



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

**Pwyllgor Deddfwriaeth Rhif 1
Legislation Committee No. 1**

**Dydd Mercher, 1 Gorffennaf 2009
Wednesday, 1 July 2009**

Cynnwys
Contents

- 3 Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions
- 4 Mesur Arfaethedig Cludo Gwastraff i'w Adfer (Ymgysylltiad Cymunedau â'r
Trefniadau) (Cymru)—Cyfnod 1, Sesiwn Dystiolaeth 1
Proposed Shipment of Waste for Recovery (Community Involvement in
Arrangements) (Wales) Measure—Stage 1, Evidence Session 1

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mohammad Asghar	Plaid Cymru The Party of Wales
Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Rosemary Butler	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Ann Jones	Llafur Labour
Huw Lewis	Llafur Labour
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Nerys Evans	Aelod Cynulliad, Plaid Cymru Assembly Member, Plaid Cymru
-------------	--

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

Keith Bush	Cyfarwyddwr, Gwasanaethau Cyfreithiol Director of Legal Services
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Bethan Roberts	Cynghorydd Cyfreithiol Legal Adviser
Liz Wilkinson	Clerc Clerk

Dechreuodd y cyfarfod am 9.30 a.m.
The meeting began at 9.30 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Rosemary Butler:** Good morning everyone. Welcome to this morning's meeting. Before we move to the main agenda, I will just remind you that the committee operates bilingually and that you can use the headsets to listen to a translation of the Welsh contributions, or as an induction loop to hear the whole proceedings more clearly. Channel 0 on the headsets provides the verbatim broadcast and channel 1 provides translation. Please switch off all mobile phones, pagers, BlackBerrys and other electronic devices as they interfere with the broadcasting and translation systems. If the fire alarm sounds, the ushers will escort us from the room. I remind everyone that you do not need to switch on the microphones as they are activated automatically.

9.31 a.m.

Mesur Arfaethedig Cludo Gwastraff i'w Adfer (Ymgysylltiad Cymunedau â'r Trefniadau) (Cymru)—Cyfnod 1, Sesiwn Dystiolaeth 1
Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure—Stage 1, Evidence Session 1

[2] **Rosemary Butler:** The purpose of today's meeting is to take oral evidence in connection with the Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure. You will recall that the proposed Measure has been referred to this committee by the Business Committee in accordance with Standing Order No. 23.21. The role of the committee, as set out in Standing Orders, is to consider and report on the general principles of the proposed Measure. The committee must report to the Assembly no later than 30 November, in line with the deadline set by the Business Committee.

[3] This morning, I welcome Nerys Evans, the Member in charge of the proposed Measure. Nerys is accompanied by Keith Bush, the legal adviser, who is almost a resident member of the committee. We also have Bethan Roberts here as our legal adviser this morning.

[4] We have a set of 33 questions, Nerys—for you to be aware—which have been allocated to different Members. I will start by asking you to clarify the underlying purpose and overall aim of the proposed Measure.

[5] **Nerys Evans:** First, thank you for the opportunity to come to give evidence to the committee. We did some research a few years ago into where our recycling takes place, through the Freedom of Information Act 2000, for our local authorities, and we discovered that some local authorities could not tell us where the recycling took place. Some could partially tell us and some told us that some recycling was taking place in China, Brazil, India and so forth. It struck us that there was no obligation on local authorities to track whether recycling took place or to tell the public about it. The purpose of the proposed Measure is to encourage greater transparency and openness in the recycling process in Wales. It would place a statutory duty on local authorities to make publicly available information about where our waste is recycled in areas outside the European Community and European free trade areas. As I said, this information is not currently available. Over time, it is expected that the quality of information will be improved as it is embedded into legislation. It comes under matter 12.5 in Schedule 5 to the Government of Wales Act 2006, which is about improving how local government conducts its services. We do not object to exporting waste; many of those belonging to the green lobby, for example, think that it is more environmentally friendly, because we have big ships of cheap goods arriving from China, for example, and it is more environmentally friendly that waste is carried back in the ships. Therefore, we are not trying to deter the exporting of waste; it is just a matter of making the process more transparent and making sure that the public knows where our waste is recycled.

[6] **Rosemary Butler:** That is fine. Thank you. I now call on Ann Jones to ask the second question.

[7] **Ann Jones:** You have given some examples of what you think that you want to see from your proposed Measure; therefore, given that we have existing legislation and there are some current arrangements in place in relation to waste management, what, do you think, will your proposed Measure provide for that is not already provided for under existing legislation or by way of current practice?

[8] **Nerys Evans:** At present, there is no legal obligation on local authorities to tell us where the waste is sent and how much is sent. We discovered through the Freedom of Information Act request that some local authorities could not tell us. There is no legal

obligation. The Environment Agency states in its submission that it believes that the proposed Measure as drafted could increase the transparency of the process by which recyclates are dealt in Wales. As I said, there is no current provision in legislation. That is why I have proposed it through the backbench process.

[9] There are regulations and legislation, and there is some talk of one local authority in Wales looking at reporting this. We know of an example in Somerset, Somerset Waste Partnership, which has started to report this as there has been an increase in demand and in the number of inquiries from the public asking for more information and transparency. So, there is one example of good practice in Somerset, and I think that Wales should follow that lead.

[10] On the current legislation, the EC's waste framework directive requires member states to establish a network of disposal installations. That will enable people to dispose of waste in the nearest appropriate installation by means of the most appropriate methods and technologies, and that network should allow the community as a whole to become self-sufficient in waste disposal, enabling member states to move towards that aim individually.

[11] There are also EC regulations on the shipment of waste. They deal with the supervision of the export of waste and place duties on the Environment Agency to ensure that any waste that is exported is managed in an environmentally sound manner through the period of shipment, and that includes the recovery or disposal in the country of destination. So, again, there is no requirement to report where it goes and when to ensure that the process is conducted in an environmentally sound manner.

[12] The UK's Transfrontier Shipment of Waste Regulations 2007, derived from the EU's regulations, ensure that the shipment of waste is in accordance with waste management plans. Once more, that has nothing to do with ensuring that the public knows where waste is recycled and how much of it is recycled. So, although there are regulations in place, there are no regulations covering what I propose with this proposed Measure.

[13] **Ann Jones:** When we had the debate in Plenary, when you sought leave to continue with your proposed Measure, Jane Davidson, the Minister for Environment, Sustainability and Housing, reported that her Government intended to work with the Environment Agency and local authorities to ensure that better information becomes available on the final destination and fate of recyclable waste and that that information would be made public. Will there be any added value to your proposed Measure if the Government goes ahead with its plan?

[14] **Nerys Evans:** The Minister made that statement during the Plenary debate, which was held well over a year ago, and she said it again in a written submission to the committee, but there has been no progress. Any plans or policy initiatives to do that would be only voluntary, so there would be no legal requirement if the Government went down that road. The purpose of the proposed Measure is to place a statutory duty on local authorities to do this, so it comes down to the voluntary versus statutory argument. From the evidence received from local authorities, it seems as though they are resisting it, as predicted. If they are resisting it now, it is hard to see that any change in policy from the Government to make it voluntary would have any effect and, therefore, it should be made statutory through this proposed Measure.

[15] **Ann Jones:** In paragraph 1.2 of your explanatory memorandum, you say that you will encourage local authorities to comply with the principles of proximity and self-sufficiency, and you have already touched on the fact that you think that local authorities will have some difficulties with your proposed Measure. Do you consider that compliance from local authorities with the principle of this will be a major problem? If so, do you have any strong

evidence to prove that?

[16] **Nerys Evans:** Local authorities are, quite rightly, submitting their evidence now before the proposed Measure is passed. They are trying to make known their view that they do not want more duties to be imposed on them. However, there are lots of arguments to counter that, and we will probably come to those later.

[17] There is nothing at present for them to comply with, and if this is passed and becomes a legal duty, they will have to comply with it. Of the 10 authorities that responded to the survey of local authorities, four said that their duty of care ends with the materials recovery facility or the licensed UK processors, and that they did not have any information on the onward destination of waste. That information is held by the processors; it is just a matter of getting it to filter down and to become part of the next contract. So, I do not think that compliance would be too much hard work, because the information is there. We are not asking local authorities to follow the waste and see what is shipped where, or how much is recycled in different countries. That information is available.

9.40 a.m.

[18] The principles of proximity and self-sufficiency are central to the waste strategies of the Assembly Government and the European Union. The proximity principle is that of dealing with waste as close as possible to where it was generated and as soon as possible, avoiding passing it on to future generations. The same is true of self-sufficiency. That is at the heart of Government policy as is reflected by the Minister's in-principle support for this proposed Measure. It is also at the heart of EU policy on waste.

[19] **Ann Jones:** So, there is no strong evidence on the compliance of local authorities, then. You are saying that you will impose it on them and they will have to comply.

[20] **Nerys Evans:** The point of the proposed Measure is to place a legal duty on local authorities. We cannot tell at the moment, because, in their evidence, they have rejected it as they see it as an extra burden, but I think that its benefits far outweigh any burden that it would place on local authorities. So, we have no evidence on compliance now, but if the proposed Measure were passed and made law, there would be a duty on them to comply.

[21] **Mohammad Asghar:** Some of those who responded to the consultation draft of the proposed Measure suggested that its objective could be achieved through proper adherence to existing controls on the transfer and export of waste, such as the waste duty of care and the Transfrontier Shipment of Waste Regulations 2007. How do you respond to that?

[22] **Nerys Evans:** There is no legal requirement in any previous legislation or regulations for the data to be published, so compliance with existing regulation and policy is totally separate to this proposed Measure, because there is no mention of making this information publicly available. There is no legal requirement. As I mentioned earlier, the regulations deal with the processing and handling of waste and aim to ensure that it is handled in an environmentally sound manner. Those duties fall to the Environment Agency. The duty of care set out in section 34 of the Environment Protection Act 1990 does not include any provisions to make information generally available to the public. Rather, it is concerned with the process by which waste is disposed of. Compliance with those regulations is a matter for another committee and another body and is not associated with this proposed Measure, because this is asking for new information to be published by the local authority.

[23] **Mohammad Asghar:** It has also been suggested that any suspected weaknesses in the existing controls on the transfer and export of waste could have been addressed through the recent review of the control of the handling, transfer and transport of waste that was

undertaken by the Department for Environment, Food and Rural Affairs. How does that review relate to the proposed Measure?

[24] **Nerys Evans:** The review by DEFRA is about handling the transport and transfer of waste; it does not place a legal duty on local authorities to publish details of where the waste is recycled or how much is recycled. The new statutory guidance code that is being consulted on will increase the quality of information passed between holders but would not place a legal duty on them to put in the public domain information about where the waste goes to be recycled.

[25] **Mohammad Asghar:** What account did you take of the review when developing the proposed Measure?

[26] **Nerys Evans:** Although it increases transparency and makes the waste process better, which we should welcome, I do not think that it is completely relevant to the proposed Measure and does not directly affect what I am trying to do. So, I did not take account of it while we were developing the proposed Measure.

[27] **Eleanor Burnham:** Pa awydd sydd yn ein cymunedau i ymwneud yn fwy â threfniadau awdurdodau lleol i gludo gwastraff i'w adennill y tu allan i'r Gymuned Ewropeaidd a'r ardal masnachu rhydd?

Eleanor Burnham: What appetite is there among communities to increase involvement in the arrangements of local authorities to ship waste destined for recovery outside the European Community and the free trade area?

[28] **Nerys Evans:** Fe'ch cyfeiriaf at yr ateb blaenorol am y Somerset Waste Partnership. Bum yn siarad llawer â'r bartneriaeth honno gan ei bod wedi datblygu system o adrodd ymhle mae'r gwastraff yn cael ei ailgylchu. Un peth sydd wedi ei hysgogi i wneud hynny yw cael y cyhoedd yn gofyn am fwy o wybodaeth am y gwastraff. Mae'r bartneriaeth yn dweud y caiff llawer o ddiddordeb gan y cyhoedd yn yr hyn sy'n digwydd a ble.

Nerys Evans: I refer you to the previous answer about the Somerset Waste Partnership, with which I have spoken quite a lot as it has developed a system that allows it to report where the waste is being recycled. One thing that has encouraged it to do that is the public making inquiries for more information about the waste. The partnership states that there has been a great deal of interest from the public about what is happening and where.

[29] Mewn rhai o'r ymatebion a gafwyd i'r ymgynghoriad, mae awdurdodau lleol yn poeni am y ddelwedd negyddol y bydd y Mesur arfaethedig yn ei rhoi iddynt o bosibl, gan eu bod yn allforio gwastraff. Fodd bynnag, mae hynny'n rhy syml. Mae'r safbwynt honno'n cymryd bod pobl Cymru yn anwybodus am yr hyn sy'n digwydd gyda'u gwastraff. Mae awydd gwybod mwy, ac yr ydym yn gweld hynny pan fydd unrhyw newidiadau i'r system o ailgylchu gwastraff yn y tî. Mae pobl yn weithredol wrth gymryd rhan yn hynny, felly mae'n glir bod awydd i gael gwybodaeth. Er enghraifft, yn ardal un awdurdod yn Llundain lle oedd llawer o dai cymdeithasol, cododd nifer y bobl a oedd yn ailgylchu eu gwastraff o 65 i 90 y cant ar ôl ymgyrch gyhoeddus wedi'i thargedu i godi

In some of the consultation responses that were received, local authorities stated that they were concerned about how this might cast them in a negative light because they are exporting waste. However, that is too simplistic. That view assumes that the people of Wales are ignorant of what is happening to their waste. There is an appetite to learn more, as we can see when there are any changes to the system for recycling household waste. People are proactive in taking part in that, which shows that there is an appetite for information. For example, in one London authority area, where there was a great deal of social housing, the percentage of people participating in recycling increased from 65 to 90 per cent after a targeted public campaign to raise awareness of the

ymwybyddiaeth o bwysigrwydd ailgylchu, ble caiff yr ailgylchu ei wneud, ac ati. Felly, gyda rhywfaint o addysg a dealltwriaeth, mae awydd i gael mwy o wybodaeth am ble y caiff ein gwastraff ei ailgylchu.

[30] **Eleanor Burnham:** Pam yr ydych o'r farn mai'r Mesur arfaethedig yw'r ffordd mwyaf addas ac effeithiol o gynnwys cymunedau yn nhrefniadau awdurdodau lleol o ran cludo gwastraff?

[31] **Nerys Evans:** Mae'n rhan o'r broses o rannu gwybodaeth. Mae awdurdodau lleol wedi'u hethol yn ddemocrataidd ac mae dyletswydd arnynt i fod yn atebol i bobl yn eu hardal. Mae'r Mesur arfaethedig yn rhan o wneud yr holl broses yn fwy tryloyw. Ar hyn o bryd, mae rhai anghysondebau o ran sut mae awdurdodau lleol yn casglu gwybodaeth. Mae rhai yn trosglwyddo eu gwastraff i awdurdodau eraill ac yn cofnodi fod y gwastraff hwnnw wedi'i ailgylchu, er ei fod wedi'i dirilenwi, er enghraifft. Felly, os cawn fwy o dryloywder yn y system, y gobaith yw y bydd yr anghysondebau hynny'n cael eu dileu. Gwyddom fod gwastraff yn cael ei allforio i'w waredu, ond pam nad ydym yn cael gwybod hynny'n swyddogol? Nid oes angen bod ag ofn dweud ei fod yn digwydd. Gadewch inni wybod amdano ac i ble yn union y mae'n mynd.

[32] Bum hefyd yn siarad â llawer o gwmnïau ailgylchu bach ar draws Cymru, ac maent am adeiladu capasiti ond, ar hyn o bryd, nid ydynt yn gwybod beth sy'n cael ei ailgylchu ymhle, felly mae'n anodd iddynt wybod ym mha ardaloedd i fuddsoddi. Gallai Cymru fod yn ailgylchu ei holl bapur, ond ar hyn o bryd nid ydym yn gwybod faint o bapur sy'n cael ei ailgylchu. Felly, mae'n anodd i Lywodraeth y Cynulliad fuddsoddi yn y diwydiant gan ei fod yn anodd gwybod beth yw ei gapasiti. Pe baem yn gwybod faint o wastraff sy'n cael ei ailgylchu ymhle, byddai'n haws i Gymru fuddsoddi yn y diwydiant ailgylchu.

[33] Gwyddom hefyd fod mwy o swyddi yn cael eu creu yn y diwydiant ailgylchu o'i gymharu â ffyrdd eraill o waredu gwastraff. Mae 250 o swyddi yn cael eu creu am bob 10,000 tonnelli o wastraff a ailgylchir; 10 swydd y 10,000 tonnelli ydyw gyda thirlenwi,

importance of recycling, of where recycling is done, and so on. So, with a little education and understanding, there is an appetite to receive more information about where our waste is recycled.

Eleanor Burnham: Why do you think that the proposed Measure is the most appropriate and effective way of involving communities in the arrangements of local authorities in relation to the shipment of waste?

Nerys Evans: It is a part of the process of sharing information. Local authorities have been democratically elected and have a duty of accountability to the people in their area. The proposed Measure is part of making the whole process more transparent. There are currently anomalies in how local authorities gather information. Some of them pass their waste on to other local authorities and record it as having been recycled, despite the fact that that waste has gone to landfill, for example. So, if we get more transparency in the system, we hope that those anomalies will be eradicated. We know that waste is exported to be disposed of, but why do we not hear about that officially? There is no need to be frightened of saying that it is happening. We should know about it and know exactly where it is going.

I have also been talking to many small recycling companies across Wales, and they want to build up capacity although, at the moment, they do not know what is being recycled where, so it is difficult for them to know in which areas to invest. Wales could be recycling all its paper, but at the moment we do not know how much paper is being recycled. Therefore, it is difficult for the Assembly Government to invest in the industry because it is difficult to know what its capacity is. If we knew how much waste was being recycled where, it would be easier for Wales to invest in the recycling industry.

We also know that more jobs are created in the recycling industry compared with other methods of waste disposal. Two hundred and fifty jobs are created for every 10,000 tonnes of waste recycled, compared with 10 jobs for every 10,000 tonnes sent to landfill, and

a rhwng 20 a 40 o swyddi ydyw wrth losgi gwastraff. Felly, mae elfen economaidd ynghlwm wrth inni geisio cynyddu'r gwastraff yr ydym yn ei ailgylchu yng Nghymru.

between 20 and 40 jobs for waste incineration. So, there is also an economic aspect as we try to increase the waste that we recycle in Wales.

[34] **Eleanor Burnham:** Ym mharagraff 3.3 o'r memorandwm esboniadol, yr ydych yn awgrymu y bydd pobl leol, o ganlyniad i gyhoeddi'r wybodaeth a ddarperir yn y Mesur arfaethedig, yn annog awdurdodau lleol i ddefnyddio cyfleusterau ailgylchu sy'n agosach at ffynhonnell y deunydd ailgylchu, sef y gwastraff, na'r cyfleusterau sy'n bellach i ffwrdd. Pa dystiolaeth sydd gennych i awgrymu mai dyna beth sy'n digwydd, a sut yn union yr ydych yn tybio y bydd yn digwydd?

Eleanor Burnham: In paragraph 3.3 of the explanatory memorandum, you suggest that local residents, as a result of the publication of the information provided for in the proposed Measure, will encourage local authorities to use recycling facilities that are closer to the source of the recyclates, that is, the waste, than those that are further away. What evidence do you have to suggest that that is what is happening, and how exactly do you suppose that it will happen?

9.50 a.m.

[35] **Nerys Evans:** Yn ei ymateb i'r ymgynghoriad, dywedodd Asiantaeth yr Amgylchedd Cymru,

Nerys Evans: In its contribution to the consultation, Environment Agency Wales said,

[36] 'Providing the means for more information to be collected and shared with the public may encourage the population to accept recycling facilities within their neighbourhoods which would be a positive outcome'.

[37] Felly, mae teimlad y bydd hynny'n digwydd. Unwaith y bydd y cyhoedd wedi cael gwybod am yr allforio—eto, nid wyf yn erbyn allforio; mae gwastraff yn adnodd ac yn nwydd i'w werthu a'i brynu, felly mae gwaith i'w wneud i addysgu pobl am hynny—gobeithio y bydd busnesau bach sydd yn ailgylchu'n lleol yn cael eu gweld yn lleoedd amgen i ailgylchu gwastraff. Daw hynny â ni yn ôl at yr egwyddor agosrwydd; dylem anelu at ddelio â'n gwastraff mor agos ag y bo modd i'r lle y'i crëwyd.

So, there is a feeling that that is happening. Once the public have been informed about exporting—again, I am not against exporting; waste is a resource and a commodity to be bought and sold, so there is work to do in educating people about that—I hope that small businesses that recycle locally will be seen as a local alternative for waste recycling. That brings us back to the proximity principle; we should aim to deal with our waste as close as possible to where it was made.

[38] **Eleanor Burnham:** Ers dechrau'r dirwasgiad, mae llai o nwyddau'n cael eu cludo o wledydd fel Tsiena. Felly, gan nad oes cymaint o alw am nwyddau, nid oes cymaint o gludo yn y ddau gyfeiriad.

Eleanor Burnham: Since the beginning of the recession, fewer goods are being shipped from countries such as China. Since the demand for goods has diminished, there are fewer shipments in both directions.

[39] **Nerys Evans:** Byrdwn y Mesur arfaethedig hwn yw gwella tryloywder drwy ryddhau gwybodaeth. Yn amlwg, mae'r farchnad yn newid, efallai'n fisol neu'n wythnosol—dyna yw'r farchnad lle bo nwyddau megis gwastraff yn cael eu gwerthu a'u prynu. Holl bwrpas y Mesur arfaethedig

Nerys Evans: The thrust of the proposed Measure is to increase transparency by means of publishing information. Clearly, the market fluctuates, perhaps monthly or weekly—that is the market in which commodities such as waste are traded. The whole purpose of the proposed Measure is to

yw gwneud hyn yn fwy agored fel bod pawb yn gwybod beth sy'n digwydd. Nid wyf yn credu y dylem ofni hynny o gwbl. Dylem ymddiried yn y cyhoedd i ddelio â'r wybodaeth honno ac ymddwyn yn gyfrifol gyda hi.

[40] **Eleanor Burnham:** Pa mor realistig yw hi y bydd y cyhoedd yn annog awdurdodau lleol i ddefnyddio mwy o adnoddau ailgylchu lleol, yn enwedig os yw'n ofyniad i sefydlu lleoedd ychwanegol yn lleol, oherwydd mae gwrthwynebiad o hyd i'r safleoedd hyn?

[41] **Nerys Evans:** Nid wyf yn credu bod gwrthwynebiad ar bob achlysur, a bod yn deg.

[42] **Eleanor Burnham:** Yr wyf yn credu bod.

[43] **Nerys Evans:** Mewn llawer achos, ond nid bob tro. Yn y pen draw, mae'n hawdurdodau lleol yn gyrrff a etholir yn ddemocrataidd, ac maent yn atebol i bobl Cymru. Felly, mae'n iawn i bobl Cymru a phobl o fewn yr awdurdodau lleol ddatgan eu barn am wahanol bethau, gan gynnwys y broses ailgylchu. Nid oes eisiau i ni fod ofn bod y wybodaeth ar gael. Os bydd y Mesur arfaethedig hwn yn dangos bod rhai awdurdodau lleol yn allforio llawer mwy nag eraill, sy'n delio â gwastraff yn lleol, a bod pwysau'n cael ei roi ar yr awdurdodau lleol sy'n allforio, mater i bobl Cymru yw hynny. Os ydynt am weld eu gwastraff yn cael ei drin o fewn ffiniau eu hawdurdodau lleol, yng Nghymru neu ym Mhrydain Fawr, bydd gan ein hetholwyr yr hawl i fynnu hynny.

[44] **Eleanor Burnham:** Ond yn y gogledd, fel yr wyf yn deall, mae cynllun rhanbarthol ar waith, sy'n golygu nad ydych yn gallu gwneud hyn yn ddigon lleol i'w diben chi.

[45] **Nerys Evans:** Na. Ar hyn o bryd, nid yw'r gallu gyda ni yng Nghymru i ddelio â'r gwastraff i gyd. Nid wyf yn dweud am eiliad y dylid ailgylchu popeth yng Nghymru. Nid yw'r dechnoleg gyda ni. Nid ydym yn dweud y dylid atal pobl rhag allforio i wledydd fel Tsiena oherwydd y ddadl amgylcheddol—yr

make it all more open so that everyone knows what is going on. I do not think that we should fear that at all. We should trust the public to cope with this information and to deal with it responsibly.

Eleanor Burnham: How realistic is it that the public will urge local authorities to increase their use of local recycling facilities, especially if they are required to establish additional sites locally, because there is always opposition to these sites?

Nerys Evans: I do not think that there is always opposition, to be fair.

Eleanor Burnham: I think that there is.

Nerys Evans: In many a case, but not every time. Ultimately, our local authorities are democratically elected bodies, and they answer to the people of Wales. So, it is only right that the people of Wales and people in local authorities state their opinion about various things, including the recycling process. We should not fear making that information available. If this proposed Measure shows that certain local authorities are exporting much more than others, which deal with their waste locally, and that pressure is applied on those exporting local authorities, that it is a matter for the people of Wales. If they wish to see their waste being managed within their local authority boundaries, in Wales or in Great Britain, then our electorate will have the right to insist on that.

Eleanor Burnham: In north Wales, however, as I understand it, a regional scheme has been implemented, which means that you do cannot do that locally enough for your purposes.

Nerys Evans: No. Currently, Wales does not have the capacity to deal with all of its waste. I am not for a second saying that everything should be recycled in Wales. We do not have the technology to do that. We are not saying that people should be prevented from exporting to countries such as China because

wyf yn eithaf niwtral ynghylch allforio. Nid ydym yn dweud y dylem ailgylchu popeth yng Nghymru—fel yr ydych yn ei ddweud, nid yw'r gallu gyda ni—ond dylem gael gweld beth sy'n digwydd gyda'r gwastraff ar hyn o bryd.

of the environmental argument—I am fairly neutral about exporting. We are not saying that we should recycle everything in Wales—as you said, we do not have the capacity—but we should be able to see what is currently happening to the waste.

[46] **Rosemary Butler:** I think that Huw Lewis wants to ask a supplementary question.

[47] **Huw Lewis:** Thank you, Chair. I, too, am concerned about the issues that Eleanor has raised. Is there not a danger, Nerys, of unintended consequences in that you could be offering a charter for Nimbyism by allowing people who are determined, come what may, not to allow any kind of waste handling anywhere near their homes? You are offering them the option of moulding their local authority's policy so that it delivers just that.

[48] **Nerys Evans:** Currently, in the UK and in Wales, places that deal with recyclates do so mostly from Europe, because they cannot get enough high-quality recyclate materials from UK collectors. There are areas in Wales and the UK that are dealing with waste for recycling at the moment. There would not necessarily be a massive increase in that, although we know about green jobs and about how many more jobs are created in recycling. It is down to local authorities to decide whether to realign their waste policies and strategies in order to export less and to deal with it to a greater extent in Wales or within the UK.

[49] **Rosemary Butler:** We will move on to questions on the timing of the proposed Measure.

[50] **Nick Ramsay:** The Welsh Assembly Government has proposed a legislative competence Order on environmental protection and waste management, which is currently in progress. As you are no doubt aware, if it goes through, the Government has indicated that its priorities are likely to be Measures aimed at addressing waste-management issues. That will cover aspects of what you are proposing in your Measure. In view of that, do you think that your proposed Measure could be seen to be premature?

[51] **Nerys Evans:** There is no guarantee as to when that proposed LCO will be passed; we know that there has already been quite a delay. I do not think that that should be a deterrent to passing the proposed Measure. There is potential, if the proposed LCO were passed, for the proposed Measure to be expanded into other fields, but, as you said, there are no plans, we have no timetable on the proposed LCO, and there is no plan to bring forward a Measure after the proposed LCO is passed on these grounds. We know that we have less than two years until the end of this term, so securing a legislative competence Order and then getting a Measure through will be quite hard within that timescale. As I mentioned, there is currently no plan to have a Measure along those lines within the proposed LCO.

[52] **Nick Ramsay:** No guarantee on an LCO—whatever next? [*Laughter.*] I have a brief supplementary question on what you have just said. It has been suggested that, if the proposed Order goes through and Measures can be made, Government Measures could deal more holistically with waste management, as opposed to the specific focus of your proposed Measure. It would be a more holistic approach. Would you agree with that, or do you think that your proposed Measure has something to offer aside from what future Government proposed Measures could do?

[53] **Nerys Evans:** There is potential to broaden the proposed Measure and to broaden the principle to include different fields after the proposed LCO is passed. However, again, we have no timetable for the proposed LCO, and there are no plans by the Government to introduce a Measure following that. This proposed Measure deals with the here and now, with

waste that is being recycled at the moment, and its purpose is to aid transparency in the process.

[54] **Nick Ramsay:** My final question is, again, on the timing. The Assembly Government is currently consulting on the draft Wales waste strategy for 2009 to 2050, which would revise the Wise about Waste strategy. I am sure that you are familiar with it. It proposes a long-term approach to waste management in terms of achieving a zero-waste society. On the back of that, and like my last question, do you think that your proposed Measure is premature, and that if you allowed the waste strategy to take its course, it would provide solutions to what you are proposing, but in a more holistic, Government-related way?

[55] **Nerys Evans:** There is nothing in the strategy that tries to do what I am trying to do in the proposed Measure. I am trying to open up the process of getting local authorities to report where the recycling takes place. There is nothing in the waste strategy on that, except for the principles of proximity and self-sufficiency, as we mentioned earlier, with regard to trying to get people to deal with their waste as close as possible to where it was generated. Those are important principles, which complement the proposed Measure. There is nothing specific in the strategy that is trying to do what my proposed Measure is trying to do. The proposed Measure aligns itself very well with what the Assembly Government is trying to do to deal with waste, and to increase the participation rate in relation to recycling.

[56] **Rosemary Butler:** We will move on to questions on the scope of the proposed Measure.

[57] **Huw Lewis:** On the scope of the proposed Measure, why does it only relate to municipal waste? Why are we not also talking about waste from other sectors?

[58] **Nerys Evans:** That is a legal question. It is because of the jurisdiction of the Assembly, and matter 12.5 of Schedule 5 to the Government of Wales Act 2006, and:

[59] ‘the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised’.

[60] I will ask Keith to expand.

10.00 a.m.

[61] **Mr Bush:** I cannot add much more. At the moment, the Assembly only has limited legislative competence that could be relevant to this kind of situation. This proposed Measure takes advantage of, and uses creatively, the competence that is available to us. If, at some future stage, the proposed LCO on environmental protection and waste management were made, that would enable the scope of this approach to be broadened.

[62] **Huw Lewis:** I accept what you say, but this is a peripheral issue, because we could be talking about as little as 10 per cent of the waste produced in Wales being covered by this proposal. Is this not small beer?

[63] **Nerys Evans:** I do not think so; I think that it is an important 10 per cent. The percentage of domestic waste is higher and this information should be available. Going back to the example of Somerset, it started this work as a result of public pressure and inquiries for more information. So, although it is 10 per cent generally, the percentage of domestic waste is higher and people have a right to know this information.

[64] **Huw Lewis:** I also wanted to ask about the restriction of information to the shipment of waste outside the European community and the free trade area. Why not specify anywhere

outside Wales? Why restrict the scope to outside the EU?

[65] **Mr Bush:** The answer to that is a combination of policy and legal issues. You could frame this in such a way as to draw the boundary, outside which a shipment would have to be reported, in all sorts of ways, from the area of the authority in question outwards to include Wales, Great Britain, the United Kingdom, Europe and so on. Each time you draw such a boundary, you have to think of competition issues, because, clearly, one is dealing differently, to some extent, with shipments inside and outside that boundary. For example, I would advise that one could not draw an arbitrary boundary that went halfway across Europe, because everyone is, *prima facie*, entitled to be treated in the same way. From a legal point of view, therefore, the only real options would be to impose a duty in relation to all shipments outside the area of the local authority or go for the approach taken here, namely that shipments within the EEC and the free trade agreement—in other words, wider Europe—can be treated in a different way from shipments outside that area, because of the high standards and the European law that apply in that area.

[66] Policy issues come into this because Nerys was conscious that, if one applied such an approach to all shipments of recycling outside the local authority's area, that would give rise to a substantial burden, because, in many cases, it might represent all the waste disposed of by a local authority. Therefore, the approach adopted takes into account many different factors, such as the burden on local authorities on the one hand and the need to ensure that whatever approach is adopted is legally sound on the other.

[67] **Nerys Evans:** However, I am willing to look at this issue, if the committee wished to consider other boundaries.

[68] **Huw Lewis:** I am quite interested in this issue. What you are trying to achieve here is better proximity, is it not? You are trying to promote the proximity principle, so why not specify only the local authority boundary? After all, in the context of the European free trade area, we could be talking about waste going to Warsaw, which is a long way away and is hardly an example of local disposal of recycling waste. It is a very long way away by anyone's measure. If we are trying to get local authorities to think about recycling waste as locally as possible, their own boundary is what counts, is it not?

[69] **Nerys Evans:** Again, I am willing to look at the boundaries if the committee wants me to do so in future stages. We accepted that equality of recycling was taking place across the European Union, which is why I put that boundary in the proposed Measure. It is not just a matter of the proximity principle—although it is important—it is also about being transparent. It is not just that one element; there are a few benefits to the proposed Measure.

[70] **Rosemary Butler:** We will now move on to a group of questions about information collection. I therefore call on Eleanor Burnham.

[71] **Eleanor Burnham:** Mae adran 55A(2) yn rhoi dyletswydd ar awdurdod lleol sy'n gwerthu neu'n cael gwarded ar wastraff y tu allan i Ewrop ac EFTA i baratoi datganiad yn cynnwys gwybodaeth o dan adrannau 55A(5) a 55B(3). Beth yw pwrpas y datganiad gofynnol yn adran 55A(2); a pha mor ystyrlon y credwch y bydd y wybodaeth hon i'r cyhoedd?

Eleanor Burnham: Section 55A(2) places a duty on a local authority that sells or disposes of waste outside Europe and EFTA to prepare a statement containing information prescribed by sections 55A(5) and 55B(3). What is the purpose of the statement required by section 55A (2); and how meaningful do you think the information will be to the public?

[72] **Nerys Evans:** Pwrpas y datganiad yw gwella'r wybodaeth sydd ar gael i'r

Nerys Evans: The purpose of the statement is to improve the information available to the

cyhoedd, fel y soniais, a'i gwneud yn fwy agored, yn fwy tryloyw ac ystyrion. Y bwriad yw, gydag amser, y bydd yr amser y bydd y gwaith hwn yn ei gymryd i awdurdod lleol yn lleihau. Nid ydym yn disgwyl i hwn ddod i rym dros nos. Mae cytundebau yn eu lle ar hyn o bryd rhwng awdurdodau lleol a phobl sy'n ymdrin â gwastraff, felly gydag amser, a phan fydd y cytundebau yn cael eu hailwneud neu pan fydd yr awdurdodau lleol yn ailedrych ar gytundebau gyda sefydliadau eraill, y bwriad yw ei gwneud yn amod o'r cytundeb bod pwy bynnag sy'n ymdrin â'r gwastraff yn rhoi'r wybodaeth i'r awdurdodau lleol. Bob blwyddyn ar ôl hynny, byddai'n cael ei ddiweddarau. Y pwrpas yw gwneud y broses yn fwy tryloyw.

[73] **Eleanor Burnham:** Serch hynny, mae amryw o'r bobl sydd wedi cymryd rhan yn ein hymgyngoriad ni ar y drafft yn teimlo nad ydynt yn dymuno ei gael am fod y wybodaeth ar gael gan yr awdurdodau lleol drwy'r system WasteDataFlow. Am fod y wybodaeth hon ar gael hyd yma, pam y credwch bod angen mwy o wybodaeth yn adran 55A(5)?

[74] **Nerys Evans:** Nid oes gofyniadau yn WasteDataFlow ar awdurdodau lleol i ddweud i ble y mae'r gwastraff yn cael ei allforio. Mae WasteDataFlow yn ffordd o rannu gwybodaeth rhwng awdurdodau lleol a'r Llywodraeth ynglŷn â lle a sut y mae'r gwastraff yn cael ei drin, ac a ydyw'n cael ei drin mewn ffordd sy'n garedig i'r amgylchedd. I ddychwelyd at y cwestiwn blaenorol ynglŷn â'r rheoliadau a'r polisi presennol, nid oes unrhyw ymrwymiad ar awdurdodau lleol i wneud hyn ar hyn o bryd yn WasteDataFlow. Serch hynny, gall WasteDataFlow fod yn fecanwaith ar gyfer gweithredu'r Mesur arfaethedig hwn o ran rhoi ymrwymiad yn y dyfodol i ehangu WasteDataFlow.

[75] **Eleanor Burnham:** Felly, nid ydych yn ystyried bod y system bresennol yn ddigon da. A gredwch fod angen sicrhau bod mwy o wybodaeth, nid gwell casgliad yn unig, ar gael i'r cyhoedd?

[76] **Nerys Evans:** Nid yw'r wybodaeth ar gael ar hyn o bryd. Pan wnaethom yr ymchwil drwy gais rhyddid gwybodaeth i'r

public, as I said, to make the process more open, transparent and meaningful. The intention, in time, is that the time that this work entails for local authorities will reduce. We do not expect this to be introduced overnight. There are agreements in place at the moment between local authorities and those dealing with waste, and in time, and when the agreements are renegotiated or when local authorities review contracts with other organisations, the intention is to make it a condition of the contract that whoever deals with the waste provides the information to the local authorities. It would then be updated annually. The purpose is to make the process more transparent.

Eleanor Burnham: However, a number of people who have taken part in our consultation on the draft feel that they do not want it because the information is available from the local authorities through the WasteDataFlow system. Given that this information is already available, why do you think that information is needed in section 55A(5)?

Nerys Evans: With WasteDataFlow, there is no requirement on local authorities to report where the waste is exported to. WasteDataFlow is a means of sharing information between local authorities and the Government as to where and how the waste is handled, and whether it is dealt with in an environmentally friendly way. To go back to the previous question on current policy and regulation, at present there is no requirement on local authorities to do this through WasteDataFlow. However, WasteDataFlow could be a mechanism for delivering this proposed Measure by giving a commitment to expand WasteDataFlow for the future.

Eleanor Burnham: Therefore, you do not consider the current system to be good enough. Do you believe that more information, not just an improved collection, should be made available to the public?

Nerys Evans: The information is currently not available. When we put in the freedom of information request to the local authorities to

awdurdodau lleol ynghylch lleoliad yr ailgylchu, yr oedd llawer o'r awdurdodau yn methu â dweud wrthym, llawer ohonynt yn dewis peidio â dweud wrthym, a llawer ohonynt—

ask where recycling took place, many of them could not tell us, many of them did not want to tell us, and many of them—

[77] **Eleanor Burnham:** Iawn. Gofynnaf y cwestiwn olaf, felly. Oni chredwch y gellid cyflawni hyn drwy wella'r ffordd y mae'r ddarpariaeth yn cael ei wneud, heb gael y Mesur arfaethedig hwn?

Eleanor Burnham: Okay. I will ask the final question, therefore. Do you not think that this could be achieved by improving the way that this provision is made, without this proposed Measure?

[78] **Nerys Evans:** Bydd y Mesur arfaethedig yn gwella'r ddarpariaeth. Gwelaf y Mesur arfaethedig fel mecanwaith i wella'r ddarpariaeth drwy ehangu WasteDataFlow i sicrhau bod yn rhaid i awdurdodau lleol gyflwyno adroddiad ar y wybodaeth hon.

Nerys Evans: The proposed Measure would improve the provision. I see the proposed Measure as a mechanism to improve the provision by expanding WasteDataFlow to ensure that local authorities have to report this information.

10.10 a.m.

[79] Yr ydym yn gwybod na fyddai ymgais i wneud hyn yn wirfoddol yn gweithio, felly, yr wyf yn cytuno â chi bod angen gwella'r ddarpariaeth a chredaf mai'r Mesur arfaethedig yw'r ffordd i wneud hynny.

We know that any attempt to do this on a voluntary basis would not work, therefore, I agree with you that there is a need to improve the provision and I believe that the proposed Measure is the way to do that.

[80] **Ann Jones:** There is currently no regulation enabling a local authority to compel private waste companies to tell them where their primary waste destination is. How appropriate or reasonable do you think it is to require local authorities to provide this information as part of the proposed Measure?

[81] **Nerys Evans:** Before coming to committee, I held a pre-committee consultation and changed the proposed Measure slightly, so that the statutory requirement would be to give the information where the information exists and for local authorities to show that they have taken reasonable steps to try to do that. So, it is only when the information exists that it is required in the proposed Measure at the moment, but, over time, it is expected that the information will improve. As I mentioned to Eleanor, when contracts are renewed—some local authorities are bound into contracts for 10 years with recycling companies or handlers, so we would not expect this to impact upon such contracts—there would be an additional requirement for information from the handlers. They know where recycling takes place and, as Somerset has shown, sometimes that information is on their website. So, it is only a matter of collecting that information and passing it on to local authorities. When we made the FOI request to local authorities, it was obvious that they did not have that information, because some of them did not answer and some answered by saying that they could not give us that information. It is about getting the data from the people who deal with the waste to local authorities.

[82] **Ann Jones:** You referred to reasonable steps. What would you consider to be a reasonable step? Do you think that if a local authority said, 'We asked and that they said they didn't know', it may have asked the driver, who does not know, but if it had asked the company director, he or she probably could have said where it was? What would you accept as a reasonable step?

[83] **Nerys Evans:** It is over to Keith again.

[84] **Mr Bush:** I will say something general about this ‘reasonable steps’ approach, if I may, because I know that this causes difficulty. It would have been possible to say that local authorities must publish this information, but, as Nerys has explained, in practice, local authorities, certainly in the short term, may not have that information. It would be unfair to impose on a local authority a duty to provide information that it does not have without giving it the opportunity to comply with the duty by doing the best that it can, taking reasonable steps, in its particular circumstances, to obtain that information. That is included as a safety valve to enable a local authority to comply with the proposed Measure, without being able, in every regard, to provide the prescribed information, provided that it has taken reasonable steps to obtain that information. It is an important provision of the proposed Measure—this is in the new section 55A(9), which says,

[85] ‘If an authority is unable to include in a statement information as to any matter specified in subsection (5) because it does not hold that information, the statement must say so and must identify any steps which the authority has made to obtain information as to that matter’.

[86] It is not enough for local authority to say, ‘We shipped 50,000 tonnes of domestic waste, but we don’t know where it went or what happened to it’. On the other hand, if that authority had made formal inquiries of the company that it had contracted to dispose of the waste and it had been refused that information, it would say so and the public would be able to tell what steps it had taken, and it would be for the public to judge, in the first instance, whether those steps were reasonable or not. However, as Nerys again has said, over a period of time, it would be possible for local authorities to increasingly include in their contractual arrangements with third parties more and more of a requirement for the relevant information to be available. The purpose of the ‘reasonable steps’ qualification is to enable local authorities to comply with their duty without making it totally impossible, allowing for the fact that individual authorities may have difficulties in particular circumstances in providing all the information that ideally should be provided.

[87] **Ann Jones:** I think that it is a loophole for local authorities that do not want to do anything, but there we go.

[88] Some of the responses to the pre-consultation suggested that the most effective way of improving transparency regarding where local authorities ship their waste might be to make it a legal requirement on the private waste companies to provide information regarding that final destination, which would stop this reasonable step test. Is that something that you ought to major on? Do you want to make sure that that happens rather than authorities having to take the reasonable step test?

[89] **Nerys Evans:** We do not have the power to compel private companies to do anything under this proposed Measure. I think that that is right, Keith.

[90] **Mr Bush:** The simple answer is that it would not be within the legislative competence of the Assembly to impose that kind of obligation at present. Clearly, when the environmental protection and waste management LCO becomes law, that situation will change.

[91] **Eleanor Burnham:** If that is the case, why are we considering your proposed Measure if we have this LCO in the pipeline that will change the situation considerably and give the Assembly the legislative competence to oversee much more than what you are proposing?

[92] **Nerys Evans:** We do not have that LCO at the moment. How long has it been delayed? When is it going to be passed? What is the detail of it? There is no plan to bring forward a proposed Measure after the LCO receives assent. It will not happen in this Assembly term. Is it going to be a priority for the next Assembly term? You are into 'what ifs' at this point. This is a proposed Measure that the Assembly has randomly selected to pursue; this is the here and now and I think that we should be dealing with it now, not waiting for future Governments to possibly think about it and possibly bring forward a proposed Measure.

[93] **Eleanor Burnham:** Thank you for clarifying that.

[94] **Ann Jones:** I know your frustration. I had the opportunity to bring forward the first backbench LCO, but here I am. What work have you undertaken to determine the practical and financial implications for local authorities of implementing your proposed Measure?

[95] **Nerys Evans:** I note the Welsh Local Government Authority's estimated cost, which I think is way off the mark. As I mentioned earlier, the people who deal with the waste already have this information and, as Somerset has seen, it is sometimes just a matter of getting it off people's websites. Obviously, it would have to be put into the contract, so in some local authorities it would not kick in until they renewed their contracts, but it would just be a matter of expanding WasteDataFlow, which we were talking about earlier, to include this information and it can be easily incorporated into people's workload at the moment. It would be part of the contract and the requirement would be to publish it annually on the website. I think that the WLGA's estimated cost is way off the mark. It is just about adding the information that is passed to local authorities; it is not asking the local authorities to go with the ship to see where the waste ends up and to see what is recycled where, which may possibly be included in the WLGA's costs. It is just a matter of getting the information and that requirement could be put into contracts.

[96] **Ann Jones:** So, you think that there is a negligible financial cost to the proposed Measure.

[97] **Nerys Evans:** Yes, I do.

[98] **Nick Ramsay:** Nerys, I will ask you, if I may, about the role of the Environment Agency in all this and in the drafting of your proposed Measure? You are probably aware that the WLGA is concerned about its possible implications. Its specific concern is that it thinks that there has not been an examination of the role of the Environment Agency or the processes that the agency wants to see implemented. What account have you taken of the information already collected by the Environment Agency and how do you see its overall regulatory role fitting in with your proposed Measure?

[99] **Nerys Evans:** The Environment Agency has a clear role in ensuring that the Transfrontier Shipment of Waste Regulations 2007 are enforced. So, it has a clear role in enforcing the regulations that are there at the moment. The purpose of this proposed Measure relates to the fact that the mechanism to get this information out does not exist at the moment. Therefore, the Environment Agency has no role because there is no requirement for this information. It has a clear and distinct role in administering and regulating what is happening at the moment, but this would create a new duty to provide more information. Its role is non-existent in the proposed Measure because the legislation has not been passed.

10.20 a.m.

[100] **Nick Ramsay:** So, you are saying that that is because this information simply is not there at the moment.

[101] **Nerys Evans:** There is no requirement on local authorities to provide this information at the moment, so there is no role for the Environment Agency to carry out in this regard. Its job is to regulate and to enforce the regulations that exist to do with the handling of waste—to ensure that it is handled in an environmentally sound manner and to look at legal recovery and other factors—so its job is quite specific. As I said, the duty on local authorities does not exist at the moment, so we want to achieve more transparency in the system.

[102] **Mohammad Asghar:** My question will be on the publication of the required statement. Why do you consider the publication of the statement on authorities' websites to be the most appropriate and effective way to involve communities in this issue? What consideration, if any, did you give to including other mechanisms for making this information available to the public?

[103] **Nerys Evans:** I just have another point to make on a previous question. The Environment Agency said in its response to the original consultation that the collection of this information would help it by enabling greater checks to be made to determine whether the final destination of recyclates was operating under appropriate permits, which obviously supports the transparency required by the proposed Measure. Sorry to go back to that, Oscar. In response to your question, the main factor was cost, to be honest. Obviously, we do not want this to be too burdensome on local authorities. We know that the financial situation is likely to get worse, so we do not want to overly burden them. Once the information has been published on the website, the public will be able to access it. The idea is to get the information into the public domain; we do not expect them to write to everybody or anything like that, but just to ensure that information is available. However, I am happy to take on board the views of the committee if Members think that there are other mechanisms for doing this.

[104] **Mohammad Asghar:** How reasonable is it to expect the public to make representations 'having regard for the proximity principle'? Do you accept that this assumes that the public has a certain level of knowledge not only about waste management generally, but about the location of waste facilities more specifically?

[105] **Nerys Evans:** I think that the public has an interest, and some of the consultation responses presume that the public is largely ignorant of what is happening to waste. Perhaps that is because of negative media stories in the past. That is another issue that we will probably come on to. The public is interested and wants to know more, as we have seen in some areas. As we were saying before, one local authority was looking to develop this, to report on the export of waste. The main instigation for this in Somerset was people asking for more information. I think that this is needed. In the Government's draft waste strategy, the elements of proximity and self-sufficiency are very important, and we know that the awareness of waste issues is also increasing. The Government has set very ambitious targets, and it is just a matter of time, really. We want people to be educated on how to recycle and what to recycle, and they should therefore have the right to know where it is being recycled.

[106] **Mohammad Asghar:** How did you arrive at the definition of the proximity principle provided for in the proposed Measure? Why does it differ from the definition widely used in the European Union?

[107] **Nerys Evans:** I will hand you over to Keith again to answer this.

[108] **Mr Bush:** I am not necessarily convinced that there is a widely used accepted definition of the proximity principle as such. What we have adopted in the proposed Measure is taken from article 5 of the waste framework directive. It refers to networks of disposal facilities. It states that

[109] ‘The network referred to in paragraph 1 must enable waste to be disposed of in one of the nearest appropriate installations’.

[110] That is the bit that we have used. It continues:

[111] ‘by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health’.

[112] That seems to me to be dealing not with proximity but with issues around the method of disposal. The waste framework directive does not define the proximity principle as such and, therefore, it may be a matter of debate as to how widely or how narrowly one takes the proximity principle from European legislation. I think that it is right to point out that the Welsh Government, in its draft revised strategy on waste, uses something rather closer to the way in which we have expressed the proximity principle in that it sets out the principle that waste should be recovered or disposed of as close as possible to where it was produced and that, as far as possible, there should be sufficient capacity to manage waste produced in any given area. So, we have focused on the proximity element, as it were, and the commonsense principle that waste should be disposed of as close as possible to the place where it arises. Of course, that cannot be an absolute principle, and that is why the way in which we have extracted the principle from the directive also includes this reference to the nearest appropriate installation, because we have to balance proximity with the effectiveness of treatment. So, in drafting the proposed Measure, I did not think that there was necessarily a single authoritative, straightforward expression of the proximity principle and, therefore, we have tried to formulate our own, which would be understandable to the public, because the purpose of including it here is so that when a local authority puts the information onto the website and invites representations from people about that information, there would be a statement to make it clear that what they are being invited to comment on is how the arrangements made by the local authority tie in with the proximity principle as expressed. I know that that is quite a long and complicated answer. I think that I speak for Nerys in saying that if the committee decided that a different or wider formulation was appropriate, there would not be any difficulty in looking at revising it.

[113] **Rosemary Butler:** Eleanor wants to ask a supplementary question on this.

[114] **Eleanor Burnham:** It is a supplementary following on from Mohammad’s previous question about information to the public. I agree with the reasonable attitude towards the publication of information, but would you not expect the council to include issues about waste in the annual report that they send out with council tax information? There are many people who would not be able to access a website, and, if we were to agree this, I would not like to think that there were people out there who could not access the information and therefore would not have the information that you want the public to have.

[115] **Rosemary Butler:** We will deal with that afterwards—

[116] **Eleanor Burnham:** Sorry, I thought that we had finished with proximity.

[117] **Rosemary Butler:** I will ask at the end whether there are any further supplementary questions, but we will stick with the point about the required statement so that we all have the same train of thought, particularly after Keith’s interesting and, as he admitted, complicated answer to the last point. Are you happy with that answer, Oscar?

[118] **Mohammad Asghar:** Yes.

[119] **Rosemary Butler:** Nick, do you want to continue on this theme?

[120] **Nick Ramsay:** Your proposed Measure states that it will insert into the Environmental Protection Act 1990—I have got my eye on Keith as I am asking this—that any authority must have regard to any representations made by the public. That is a very specific addition that the proposed Measure will make to that Act. Given the complexities involved in making decisions on waste management, how reasonable is it for local authorities to have regard to representations made by the public when making future arrangements in relation to the recovery of waste? In other words, local authorities are now dealing with this very complex issue, and how valuable is the public contribution to that? How much notice should they take of that?

10.30 a.m.

[121] **Nerys Evans:** On ‘have regard to’, because of the complexities involved, it is reasonable to expect local authorities to have regard to those representations, but the proposed Measure leaves it to local authorities to decide how to define that. They are not bound by it, but they have to take it into account.

[122] **Nick Ramsay:** You have just started to answer the second question that I was going to ask, which is what exactly does ‘have regard to’ mean? You have said that local authorities are not bound by it. If they are not bound by it, to what extent should they be taking notice of what the public is saying? What does that phrase mean?

[123] **Nerys Evans:** It would be down to the individual local authorities. Again, they are democratically elected bodies, and they are accountable to the people within that local authority boundary. It could lead to a change in policy, whereby they try to export less and use indigenous companies more. There is a range of options as to what they could do, but, ultimately, it would be down to the local authority to decide. Waste is a commodity; it is bought and sold, and there is a market here in Wales, in the UK, in Europe and throughout the world. Those factors must also be taken into consideration, as well as the capacity in Wales and the UK to deal with waste. As to what they can do, there is a range of options, but it would be down to them. That information would be publicly available, so it would be the people in the local authority area who could make representations, based on the authority’s decisions.

[124] **Nick Ramsay:** You are saying that that phrase ‘have regard to’ is for the interpretation of the authority, so you could end up with a different interpretation in different authorities.

[125] **Nerys Evans:** Yes, because at the moment there are different set-ups for how to deal with waste in different authorities. We know that; everyone knows that local authorities deal with waste differently, so we cannot expect a uniformity of policy, because there are local differences. We would not want to impose uniformity. We need to devolve decisions to local authorities, and I think that it is right that they have the power to do that. We would not expect uniformity, and we would not expect 100 per cent of them to decide that waste should be dealt with in a certain area or in certain circumstances. It is down to the authorities as democratically elected bodies as to how to deal with the waste that is generated, for example with regard to how many tonnes are exported, where the waste is exported to, how many local companies or other companies in Wales and the UK that they use, and so on. That would all be down to the local authority.

[126] **Rosemary Butler:** Before we go on to the next section, we will go back to Eleanor’s supplementary question. Would you like to repeat it, Eleanor?

[127] **Eleanor Burnham:** Yes. In view of your answer to Oscar’s question on information

to the general public, I am concerned that there are swathes of people who, for whatever reason, are unable to access websites. Would you expect that it would be reasonable for the local authority to include that information with the council tax information that is sent out annually? We get what almost amounts to a package from the council on its services to the general public. Do you consider that that should be part of the requirement, rather than just publishing the information on the web?

[128] **Nerys Evans:** As the chair of the Assembly's cross-party group on broadband, I am fully aware that there are many not spots in Wales, which cannot get access to broadband or the web. However, cost is the main factor here. As soon as the information is out there, it is in the public domain, and if people want to pick up on it, that would happen through the normal channels. The issue that you mentioned could be a factor, and I am willing to look at that if the committee recommends that that should be done, but it would add to the burden of cost for local authorities. Again, I would be happy to look at it if the committee recommends that that should be done.

[129] **Rosemary Butler:** We now move on to questions on the consequences of the proposed Measure.

[130] **Huw Lewis:** You have articulated to us very clearly the purpose behind the proposed Measure, how it would work, and the related technicalities of how it would operate. I wanted to move on to think about the happy day when your proposed Measure is passed, and what the real-world consequences of it might be. It is a complex area. We have received a submission from the Chartered Institution of Wastes Management, which stresses that this is a highly complex area and that the environmental costs and benefits of waste reprocessing are not as simple as common sense might dictate, and are, quite often, counterintuitive. For instance, it seems to be very supportive of transporting recyclates in bulk by ship to quite distant markets, because that is very carbon efficient, even though common sense would lead you away from that conclusion. Have you made any assessment of the real world impact on recycling levels of your proposed Measure?

[131] **Nerys Evans:** To go back to my earlier point, we are not against the exporting of waste for recycling at all; the proposed Measure would just aid transparency and provide information to people. Cylch said in its submission that participation increases when people are given the right information. This is happening and I think that people should know about it. I reiterate the point that I made about the London borough of Barnet: information on recycling was given to those living in a social housing complex in the borough, in large social housing blocks, and when they were given proper information about what to do, the participation rate increased from 65 to 90 per cent. So, this is about educating people. Yes, it is complex. There are different market forces at play and issues involved as regards why local authorities export waste, but that should not mean that we should not know about it. We should be confident in the capabilities and the intelligence of the people of Wales to understand those complexities. Cylch's point is important: participation rates increase when the relevant information is given to people.

[132] **Huw Lewis:** You will forgive me for saying so, but I think that you are arguing a slightly different point here. I accept what you are saying. When people know what recycling is all about, they will do more of it and participation levels will increase. However, what of the consequences? Although you say that you are not against the export of waste for recycling, you are trying to encourage local solutions. There is a push towards localism and you are concerned about the proximity principle, which is fair enough. What are the real world consequences? A local authority area that has a certain level of recycling commitment from its residents might be going along very nicely, but if you introduce into the debate giving information to people as to why you want them to recycle and then say that the recycling will be done at the end of their road, is there not an unintended consequence?

[133] **Nerys Evans:** The purpose of the proposed Measure is to increase transparency and increase the level of information available. I hope that the consequence would be to increase participation rates. Other issues come into play, but the intention is to make the system transparent. I do not think that we should be afraid of that.

[134] **Huw Lewis:** Fair enough. If your proposed Measure really does get traction and changes the way in which we do things, is there not a concern about the capacity of local authorities to deal with increased volumes of recycling?

[135] **Nerys Evans:** I reiterate that the proposed Measure is about getting the information out there and is about transparency. We know that there is no capacity in Wales to deal with and recycle all our waste. It is just a matter of getting the information out there. It will be an educational process for the people of Wales. The Assembly Government's strategy is quite clear about increasing recycling rates, and the proximity principle is central to that. This fits in nicely. It ensures that the information is out there and that local authorities respond in the way in which the public wants them to respond.

[136] **Huw Lewis:** However, the Environment Agency is worried about this, is it not? Its comments included concerns that it would not be possible to generate local markets for recyclates, that you could not necessarily provoke a demand for that, and that, in reality, a great deal of the demand for recyclates comes from overseas.

[137] **Nerys Evans:** We are not trying to force all local authorities to recycle within their boundaries; this is just to ensure that people know where our waste is recycled. As a consequence, the public could make their views known to local authorities, but it is up to local authorities to explain why they are recycling in a certain way or in certain countries. It is just about making it more transparent.

10.40 a.m.

[138] **Ann Jones:** I want to expand a little on that. If a local authority's waste is being shipped somewhere and the public suddenly thinks that it does not like that—and some people may wonder why we dump our waste on another country—and so puts pressure on a local authority to withdraw from a shipment contract, what would happen to that waste then? As Huw said, you would have to find more local recycling points. The public may not want it shipped to another country, but they certainly would not want a recycling point at the end of their garden, would they?

[139] **Nerys Evans:** The Environment Agency said, in response to the committee, that providing the means for more information to be collected and shared with the public may encourage the population to accept recycling facilities within neighbourhoods, which would be a positive outcome. The green lobby does not disagree with exporting waste. Almost every local authority does it, so this is more about educating people. If it is happening, we should not be afraid of telling people that. The consequence is that we need to build markets for this in Wales and in the UK. The proximity principle is the key, but this proposed Measure does not necessarily mean that it will be achieved; it just makes the issue more transparent.

[140] If they recycle, the people of Wales deserve to get clear messages from local government or from the Welsh Assembly Government about that recycling, and if, for example, recycling levels are increasing. Let us be a bit more open about what happens to our waste. When I looked at the figures on exporting waste, my automatic reaction was, 'We should not do that', but, on looking into it further, I realised that this is about education and about market forces. The green lobby's message is clear: big ships come here from China importing cheap goods and it is more environmentally sound to export recyclates back there

on those otherwise empty ships. We should not be afraid of telling people that we do that, because it happens.

[141] **Rosemary Butler:** Nerys, how would you ensure that local authorities comply with the requirements of the proposed Measure and how is that provided for in the proposed Measure? What will be the consequences for local authorities if they fail to comply?

[142] **Nerys Evans:** I will hand over to Keith on that one.

[143] **Mr Bush:** Nothing in the proposed Measure imposes a direct sanction on a local authority for failing to comply with the duty. However, that is perfectly standard when such duties are imposed on local authorities by statute, whether through an Act of Parliament or an Assembly Measure. It is almost unknown for a specific sanction to be attached to such a duty. For example, the relevant part of the Environmental Protection Act 1990 relates to duties imposed on local authorities to collect household waste and so on, but no sanction or penalty is prescribed by the legislation.

[144] It is fair to say that there is no reason to believe that local authorities fail to comply with that kind of duty when it is imposed on them. That is the law and their duty is to comply with it, and so they can be expected to do so. There may be exceptional circumstances in which an authority has failed to comply, but there are sanctions in the background that are not spelled out in the proposed Measure or in similar legislation. The courts are always there to enforce compliance or to order local authorities to comply with their statutory duties. If a local authority decided not to bother to comply with this duty, one could refer it to the ombudsman. Furthermore, a failure by a local authority to comply would no doubt attract the attention of Ministers who have the sanction of setting performance targets for local authorities and of determining the level of financial support to which they are entitled according to whether they achieve those targets. So, in the very unlikely event of a local authority not complying with this duty, a range of indirect sanctions is available. However, the proposed Measure is consistent with the general approach, which is not to require a specific penalty for a breach of the duty in question.

[145] **Rosemary Butler:** Are there any other supplementary questions?

[146] **Mohammad Asghar:** Yes, please. Nerys, thank you for giving us this good brief. You mentioned in your statement that 250 jobs are required for every 10,000 tonnes of waste recycled. The economy has gone to the wall. One of the things that you just mentioned is educating people. Waste is a very contentious issue. There are 22 authorities and Wales is a wide country in distance terms. Can the local authorities share the waste management between themselves, rather than having to put waste incinerators or recycling plants everywhere? Last week, in Newport, there was a public meeting and the attitude was 'Not in my back yard'. Your proposed Measure has to overcome that attitude. It is a wonderful proposed Measure, and we all appreciate the effects that it may have for the future and for healthy living. How can you tackle the sharing of the WLGA's and local authorities' information on this and put the finances together, rather than its being done by each individual authority in each corner of Wales?

[147] **Nerys Evans:** Newport has an excellent reputation for recycling and should be congratulated on that. The Assembly Government's targets for recycling are quite ambitious. The target is to recycle or compost 70 per cent of all waste by 2024-25 and to have zero waste by 2050. If we are to achieve that, it will mean expanding the recycling infrastructure in Wales. The Government's waste strategy develops a sector plan for the waste industry, including increasing the market for recyclates in Wales. For the future, it will be necessary for local authorities to work together, but I am sure that the Government would take that forward and share the responsibility for it. As you said, it is not just about local authorities; it is about

getting the national picture. The Government's policy is clear on waste. My proposed Measure is trying to increase the transparency for the people of Wales, so that they can see how our waste is being dealt with.

[148] **Rosemary Butler:** Thank you very much, Nerys, for the way in which you have answered the questions this morning. There will be a draft transcript of the meeting for you to look at. Hopefully, your comments will have been recorded accurately; I am sure that they will have been. Were there any other points that you wanted to make this morning?

[149] **Nerys Evans:** No, I think that we have covered everything.

[150] **Rosemary Butler:** Thank you very much and thank you for bringing Keith Bush with you this morning.

[151] I just want to remind committee members that this is the last meeting of the term and our next meeting will take place on the morning of Thursday, 24 September. Please note that it is a change of day. We will be taking evidence from the Minister for Environment, Sustainability and Housing on this proposed Measure. Thank you very much. I declare the meeting closed.

*Daeth y cyfarfod i ben am 10.48 a.m.
The meeting ended at 10.48 a.m.*