effective way of introducing healthier foods.

Subordinate Legislation Powers and Procedures

7. The proposed Measure contains limited powers for the Welsh Ministers to make subordinate legislation. The powers conferred relate to the implementation and detail of the principles contained in the Proposed Measure.

8 The proposed Measure contains the following regulation and order making powers.

8.1 Section 4: Duty of governing bodies to report

The Welsh Ministers may make regulations prescribing the form of such reports and the means by which they are to be communicated to parents and the public.

Procedure: Negative. Section 4 amends section 30 of the Education Act 2002. Section 30 requires the governing body of a maintained school to provide an annual report on matters prescribed in regulations. The Education Act 2002 provides that regulations made under section 30 are made under the negative procedure.

8.2 Section 7: Requirements for food and drink provided on school premises

The Welsh Ministers may make regulations in relation to the food and drink provided on school premises. The regulations may specify the maximum amounts of fat, salt, sugar and artificial additives which the food or drink may contain and in particular may specify the nutritional standards or other nutritional requirements which are to be complied with and may require that that specified descriptions of food or drink are not to be provided.

Before making regulations under this section the Welsh Ministers are required to ascertain the views of pupils as to the provisions proposed to be made by the regulations and to consult such other persons as they consider appropriate.

Procedure: Negative – the Explanatory Memorandum asserts that it is justified on the grounds that these regulations will replace similar regulations made under section 114A of the School Standards and Framework Act 1998 and enables the regulations to be amended whenever it is considered that appropriate.

8.3. Section 13: Orders and Regulations

This section provides that whilst regulations are normally to be subject to the negative procedure there are two exceptions:-

- Subordinate legislation which amends an Act of Parliament or Assembly Measure are to be subject to the affirmative procedure; and
- No procedure is to apply to commencement orders.

8.4 Section 14 Power to make further supplementary and consequential provision

This provision permits the Welsh Ministers, by regulations, to make supplementary or consequential provisions to enable the Measure to be fully effective.

Procedure: Negative – save in the circumstances referred to in section 12 above.

8.5 Additionally the proposed Measure confers on the Welsh Ministers the power to bring the Measure into force at some future date by commencement order and to make, by regulations, further supplementary and consequential provisions.

Guidance

9. The proposed Measure also enables the Welsh Ministers to issue guidance on how local education authorities are to exercise their functions so as to promote healthy eating in schools or during incidental activities such as visits, walks etc (section 1 – Duties in relation to the promotion of healthy eating in Schools). Welsh Ministers may also issue guidance to local education authorities as to the discharge of their duty to provide drinking water on the premises of any maintained school (section 8 – drinking water in schools) and in relation to the protection of the identity of pupils receiving free school lunches (section 10 - Protection of the identity of pupils receiving free school lunches).

Procedure: None – but these matters may be included in the annual report to be laid before the Assembly by the Welsh Ministers under section 6.

Standing Order 15.6

10. Standing Order 15.6(ii) provides that the Committee may consider and report on:

“the appropriateness of provisions in proposed Assembly Measures...that grant powers to make subordinate legislation to the Welsh Ministers...”

11. In considering the appropriateness of the powers conferred on the Welsh Ministers Members may wish to take in to account the following:-

- the proposed draft Measure does not provide for the content of food served in schools; this is to be done by the Welsh Ministers by way of regulations to be made under section 7 utilising the negative procedure.
- In exercising the powers under section 7 the Welsh Ministers are placed under a statutory obligation to ascertain the views of pupils as to the provisions proposed to be made by the regulations and to consult such other persons as they consider appropriate.
- Regulations made under sections 4 (inclusion in governors’ reports of information on the promotion of healthy eating) and 7 requirements for food and drink on school premises etc) are to be made under the negative procedure. This is put forward as appropriate on the grounds that regulation 4 amends section 30 of the Education Act 2002 and regulations made under section 30 are made under the negative procedure and regulations made

under section 7 will replace similar regulations currently made under section 114A of the School Standards and Framework Act 1998 which are made under the negative procedure and also enables amendment to be undertaken whenever considered appropriate.

- That Standing Order 24.9 provides that once a motion (which is not amendable) has been laid under Standing Order 24.4 (Motion for Approval (Affirmative Resolution Procedure)) the instrument to which it applies cannot be amended;

Action for the Committee

12. 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. To assist in its consideration of the proposed Measure under Standing Order 15.6(li) the Committee may wish to avail itself of the facility afforded by Standing Orders 10.43 (invitation to give evidence) and 10.44 (summoning of witnesses).

Legal Advisers
Subordinate Legislation Committee

April 2008

Atodiad

Y Pwyllgor Is-ddeddfwriaeth

SLC(3) 08-08 (p1)

Dyddiad y cyfarfod: 15 Ebrill 2008

Amser y cyfarfod: 8.15am – 9.15am

Lleoliad y cyfarfod: Ystafell Bwyllgora 2, y Senedd

Mesur Arfaethedig ynghylch Bwyta'n Iach mewn Ysgolion (Cymru) 200-

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 Mesur Arfaethedig ynghylch Bwyta'n Iach mewn Ysgolion (Cymru) 200-i'r pwyllgor eu hystyried.

Cefndir

2. Ym mis Mehefin 2007 bu Jenny Randerson AC yn llwyddiannus yn y balot cyntaf a gynhaliwyd gan y Cynulliad Cenedlaethol am yr hawl i geisio caniatâd i gyflwyno Mesur arfaethedig Aelod (Rheol Sefydlog 23.99).

3. Ar 19 Medi 2007 cytunodd y Cynulliad y gallai'r Mesur arfaethedig gael ei gyflwyno i'w ystyried gan y Cynulliad (Rheol Sefydlog 22.50).

4. Mae Memorandwm Esboniadol y Mesur arfaethedig yn nodi mai ei nod yw cynnig polisi cynhwysfawr yn ymwneud â maeth sy'n sicrhau bod bwyta'n iach yn cael ei hybu a'i gefnogi ar gyfer yr holl ddisgyblion cofrestredig mewn ysgolion a gynhelir gan awdurdodau addysg lleol Cymru. Diffinnir bwyta'n iach yn y Mesur arfaethedig fel:

"...bwyta (ac yfed) bwyd (a diod) y mae eu natur, eu hansawdd a'u maint—

(a) o les i iechyd y person sy'n ei fwyta neu'n ei hyfed;

(b) yn peidio â gwneud niwed i iechyd y person sy'n ei fwyta neu'n ei hyfed; ac

(c) yn peri cyn lleied o niwed ag y bo'n rhesymol bosibl i'r amgylchedd wrth gael eu cynhyrchu, eu prosesu a'u dosbarthu." (Adran 3)

5. Diben y Mesur arfaethedig yw gosod dyletswydd ar ysgolion ac awdurdodau addysg lleol i hybu bwyta'n iach yn gyffredinol, ac mae i hynny oblygiadau o ran y cwricwlwm. Mae hefyd yn gosod dyletswyddau ar gyrff llywodraethu (fel rhan o'u hadroddiad blynyddol i rieni) i gyflwyno adroddiad ar hybu bwyta'n iach ac mae'n ei gwneud yn ofynnol i Weinidogion Cymru gyflwyno adroddiad blynyddol ar y cynnydd a wneir o ran hybu bwyta'n iach mewn ysgolion. Mae'r Mesur arfaethedig hefyd yn gosod dyletswydd ar ysgolion ac awdurdodau addysg i annog rhagor o ddisgyblion i fwyta prydau ysgol.

6. Nid yw'r Mesur arfaethedig yn manylu ar gynnwys y bwyd sy'n cael ei weini mewn ysgolion ac nid yw'n pennu faint o fraster, siwgr, halen nac ychwanegion artiffisial y dylid eu cynnwys. Rhaid i Weinidogion Cymru wneud hyn drwy reoleiddio, gan fod y

gofynion a'r canllawiau'n ymwneud â maeth yn newid o un flwyddyn i'r llall. Disgwylir y caiff y broses o godi safonau maeth iach ei chyflwyno'n raddol gan mai dyma'r ffordd fwyaf effeithiol o gyflwyno bwydydd iach.

Pwerau a Gweithdrefnau Is-ddeddfwriaeth

7. Mae'r Mesur arfaethedig yn cynnwys pwerau cyfyngedig i Weinidogion Cymru wneud Is-ddeddfwriaeth. Mae'r pwerau a roddwyd yn ymwneud â gweithredu egwyddorion y Mesur arfaethedig a'u manylder.

8 Mae'r Mesur arfaethedig yn cynnwys y pwerau a ganlyn i wneud rheoliadau a gorchmynion.

8.1 Adran 4: Dyletswydd cyrff llywodraethu i gyflwyno adroddiadau

Gall Gweinidogion Cymru wneud rheoliadau'n pennu ffurf adroddiadau o'r fath a'r ffordd y cânt eu cyfleu i rieni a'r cyhoedd.

Gweithdrefn: Negyddol. Mae adran 4 yn diwygio adran 30 o Ddeddf Addysg 2002. Mae adran 30 yn ei gwneud yn ofynnol i gorff llywodraethu ysgol a gynhelir i ddarparu adroddiad blynyddol ar faterion a bennir mewn rheoliadau. Mae Deddf Addysg 2002 yn darparu bod rheoliadau a wneir o dan adran 30 yn cael eu gwneud o dan y weithdrefn negyddol.

8.2 Adran 7: Gofynion ynglŷn â bwyd a diod a ddarperir ar fangre ysgol

Gall Gweinidogion Cymru wneud rheoliadau mewn perthynas â'r bwyd a diod a ddarperir ar fangre ysgol. Gall y rheoliadau bennu uchafswm y braster, halen, siwgr ac ychwanegion artiffisial y gellir ei gynnwys mewn bwyd a diod ac yn benodol gall nodi'r safonau maeth neu'r gofynion maeth eraill y dylid cydymffurfio â hwy ac efallai y byddant yn ei wneud yn ofynnol na ddylid darparu disgrifiadau penodol o fwyd a diod.

Cyn gwneud rheoliadau o dan yr adran hon, mae'n ofynnol i Weinidogion Cymru gael sylwadau gan ddisgyblion o ran y darpariaethau y bwriedir eu gwneud gan y rheoliadau ac ymgynghori â phobl eraill fel y bo'n briodol.

Gweithdrefn: Negyddol – mae'r Memorandwm Esboniadol yn nodi ei gyfiawnhad ar sail y ffaith y bydd y rheoliadau hyn yn disodli rheoliadau tebyg a wnaed o dan adran 114A o Ddeddf Safonau a Fframwaith Ysgolion 1998 ac mae'n galluogi i'r rheoliadau gael eu diwygio pryd bynnag y bo'n briodol.

8.3. Adran 13: Gorchmynion a rheoliadau

Mae'r adran hon yn darparu, er bod rheoliadau fel arfer yn ddarostyngedig i'r weithdrefn negyddol, bod yna ddau eithriad:-

- Bod Is-ddeddfwriaeth sy'n diwygio Deddf Seneddol neu Fesur Cynulliad yn ddarostyngedig i'r weithdrefn gadarnhaol; a

- Nad yw'r un weithdrefn yn gymwys i orchmynion cychwyn.

8.4 Adran 14: Pŵer i wneud darpariaethau pellach sy'n atodol neu'n ganlyniadol

Mae'r ddarpariaeth hon yn caniatáu i Weinidogion Cymru, drwy reoliadau, wneud darpariaethau atodol neu ganlyniadol i alluogi'r Mesur i fod yn gwbl effeithiol.

Gweithdrefn: Negyddol - ar wahân i'r amgylchiadau y cyfeirir atynt yn adran 12 uchod.

8.5 Yn ychwanegol, mae'r Mesur arfaethedig yn rhoi'r pŵer i Weinidogion Cymru roi'r Mesur ar waith rywbryd yn y dyfodol drwy orchymyn cychwyn a gwneud, drwy reoliadau, ragor o ddarpariaethau atodol neu ganlyniadol.

Canllawiau

9. Mae'r Mesur arfaethedig hefyd yn galluogi Gweinidogion Cymru i gyhoeddi canllawiau ynghylch sut y dylai awdurdodau addysg lleol arfer eu swyddogaethau mewn ffordd sy'n hybu bwyta'n iach mewn ysgolion, neu yn ystod unrhyw weithgareddau atodol fel ymweliadau, teithiau cerdded ac ati (adran 1 – Dyletswyddau mewn perthynas â bwyta'n iach mewn ysgolion). Gall Gweinidogion Cymru hefyd gyhoeddi canllawiau i awdurdodau addysg lleol o ran ymgymryd â'u dyletswydd i ddarparu dŵr yfed ar safle unrhyw ysgol a gynhelir (adran 8 – dŵr yfed mewn ysgolion) ac mewn perthynas â diogelu manylion adnabod disgyblion sy'n cael cinio ysgol am ddim (adran 10 - Diogelu manylion adnabod disgyblion sy'n cael cinio ysgol am ddim).

Gweithdrefn: Dim – ond gellir cynnwys y materion hyn yn yr adroddiad blynyddol a osodir gerbron y Cynulliad gan Weinidogion Cymru o dan adran 6.

Rheol Sefydlog 15.6

10. Mae Rheol Sefydlog 15.6(ii) yn darparu y caiff y pwyllgor ystyried y canlynol a chyflwyno adroddiadau arno:

“pa mor briodol yw darpariaethau mewn Mesurau Cynulliad arfaethedig ...sy'n rhoi pwerau i wneud is-ddeddfwriaeth i Weinidogion Cymru ...”

11. Wrth ystyried pa mor briodol yw'r pwerau a roddir i Weinidogion Cymru efallai y bydd Aelodau am ystyried y canlynol:-

- Nid yw'r Mesur arfaethedig yn darparu ar gyfer cynnwys y bwyd sy'n cael ei weini mewn ysgolion; Gweinidogion Cymru fydd yn gwneud hyn drwy reoliadau a wneir o dan adran 7 gan ddefnyddio'r weithdrefn negyddol.
- Wrth arfer y pwerau o dan adran 7, mae'n ddyletswydd statudol ar Weinidogion Cymru gael sylwadau gan ddisgyblion o ran y darpariaethau y bwriedir eu gwneud gan y rheoliadau ac ymgynghori â phobl eraill fel y bo'n briodol yn eu barn hwy.
- Caiff Rheoliadau a wneir o dan adran 4 (cynnwys gwybodaeth am hybu bwyta'n iach mewn adroddiadau llywodraethwyr) ac adran 7 (gofynion ynglŷn â bwyd a diod a ddarperir ar fangre ysgol) eu gwneud o dan y weithdrefn negyddol. Nodir bod hyn yn briodol ar sail y ffaith bod rheoliad 4 yn diwygio adran 30 o Ddeddf Addysg 2002 a bod rheoliadau a wneir o dan adran 30 yn cael eu gwneud o dan y weithdrefn negyddol a bod rheoliadau a wneir o dan adran 7 yn disodli rheoliadau tebyg a wneir ar hyn o bryd o dan adran 114A o Ddeddf Safonau a Fframwaith 1998 a wneir o dan y weithdrefn negyddol ac mae hefyd yn galluogi diwygiadau i gael eu gwneud lle bynnag y bo hynny'n briodol.
- Mae Rheol Sefydlog 24.9 yn darparu unwaith y caiff cynnig (nad oes modd ei ddiwygio) ei osod o dan Reol Sefydlog 24.4 (Cynnig ar gyfer Cymeradwyo (Gweithdrefn Penderfyniad Cadarnhaol)) ni ellir diwygio'r offeryn y mae'n berthnasol iddo.

Cam i'r pwyllgor ei gymryd

12. 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. Er mwyn ei gynorthwyo i ystyried y Mesur arfaethedig o dan Reol Sefydlog 15.6(ii) efallai y bydd y pwyllgor am fanteisio ar y cyfleuster a roddir gan Reol Sefydlog 10.43 (gwahoddiad i roi tystiolaeth) a Rheol Sefydlog 10.44 (galw ar dystion).

Cynghorwyr Cyfreithiol
Y Pwyllgor Is-Ddeddfwriaeth
Ebrill 2008