

# Subordinate Legislation Committee Y Pwyllgor Is-ddeddfwriaeth

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20 Ionawr 2009

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## Ymchwiliad i'r gwaith craffu ar is-ddeddfwriaeth a phwerau dirprwyedig

Mae Pwyllgor Is-ddeddfwriaeth Cynulliad Cenedlaethol Cymru yn cynnal ymchwiliad i'r gwaith craffu ar is-ddeddfwriaeth a deddfwriaeth arall sy'n dod o fewn ei gylch gwaith. Yn dilyn ymgynghoriad cyhoeddus, mae'r Pwyllgor wedi ystyried y dystiolaeth a ddaeth i law. Roedd llawer o'r dystiolaeth yn cyfeirio at graffu ar y darpariaethau ar gyfer Cymru ym Mesurau Senedd y DU. Ysgrifennaf atoch er mwyn eich gwahodd i roi eich sylwadau ar y dystiolaeth a ddaeth i law er mwyn ein cynorthwyo i lunio ein hargymhellion.

Er bod cylch gwaith ein rhagflaenydd – Pwyllgor Deddfau'r Ail Gynulliad – wedi ei gyfyngu i waith craffu technegol ar is-ddeddfwriaeth, mae gan y Pwyllgor presennol gylch gwaith ehangach. Erbyn hyn, gall graffu ar "rinweddau" offerynnau statudol ar seiliau eraill, fel a yw unrhyw offeryn statudol yn rhoi deddfwriaeth yr Undeb Ewropeaidd ar waith yn amhriodol neu a yw'n methu â gwireddu ei amcanion polisi yn berffaith (Rheol Sefydlog 15.3). Mae hon yn debyg i rôl y pwyllgor yn Nhŷ'r Arglwyddi sy'n trafod rhinweddau offerynnau statudol.

Caiff y Pwyllgor hefyd graffu ar y broses o ddirprwyo pwerau i Weinidogion Cymru ym Mesurau Senedd y DU yn ogystal â Mesurau'r Cynulliad. Caiff y Pwyllgor hefyd ystyried gorchmynion i ddiwygio rheoliadau sy'n effeithio ar feysydd sydd o fewn cymhwysedd y Cynulliad.

Mae ymchwiliad y Pwyllgor yn canolbwyntio ar y meysydd gwaith newydd hyn – yn arbennig craffu ar "rinweddau" offerynnau statudol, a dirprwyo pwerau ym Mesurau Senedd y DU – a fydd yn sail i ddull y Pwyllgor o ymdrin â'i gylch gwaith ehangach yn y dyfodol.

Rwyf wedi crynhoi'r materion a godwyd yr hoffem eu dwyn i'ch sylw ac fe'u hamgaeaf gyda'r llythyr hwn (Atodiad 1). Byddwn yn ddiolchgar petaech yn ystyried ymateb i'r cwestiynau a godir yn y ddogfen amgaeedig gan y bydd hyn yn cynorthwyo'r Pwyllgor â'i ymchwiliad.

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Amgaeir y llythyr ymgynghoriad ar gyfer yr ymchwiliad yn Atodiad 2 er gwybodaeth yn unig ac mae'n nodi cylch gorchwyl yr ymchwiliad (daeth yr ymgynghoriad i ben ym mis Medi 2008). Er gwybodaeth, anfonwyd llythyrau yn gofyn am yr un wybodaeth i'r canlynol:

- Dr Hywel Francis, Cadeirydd y Pwyllgor Materion Cymreig
- Harriet Harman, Arweinydd y Tŷ
- Roger Williams, Ysgrifennydd Gwladol Cymru'r Democratiaid Rhyddfrydol

Gwerthfawrogir ateb erbyn 13 Chwefror 2009. Os oes gennych unrhyw gwestiynau pellach, cysylltwch â Bethan Davies, yr Ail Glerc ar 02920 898120 neu Olga Lewis, y Dirprwy Glerc ar 02920 898154.

Yn gywir,

Janet Ryder AC  
Cadeirydd

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**Inquiry into the scrutiny of statutory instruments and delegated powers**

**UK Legislative Work Programme**

In his evidence to the Committee, the Secretary of State noted the steps that he takes to brief Members of Parliament about the implications for Wales of the Government's Legislative Work Programme. He also has a statutory duty under section 33 of the Government of Wales Act 2006, to consult the National Assembly on the UK Government's legislative programme.

Some respondents felt that the legislative programme (and the draft version) is not sufficiently detailed to enable stakeholders to identify the potential implications for Wales, compared to some instances, where the implications for England are fleshed out in more detail, e.g the Marine and Coastal Access Bill as detailed in this year's legislative programme.

- i. Do you have any views on how these concerns about the lack of information on the implications of Bills for Wales might be addressed to enable early representation to the Secretary of State and Welsh Ministers where there are areas of concern or areas of opportunity for devolution of executive powers to Welsh Ministers or legislative powers to the Assembly?

**Information on and Scrutiny of individual UK Bills**

Several respondents stated that the information provided on the implications of UK Bills for Wales is inadequate. The Secretary of State explains that for framework powers, the Welsh Assembly Government produces an Explanatory Memorandum, agreed with the Wales Office, setting out the existing executive and legislative provisions which is then published on the Wales Office website. However, there is no similar process to identify where Bills confer new functions on Welsh Ministers and how they plan to make use of their new powers.

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It was noted that the Sustainability Committee's Report on the Planning Bill, of 5 February 2008, also expressed disappointment that, "due to the lack of detail on the face of the Bill on a number of provisions, it was unable to consider and input fully to the parliamentary process on the impact on Wales of all aspects of the Bill."

- ii. Do you have any views on how this gap in information might be addressed to ensure effective scrutiny of Welsh provisions of UK Bills, in particular those delegating powers to Welsh Ministers?

While the Secretary of State has suggested that that at least one Welsh MP will be on every Committee scrutinising a Bill with a framework power, there may be other Bills which do not contain framework powers but nonetheless devolve significant functions to Welsh Ministers. Some respondents expressed concern that scrutiny of Bills in Westminster tended to neglect the implications for Wales.

The Report of the Joint Committee on the Draft Marine Bill (16 July 2008) flagged concern that there is a potential for a legislative vacuum between Westminster and the Assembly where changes are made to the UK legislative framework, due to the difference in ways in which Executive powers can be implemented by Welsh Ministers and the Secretary of State.

- iii. Do you have any views on what steps could be taken in Westminster to address these concerns to ensure robust scrutiny of Welsh provisions of UK bills?
- iv. Do you have any views on how Westminster Committees and Assembly Committees who scrutinise UK Bills could co-operate to ensure more effective scrutiny of UK Bills with Welsh provisions?

### **Liaison between the Welsh Assembly Government and the UK Government in relation to UK Bills**

In his evidence to the Committee, the Secretary of State states that Devolution Guidance Note 9 sets out guidance on the handling of Bills which affect the responsibilities of Welsh Ministers or the National Assembly for Wales.

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Some respondents have suggested that it appears the Welsh Assembly Government is not always consulted by UK government departments at an early stage in the development of legislation which may affect Wales and in particular where competence has been devolved.

Again, in relation to the Planning Bill, the Sustainability Committee's Report urged the review of procedures for liaison between the Welsh Assembly Government and UK government departments due to their concern at the position of the WAG within the UK legislative process.

- v. Do you have any view as to whether UK government departments are adhering to Devolution Guidance Note 9 and how the relationship works in practice?

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