



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

**Y Pwyllgor ar y Mesur Arfaethedig ynghylch  
Llywodraeth Leol  
The Proposed Local Government Measure  
Committee**

**Dydd Mawrth, 4 Tachwedd 2008  
Tuesday, 4 November 2008**

**Cynnwys**  
**Contents**

- 3 Cyflwyniad, Ymddiheuriadau a Dirprwyon  
Introduction, Apologies and Substitutions
- 4 Cyfnod 1 y Mesur Arfaethedig ynghylch Llywodraeth Leol (Cymru), Sesiwn  
Dystiolaeth 1  
Proposed Local Government (Wales) Measure Stage 1, Evidence Session 1

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi 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**

Janice Gregory	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
David Lloyd	Plaid Cymru The Party of Wales
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives
Jenny Randerson	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Joyce Watson	Llafur Labour

**Eraill yn bresennol**  
**Others in attendance**

Dr Brian Gibbons	Aelod Cynulliad, Llafur (Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol) Assembly Member, Labour (The Minister for Social Justice and Local Government)
Steve Pomeroy	Pennaeth Strategaeth a Pherfformiad Llywodraeth Leol, Llywodraeth Cynulliad Cymru Head of Local Government Strategy and Performance, Welsh Assembly Government
Sioned Tobias	Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Legal Services, Welsh Assembly Government

**Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol**  
**Assembly Parliamentary Service officials in attendance**

Ruth Hatton	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Cynghorydd Cyfreithiol Legal Adviser
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 9.29 a.m.*  
*The meeting began at 9.29 a.m.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon**  
**Introduction, Apologies and Substitutions**

[1] **Janice Gregory:** Good morning and welcome to this Proposed Local Government Measure Committee meeting. I will run through housekeeping matters. There is no fire drill this morning, so if the fire alarm sounds, you will be asked to leave the building in a safe and orderly fashion. Please follow instructions from the ushers. I ask everyone to turn off any electronic devices, including mobile phones, BlackBerrys and pagers. Do not put them into standby or flight mode as they interfere with our broadcasting equipment. As I am sure that

you are aware, the National Assembly for Wales operates through the medium of Welsh and English. If you require simultaneous translation, please use the headsets that are in front of you. Channel 1 is for interpretation and channel 0 is for sound amplification. There is no need to touch the buttons on your microphones as they will come on automatically.

9.30 a.m.

**Cyfnod 1 y Mesur Arfaethedig ynghylch Llywodraeth Leol (Cymru), Sesiwn  
Dystiolaeth 1  
Proposed Local Government (Wales) Measure Stage 1, Evidence Session 1**

[2] **Janice Gregory:** I welcome to today's meeting Dr Brian Gibbons, AM, Minister for Social Justice and Local Government, and his officials, Steve Pomeroy, who is head of local government strategy and performance, and Sioned Tobias from the Government's legal services. Thank you for attending committee this morning. Members will ask you a series of questions. As we are restricted for time, we will move straight to questions, if you are happy to do so. Dai Lloyd has the first question.

[3] **David Lloyd:** Why is there a need to reform the current regimes for local authority service improvement and community planning?

[4] **The Minister for Social Justice and Local Government (Brian Gibbons):** The current legal framework for local government is based on the Local Government Act 1999, which outlined the best value requirements. Within two to three years of that Act and the Best Value regime coming into being through the Wales programme for improvement, there was improvement in how that regime was operating and, as time has passed, there has been more emphasis on the Wales programme for improvement.

[5] We issued a policy statement before the end of the last Assembly, 'A Shared Responsibility', and that document set out an alternative vision for the relationship between the Assembly Government and local government in Wales. The objectives in that document would not be deliverable through the Local Government Act 1999. The new, emerging regime in 'A Shared Responsibility', plus the increasing drift in practice from the Best Value regime, meant that the current legal framework needed to be revisited and reformed.

[6] **David Lloyd:** Can you confirm why a statutory approach to service improvements and community planning is required?

[7] **Brian Gibbons:** That is because the present legal framework is the Best Value regime and, clearly, practice and policy intent have moved on considerably from the current legal framework. It makes sense that the legal framework should correspond to modern practice.

[8] **Jenny Randerson:** People may think that the Measure will result in a greater workload for the Welsh improvement authorities and create a more excessive performance bureaucracy. I am interested in your response to that, Minister. How do you propose, through the Measure, to safeguard against all this bureaucracy?

[9] **Brian Gibbons:** Local government should have in place an improvement regime as things stand. First, there should be a regime in place to implement the Best Value regime and the regime of continuing improvement under the Wales programme for improvement, so there should already be mechanisms in place in local government for delivering an improvement regime. This legislation does not require a change in that, but rather in the principles, framework and the means by which the improvement is delivered. So, there should not be

substantial change, but a refocusing of the activities of the mechanisms that are currently in place.

[10] **Nick Ramsay:** I have a general question for you on the Measure and its implementation. How do you see the proposed Measure improving services to the public and improving the quality of life of local people and communities?

[11] **Brian Gibbons:** The public currently has limited insight into the services, other than in terms of using the services—if you or someone in your family uses a service, you have experience of that service. However, I do not think that there is a great amount of transparency in the present system of accountability for local authority performance to the public at large. Elected members have some role through their scrutiny activities, but for ordinary members of the public, their understanding of what their local authority is doing across the board is fairly limited.

[12] On what is being proposed, first of all, local authorities will be required to put an improvement plan in place, which is part of the current Wales programme for improvement. The additional steps will measure the implementation of the improvement plan and detail the actions required to deliver improvement, and then the quality assurance that will be delivered by the regulators will give the public much greater insight into what local authorities are doing. By understanding more effectively what is going on, the public will be able to hold their authorities to account, and that will be an important driver of improvement.

[13] **Nick Ramsay:** Your explanatory memorandum asserts that there is currently a culture of predetermination in planning to meet, to use your phrase, ‘pre-specified output targets’ instead of there being responsiveness to real local needs. Can you elaborate a little on that and on how you think your proposed Measure will alter that culture?

[14] **Brian Gibbons:** Steve Pomeroy may be able to deal with the specifics. The overall principle is that the Best Value regime talks of economy, effectiveness and efficiency and sets targets for individual services very much using a silo approach. A service could easily meet many of the requirements of economy, effectiveness and efficiency but still not deliver a citizen-focused or a citizen-responsive service. We therefore want to broaden the scope of how service delivery will be judged, rather than just by the three Es of the present Best Value regime. Steve is probably best placed to give you a flavour of what is required under the Best Value regime and how things will change as a consequence of this Measure.

[15] **Mr Pomeroy:** The Minister is quite right. Let us be clear that Best Value was a replacement for compulsory competitive tendering, and, in that sense, you might say that it has served its purpose quite well. However, that approach, from the 1999 Local Government Act, still takes as its basis for improvement how good or bad an organisation is, namely how economic, efficient and effective an organisation called a ‘local authority’ is. To our way of thinking, that approach does not look at how well an authority serves people when judging good performance, improving performance or whatever. As it says in the explanatory memorandum, there is this idea of a cycle, in which you set a target, you monitor, you deliver and you go around and around the same track. That is fine as an organisational improvement mechanism and as a change strategy, but it can exist too much in isolation from the people whom an authority is trying to serve. So, several elements of the proposed Measure try to get past and around that, such as the rather expanded set of aspects of improvement that are not just economy, efficiency and effectiveness, but are more about serving citizens, and also some of the flexibilities that it gives authorities to decide exactly what their priorities are within that set of aspects, to free them from having to express everything in numerical, target-driven terms. It is about how they use performance data to explain their performance, rather than just using, as you often see, little smiley faces to show that they have hit a target. It is also about how they report to, and account to, local people for what they have done.

[16] A very stark weakness of the 1999 Act is that everything an authority tries to report on and be accountable for has to be produced in a single document, called an improvement plan, and that means trying to do two things at once. It means trying to look back and say, 'This is what we have done' and look forward and say, 'This is what we are going to do about it'. It has to do that for all stakeholders, all interested groups and all categories of citizens in a single document.

9.40 a.m.

[17] It is trying to hit lots of targets at once, but it is missing most of them, to be honest. So, we say in the Measure that it matters not how you do it as long as you do it effectively, and as long as you account for what you have done. For instance, it might mean accounting differently to different groups of the population, or to different areas within an authority, which some authorities already do, to their credit, or it could mean any number of other ways of cutting it. So, I would characterise it as a moving beyond questioning whether an organisation is good, bad or indifferent to questioning whether an organisation is actually serving the community's needs well.

[18] **Janice Gregory:** Thank you, Steve. Joyce, did you have a supplementary on this?

[19] **Joyce Watson:** Yes. Good morning, Minister. You have explained already that you had the three Es as performance indicators in the plan. As someone who was in local government, I always felt somewhat frustrated by those measurements because they were restrictive and hard to track. Often, you could see failure but you could not drive change forward. Are you satisfied that these changes, which will be welcomed by people who receive poor services, will deliver that? Will they clearly identify those failures—as well as good practice, to be fair—so that the recipients of those services can tell immediately where things are going well or where there is failure? We are trying to ensure that we get good services, so will people know the outcome and the way in which services will be improved?

[20] **Brian Gibbons:** That is certainly the intention. As Steve explained, one of the big conceptual shifts in this Measure is moving the locus for activity from the local authority as a corporate organism to the services that it provides to citizens. Therefore, it is an important shift in conceptual terms, but it is not to say that organisational performance improvement is not relevant; of course it is relevant, but only in the wider context of delivering services to people. Given that the local authority will have to produce its improvement plan, it will have to list the actions that it will take to deliver improvements where service is not as good as it should be. That will be underpinned by the regulator, who may make recommendations for improvement. The regime will be significantly strengthened because there are backstop options in this legislation for ministerial involvement ahead of service failure.

[21] **Janice Gregory:** Thank you, Minister. We now move on to general duty under section 2.

[22] **Jenny Randerson:** The Wales programme for improvement guidance indicates that the nature of the fire and rescue authorities is such that they have functions that require a distinct approach to improvement. Does that remain the case, and how does the Measure take account of those functions?

[23] **Brian Gibbons:** The fire service has a different set of functions from those of the local government, and we have tried to align the framework for the fire service with the Wales programme for improvement. We have issued the documentation during the past 12 months. Nevertheless, the fire service operates in a different way, in the sense that there is a professional element to it that can be judged only by professionals. There is a performance

framework by which the fire service can be held to account, and we are in the process of appointing a person, whether that person is a fire service inspector or a ministerial adviser on the fire service in Wales. So, the fire service is different from local government in many respects, but the broad approach of trying to focus the fire service more on citizens and communities is still valid. One of the challenges is delivering improvement through increased collaboration, but there are plenty of opportunities for the fire service to improve its performance through collaboration, so that option will be available. In many respects, that reflects the different way in which the fire service has to do business. The broad philosophical approach of this proposed Measure is entirely consistent with delivering improvement in the fire service. However, I recognise the difference between the two organisations.

[24] **Janice Gregory:** The next questions are from Joyce, looking at sections 3, 4 and 8.

[25] **Joyce Watson:** How did you arrive at the seven aspects of improvement provided for in Part 1 of the proposed Measure?

[26] **Brian Gibbons:** Steve might want to elaborate on the detail of that. In many respects, it came from the experience of the transition from the Best Value regime to the Wales programme for improvement, and our reflections on how the Wales programme for improvement was operating. It was an iterative process of recognising the weaknesses of the Best Value regime, the emerging strengths of the Wales programme for improvement, and trying to capture those lessons in legislation. One point that you will note in the legislation is that those seven aspects of improvement are not necessarily immutable, and there are legislative opportunities to revisit them, either to add to them, or to delete or modify them. They do not necessarily represent the definitive last word, and, in that sense, this is a dynamic measurement or assessment tool. Would you like to add to that, Steve?

[27] **Mr Pomeroy:** The 2005 Wales programme for improvement guidance includes a similar list. However, as with most of that guidance, it is wholly non-statutory and so, if push came to shove, we could not enforce it. Having said that, we feel that the list prescribed in the 2005 guidance was produced in close collaboration with the Welsh Local Government Association and with authorities. We feel that the relevant provisions of the Measure, like the 2005 list, are a fairly comprehensive set of broad aspects that capture most things that an authority might want to do by way of improving its service to people. If that proves not to be the case—and let us be honest, if we were doing this 10 years ago, sustainability would not have featured—there is the provision to add, subtract or amend. However, as things stand, it is fairly comprehensive.

[28] **Joyce Watson:** How do you think the public will relate to or understand the terms?

[29] **Brian Gibbon:** I do not suppose that anyone other than the most enthusiastic members of the public will pay too much attention to the specifics, and that is a challenge in improving accountability. As the various reports are produced under this legislation, I am keen that they be fairly accessible to the average citizen, so they should read easily. If you were to read the improvement plans of some local authorities, you could easily lose the will to live. You cannot understand them, and they seem designed to be impenetrable. Others are almost a good read, and some of them even get you a little excited about what the authority is trying to achieve. So, part of the challenge—and it will form part of the guidance on this—will be to improve accountability by ensuring that reports from local authorities and regulators are written in such a way that the average citizen can relate to them.

9.50 a.m.

[30] Although it is not dealt with in this legislation, it is written elsewhere that the scrutiny role of the elected members is important and, again, as we have said elsewhere in the shared

responsibility document, we would like to see a broadening of the governance of local government and accountability. How transparent, readable and understandable these documents are for the average citizen and elected members is the litmus test. These are the standards under which the more comprehensible document will be presented.

[31] **Joyce Watson:** Can you explain the relationship between the duty to secure continuous improvement under section 2 and the performance indicators and standards to be set by Welsh Ministers under section 8?

[32] **Brian Gibbons:** The first thing to say is that not everything that is worthwhile can be measured in simple quantitative terms. Therefore, these performance indicators will obviously include some quantitative measures such as we have in the performance framework at the moment, but those could be elaborated by other performance indicators that may not be quite as quantifiable in the same way. Underpinning this, in addition to identifying areas by which performance would be measured, as you will see, there is an attempt to indicate that we should have standards against that performance. For example, if the requirement is to fix streetlights quickly, you may set a standard that says that 'quickly' means five days, seven days, 10 days or whatever you want. There could be other standards that relate to what the public thinks of the service, such as whether it is sufficiently citizen-focused or user-focused, which are elements that are not so easily quantifiable in a numerical sense.

[33] So, this tries to cover a broader range of activities in order to capture the quantifiable data, but it also tries to capture the personal experience, to set standards against that and to expect the local authorities to report on those parameters. Those are just the standards that we prescribe, but local authorities may have particular local circumstances, and this does not preclude them from developing standards that they think are relevant to improving performance in a local context.

[34] **Joyce Watson:** What purpose do self-imposed performance indicators and standards serve?

[35] **Brian Gibbons:** There is a national context, and it is important that local government delivers national priorities, because we, as an Assembly Government, do not deliver many services ourselves. Many of the policies that we, as an Assembly Government, set can be delivered only through partners or organisations, such as local government. Therefore, there is a national context to all of this, but there are specific local circumstances and we and local authorities need to have the flexibility to deliver on the national front and to reflect local circumstances. That is the whole essence of local democracy.

[36] **Jenny Randerson:** Earlier, you said that it is not in the proposed Measure but that scrutiny is so important. Clearly, scrutiny is going to be key to driving up standards. Therefore, why is it not included?

[37] **Brian Gibbons:** We do not have the necessary legal competence to enforce some of the elements that we would like to see with regard to scrutiny. The scrutiny processes that exist could be made to run a bit faster and be a bit more targeted. We do not have the legal competence at present to qualitatively change the way in which we do scrutiny, but we have indicated the direction of travel in 'Delivering a Shared Responsibility'. We would like scrutiny to have a broader base, we would like it to reflect the collaborative agenda, and we have even indicated that would like local government scrutiny to be scrutiny of all public services in a particular area. However, unfortunately, as things stand, we do not have the legal competence to refashion scrutiny. We are in discussions with the UK Government to gain competence in that area.

[38] **Janice Gregory:** We will move now to sections 9 to 12, on collaboration and



improvement, and Nick Ramsay will start us off.

[39] **Nick Ramsay:** The Minister has just touched on the issue of collaboration, which is clearly a key part of the proposed Measure. Section 9 of the explanatory memorandum says that the Welsh improvement authorities should have

[40] ‘broad powers to enable them to collaborate with each other and with other bodies’.

[41] I pick up on the word ‘enable’. Why is it not a duty to collaborate?

[42] **Brian Gibbons:** It takes two to tango. You might be keen to collaborate, but someone else might say that they do not want to collaborate with you. Therefore, it cannot be a duty, because you may not have someone to collaborate with. We are suggesting that local authorities should look at what they are doing on a regular basis. If collaboration is a way of improving services, whatever legal obstacles are in the way of delivering that collaboration should be removed, and local authorities should actively seek partners to collaborate with to improve the services. However, as I said, it is like asking someone to dance; you can only ask, and there is no statutory duty on them to accept. [*Laughter.*]

[43] **Nick Ramsay:** That is an interesting point—not the dancing—and what you say is true. If others do not want to collaborate, that will surely undermine the whole process. Could a greater duty have been placed in the proposed Measure on those other bodies to reciprocate and ensure that there is such collaboration?

[44] **Brian Gibbons:** There is an element of proportionality. I do not think that you can have shotgun weddings left, right and centre. Later in the document, you can see that, in circumstances where there is a serious risk of service failure and people are not willing to collaborate, there is a ministerial power to direct collaboration. However, we do not want that ministerial power to direct collaboration to become a routine part of doing business. The ministerial intervention should be at a stage where an authority has significant problems, in that it is unwilling to seek a collaborative route to address those problems, if it seems appropriate. In some instances, it could also help an authority that does not wish to collaborate even though it might assist. So, there is the ultimate option of directing collaboration, but we do not want it to be part of routine, mainstream, day-to-day activity.

[45] **Joyce Watson:** The obvious place where it might be useful to impose collaboration is on child protection, because, sadly, we have seen the results of collaboration not being in place, with a cost to lives. My question follows the same theme. Might it be advantageous to impose collaboration for child protection? In addition, we have increasing levels of elder abuse, and collaboration is the key to capturing and preventing those cases.

10.00 a.m.

[46] **Brian Gibbons:** Some of that exists already, under what were the Health Act 1999 flexibilities—I do not know whether that is still the title. Legal frameworks are already in existence that allow some collaboration to take place. However, the purpose of this legislation is to strengthen opportunities for improvement agencies to collaborate and to increase the range of collaboration opportunities in order to expand their scale. You are right that some of the worst disasters in child protection have been down to a failure in communication and a failure to collaborate. The important message of collaboration will be underpinned by this particular document. Do not forget that this document is about improvement; it is not quite about the operational activities in child protection. So, there is a slight difference there. Nonetheless, I think that the principles are still the same.

[47] **Nick Ramsay:** You say in your note, Minister, that some bodies can collaborate

under their existing powers. Could you give us an example of one of those bodies? In terms of other practical examples, how do you envisage local authorities being able to use the new powers to collaborate, if the Measure goes ahead, under section 9?

[48] **Brian Gibbons:** As I have said, NHS bodies can collaborate with local government in joint commissioning and joint provision. So, there is a range of opportunities out there. In your own constituency, the big shared healthcare and social care facility in Monmouth is a good example where two organisations were able to collaborate together effectively to deliver something new and different that is clearly better. The opportunities for local government to collaborate horizontally are not quite as well defined as the opportunities, for example, for local government to collaborate with the NHS. It seems slightly paradoxical that that should be the situation. So, the purpose of this legislation is to clear away any ambiguities that may exist in relation to legal barriers, whether they are real or perceived. However, if this Measure is passed, then, hopefully, any real or perceived barriers to collaboration between local authorities and other improvement authorities will be swept away and there will be no doubt about the legal framework within which local authorities are operating. I do not know if you want to say anything, Steve.

[49] **Mr Pomeroy:** It is very common now for authorities to collaborate on particular things, but it is seen as an operational matter. One example is that, if you travel around Blaenau Gwent—as I do quite a bit—it is common to see roads being dug up, repaired, and maintained by Caerphilly County Borough Council. The reason is that Caerphilly County Borough Council is a much larger organisation, has a much greater capacity and it does the works on behalf of Blaenau Gwent. That is perfectly fine. That is just an operational decision by the two highways departments. As the Minister has said, what we are trying to do in the proposed Measure is first to put beyond any legal doubt the powers for authorities to do this, but, more importantly, to put it in the context of the overall improvement of service to citizens that is defined earlier on. We are not simply saying, ‘You two can collaborate with each other if you want’, but, ‘If and where you have the same broad improvement objectives, you really need to think about it’. That will, as likely as not, be more than an operational decision for two highway departments. So, it is putting it in that context rather than just removing barriers.

[50] **Nick Ramsay:** Do you envisage that it will be easy for local authorities to demonstrate that they have collaborated in the way that you would wish, in the way required by this proposed Measure?

[51] **Brian Gibbons:** Part of my duty is to have regular bilateral meetings with local authorities across Wales. My view is that, over the last two years, the attitude towards collaboration has been completely transformed. There was a period up to around two years ago, before the Beecham review, when local authorities took a view that they either sank or swam within their own organisational boundaries. I do not think that that culture exists any more. There is a strong recognition among local authorities that they have to collaborate to deliver better services. Steve gave a good example, but there are many good examples out there now of positive projects being brought forward by local government, which are very much based on the collaborative agenda, for example the 101 number in Cardiff, which is a good collaborative project. If local authorities have any difficulty, I think that collaboration is always pursued as one of the options to deliver improvement.

[52] **Janice Gregory:** We will now move to sections 13 to 15 on improvement planning and information. The first question is from Jenny.

[53] **Jenny Randerson:** You have included a requirement that local authorities must, as far as reasonably practical, compare their performance with other Welsh improvement authorities and public authorities. Why have you done that?

[54] **Brian Gibbons:** Benchmarking is a fairly standard mechanism for any organisation trying to measure how well it is achieving its objectives. So, it is on that basis. I do not know whether or not there is a hidden element to your question, but it is essentially an exercise in benchmarking performance.

[55] **Jenny Randerson:** If it is fairly standard, why is it necessary to include it?

[56] **Brian Gibbons:** The purpose of the legislation is to be as comprehensive as possible. In the same section, there is also a reference that authorities should benchmark performance over time, in other words, that they do not just measure their performance for the current year, but also measure performance in previous years. It is a fairly elementary performance parameter.

[57] **Jenny Randerson:** The core of this seems to be that you are moving to a more flexible approach to diverse local priorities and allowing local authorities the flexibility to respond in the best way, which I strongly support. How will you be able to make valid comparisons between authorities as a result of the increased flexibility? With all of the disadvantages of the current system, you are supposed to have a standardised approach, and we all know that it is the case that local authorities still collect statistics in different ways and that it is difficult to make comparisons. So, in this new flexible world, how will you be able to make valid comparisons?

[58] **Brian Gibbons:** There will be elements that are the same. We still have a national performance framework, by which 120 different parameters can be measured, so, there will be an equivalent of a national performance framework. Most of us, when we are trying to distribute good practice, do not want to start talking about the facts and figures very often; it is often about anecdotes and softer measures of how we do our business, and then we try to improve on that. I do not think that we start off with a batch of statistics to show that we are delivering better outcomes for our constituents. We talk fairly anecdotally and impressionistically and move on from that. So, there will also be opportunities in that regard if there is an atmosphere or a context of collaboration, but, equally, we need data. The disabled facilities grant is an obvious example. The length of time that people were waiting varied between local authorities—in some cases it was years. The quantitative data was also useful in that regard. So, it includes the quantitative data and also includes opportunities through talking to people, going to conferences and those sorts of softer measures that we take all the time. I do not know whether there is anything that you want to add, Steve.

10.10 a.m.

[59] **Mr Pomeroy:** I will simply add that it depends on what you are trying to get out of a comparison. If all an authority is looking to do is to see where it is in the benighted league tables that we see from time to time, then it will not actually be learning very much, it seems to me, other than that it is third, seventeenth or twenty-first. As often as not, a comparison is just a stimulus to further inquiry as to why an authority is doing so well or so badly, over time, against a particular indicator. There are any number of examples of where trends in raw data can lead you to some good practice and improved performance, in whatever aspect or element of performance you want to consider.

[60] Coming back to your first question, it is not enough to ask why it should be prescribed if it happens now. It seems to me that what happens now, as often as not, is too much thinking of things like, 'We are in the top quartile, so we are fine, aren't we?', rather than trying to get behind a comparison to understand it a bit more fully and to understand whether there is any learning that can take place. It does not say that in the Measure—I do not think that we could reasonably say in a Measure that they must learn from their comparisons—but that is what we will be trying to get to, through guidance.

[61] **Janice Gregory:** How can improvement authorities share information, particularly if they do not need to publish the information before 31 October?

[62] **Brian Gibbons:** It is a dynamic process. I think that local authorities will see the performance. I am not really clear where that date, 31 October, comes into it.

[63] **Janice Gregory:** It is in the Measure.

[64] **Brian Gibbons:** I realise that that is the date of the publication of—

[65] **Janice Gregory:** Can they share the information prior to that?

[66] **Brian Gibbons:** Yes. The information, with very few exceptions, will not be state secrets, so you would hope that the sharing of information and best practice, as Steve has said, would be going on all the time.

[67] **Janice Gregory:** So, you have no objection to that, Minister? You would be quite happy for that information to be shared.

[68] **Brian Gibbons:** I have no objection. I do not see any problem with the date.

[69] **Janice Gregory:** On the performance improvement information, how will the Measure make sure that that is fully accessible to citizens?

[70] **Brian Gibbons:** I think that I dealt with some of that in answer to Joyce's question.

[71] **Janice Gregory:** You did indeed.

[72] **Brian Gibbons:** Clearly, the local authorities will have to produce annual reports. They will have to do assessments and the regulators will take a view on performance. If the regulators are not satisfied, they will make recommendations at a certain stage and they will be in the public domain. I think that elected members will have a much greater understanding of what is going on. As I say, the information needs to be produced at some stage in such a way that ordinary members of the public can get their heads around it as well.

[73] **Janice Gregory:** It is about the language that is to be used, is it not?

[74] **Brian Gibbons:** Yes, and the fact that you have all these tables that nobody can understand.

[75] **Joyce Watson:** We have exhausted what it is hoped the plan will achieve. Going on from that, is there a requirement on local government to implement that plan?

[76] **Brian Gibbons:** Yes—that is the whole purpose of the legislation. We can ask Sioned if she wants to give the specifics, but the improvement plan says that the authorities must also outline the actions that need to be taken to deliver the plan. As part of the assessment process, an evaluation has to take place of how those actions led to the desired improvement. I think that the answer is in the affirmative.

[77] **Ms Tobias:** Essentially, the improvement plan is set out in section 15(6) of the Measure. Essentially, it says that the improvement plan is a document that sets out how the authority in question will discharge its various duties under the Measure. In that respect, it is almost a backward way of looking at it because the improvement plan is just a documentation of how it will achieve its goals and discharge its duties. Section 3(2) of the Measure requires a

local authority to make arrangements to secure the attainment of its objectives, for example. Therefore, in that sense, that is the duty to implement what is documented in the improvement plan.

[78] **Janice Gregory:** Sections 16 to 28 deal with regulation and inspection. What are the practical and financial implications for Welsh improvement authorities with regard to the changes made to the auditing, assessment and reporting arrangements provided for in the proposed Measure?

[79] **Brian Gibbons:** One consistent message that we have had from all public bodies that are subject to regulation and inspection is that the regimes are onerous, time-consuming, and bureaucratic. One inspector comes in when another is going out the door—the new crowd comes in and asks for exactly the same information that the crowd that has just gone out the door has asked for. In many respects, the regulators and inspectors are laws unto themselves, and they do things in ignorance of what others are doing. The whole purpose of this is to co-ordinate the activities of regulators and inspectors, as well as to streamline the process, so that the whole process will be less onerous on local authorities, but more efficient from the inspectorate's point of view.

[80] **Janice Gregory:** Do you believe that there will be any practical or financial implications for the relevant regulators and the Auditor General for Wales?

[81] **Brian Gibbons:** I would be disappointed if they did not see this as being a welcome step forward. Again, over the last 12 or 18 months, the inspectorates and regulators have seen the value of them all working more closely together, rather than working in isolation.

[82] **Janice Gregory:** How does the auditor general's role differ from the role undertaken now, and what are the reasons for the changes?

[83] **Mr Pomeroy:** There are two things that are flawed in the current regime that we would be looking to correct. In formal terms, under the Best Value regime, the auditor general does two things now. First, he—or, in practice, his staff—certifies that an improvement plan has been properly prepared and published. That plan could be complete pie in the sky and it could contain evidence of very poor performance; all the auditor general does is say, 'This is properly prepared and published'. Secondly, the auditor general has powers to conduct ad hoc inspections, which he and his staff use regularly. However, they are ad hoc, and, despite the best efforts of the Wales Audit Office to regularise things, there is no necessary regularity here.

[84] Therefore, what we are looking to do in sections 17 and 18 is to expand on that, and to say that, what we want from an auditor, in broad terms, is a retrospective validation as to where an authority has got to, as well as a prospective prognostic, if you like, looking forward as to where it might go in the future. For those of you who are familiar with the work of the Care and Social Services Inspectorate for Wales, it is similar to its judgment as to how well people are being served, and what the prospects for improvement are—it is that similar sort of frame. That links into what we are trying to do later in co-ordinating the work of the WAO, and other inspectors, which really only works if you bring some regularity to the WAO's work to begin with. In practice, the WAO tries to get around many of the problems that I have mentioned. However, I think that it thinks that it is hampered by the limitations of the current regime, which, as I say, we are trying to correct.

[85] **Janice Gregory:** Section 19 provides the Auditor General for Wales with the power to require relevant regulators to provide reports. Why has the auditor general been given this power, and what purpose is it intended to serve?

[86] **Brian Gibbons:** The auditor general will not be an expert in everything. Therefore, while the auditor general may have an overview of the performance of an individual local authority, more specialist regulators may be able to give a more informed view, so that the auditor general may be able to call on the expertise of other regulators to inform his or her overall view of how an authority is performing.

10.20 a.m.

[87] **Mr Pomeroy:** All I would add to that—and Sioned may want to correct me on this—is that there may be restrictions on the ability of other regulators and inspectors to disclose information other than in pursuance of a statutory duty to disclose it. This is such a statutory duty to disclose it.

[88] **Jenny Randerson:** The auditor general is required to prepare audit and assessment reports for each improvement authority under section 20, special inspection reports under section 23 in some circumstances, and annual improvement reports under section 25. Those are the summaries of reports by relevant regulators and by the auditor general. That is an awful lot of reports. Why are all of those different categories of reports needed, and are you satisfied that each report serves a specific function and that there will be no overlap and confusion?

[89] **Brian Gibbons:** Hopefully, there will not be too many special reports, because they will only be required where there are areas of concern. Basically, there will only be two activities, one of which is the first one that you mentioned under section 20, and then there will be the second one in which the auditor general will give his or her view on how likely improvement is to be delivered. Some authorities that have problems will have a more onerous regime, which, I suppose, is inevitable, but there will only be two activities on a routine basis.

[90] **Jenny Randerson:** Section 24 of the Measure provides for the co-ordination of audit between relevant regulators and the auditor general. What is the purpose of this co-ordinating role and what are the benefits that you intend to come from it?

[91] **Brian Gibbons:** As I said, local authorities and other public bodies have long complained about the incessant stream of regulators and inspectors and have questioned how justified it is. I am not going to judge, but it is certainly a well-established complaint. This will allow local authorities to know, for the forthcoming year, or possibly even longer—because indicative timetables can be given a couple of years ahead—when the regulators and inspectors will be coming in. Implicit in all of this is that these inspectors and regulators will discuss their inspection regimes among themselves and that they will try to do that in the most effective, efficient and economical way—to coin a phrase—bearing in mind local authorities' duty to get on and deliver public services. The message that we get is that, in many respects, it is very burdensome on local authorities; this is about trying to bring some sort of order from the point of view of the regulators and the receivers of the inspections.

[92] **Janice Gregory:** We will now move on to sections 29 to 33. I call on Nick.

[93] **Nick Ramsay:** Many of the responses to the consultation exercise on the policy proposal for the Measure seemed to indicate that respondents thought that the power of Welsh Ministers to do anything, effectively, as set out in section 29, was too wide-ranging. Can you explain, Minister, why you think that such a broad power is necessary; and can you provide examples of how you might intend to use that power?

[94] **Brian Gibbons:** I can see how people reading the document might be concerned that it seems to be a very broad power, but we are not suggesting capital punishment, for example,

for a failure to make sure that streetlights are working and so forth. The intention is to provide sufficient flexibility for Ministers to assist local authorities. The key there is the opportunity to assist. In this context, local authorities will be involved in undertaking improvement activities, and the Measure is drafted to give Ministers sufficient flexibility to assist local authorities to deliver improvement. You could have an exhaustive list of 21 different ways in which to assist local authorities, but you might then find that local authority 22 has a problem that requires assistance that we did not think of including. If an authority had a particular need that was not included in the legislation, we would not have legislative cover for that. Therefore, rather than trying to anticipate every conceivable type of assistance that a local authority could be provided with, we felt that having a more general phrasing was the best way to cover this and to remove possible ambiguity. However, this must be seen in the context of providing assistance to local authorities; the intention is not to take over their powers. It is to provide assistance in a certain context.

[95] **Nick Ramsay:** I am relieved that it does not include capital punishment, Minister—local authorities have enough on their plate at the moment. On that last point regarding flexibility, could that conceivably include financial assistance to local authorities?

[96] **Brian Gibbons:** Yes.

[97] **Jenny Randerson:** I would like to ask a supplementary question, if I may. How will this power fit in with the existing powers of regulators? The service in which it is most frequently detected that assistance is needed is social services. Are you saying that you would not use the power if the social services regulator determined that a local authority needed that assistance?

[98] **Brian Gibbons:** No, but suppose that a local authority came to us—and I refer to what Nick said—saying ‘We need a bit more money’, which I do not think would be likely to happen, but it could, or that it needed help in providing extra training, or in brokering a deal of some kind, this legislation would provide us with the flexibility to do that. However, if, for example, in an extreme case, there was a requirement to put a manager in for a six-month period to mentor a local authority, and we had not included that on the list, we would not be able to assist in that way. So, the idea behind the wording of the legislation is to provide flexibility within a context. The words do not have any meaning unless they are seen in the context of providing assistance. If you took the words out and said that we had the power to do anything, that might be alarming, but the words are clearly written to give the context of providing support and assistance to a local authority that is involved in the improvement process.

[99] **Nick Ramsay:** You have explained why you think the power of direction in section 30 is necessary. Why have you introduced a power enabling Welsh Ministers to direct a failing improvement authority to collaborate with another improvement authority?

[100] **Brian Gibbons:** As I said previously, there may be situations in which a mentoring authority, a better authority, could help a failing authority. However, there might be circumstances in which the better local authority would not want to help the failing authority, for reasons that could be quite substantial, and it is in no-one’s interest for a good authority to be dragged down by a failing one. However, there could be less important reasons for a better authority to avoid helping a failing one, for example, reasons to do with their history, personality, or conditionality—in other words, an authority might be willing to help if certain circumstances were more favourable. So, we could try to address reservations or caveats about getting involved. However, even though the power of direction is there, it is not common sense to enforce collaboration to the detriment of the mentoring authority. That is self-evident.

10.30 a.m.

[101] **Nick Ramsay:** I think I understand what you are saying about the mentoring aspect between improvement authorities. Is there conceivably a danger that that process could ultimately undermine local democracy and the wishes of the people who have elected councillors to one authority area?

[102] **Brian Gibbons:** Not really. I am sure that voters do not vote for council officials; they vote for local authorities to deliver services. I do not suppose that any voter votes for his or her local authority to deliver poor services—unless the basis of the election is to elect someone to deliver worse services. Implicit in the democratic process is the idea that you are voting for quality services and improving services, and that you are not voting for officers or appointees in the local authority, but rather what the local authority will do to help you to live a better life.

[103] **Janice Gregory:** Can you imagine any circumstances in which, having consulted the non-failing authority, you would apply section 31 against the authority's will?

[104] **Brian Gibbons:** If the case is made that collaboration would drag the better authority down to a significant extent, then it would not be in anybody's interest to do that. So, I think that there would be circumstances in which collaboration would not be reasonable. However, there are all sorts of reasons why authorities might not want to work together, some of them potentially quite trivial, such as a clash of personalities or whatever. This is the reality of life, is it not?

[105] **Janice Gregory:** Thank you, Minister. We will move on now to the final sections, namely sections 37 to 40 under 'Community planning'.

[106] **Joyce Watson:** How does the proposed Measure link service improvement to community planning?

[107] **Brian Gibbons:** You will probably know from your days in local government that the community strategies were produced with a fantastic vision for 10 or 15 years' time and, with few exceptions, the document was shelved while we got on with the real business, as dictated by the Best Value regime or the Wales programme for improvement, to a certain extent. The community strategy, as published here, will require actions. As part of this, it will indicate not only what the vision is, but it will also place an expectation that the actions to deliver the vision be outlined. Those actions will then form part of the improvement regime. So, for the first time, there will be an organic link between the actions required to deliver the community strategy and the wider improvement agenda, which all of this proposed Measure is intended to achieve. Currently, the Best Value regime, the Wales programme for improvement, is in one piece of legislation, and the community strategies are in a different piece of legislation; they operate in a different legislative framework. This will bring them together under one umbrella and will also create the link between improvement and activities underpinning the community strategy.

[108] **Joyce Watson:** Thank you for your comprehensive answer, because you have answered my three questions in one.

[109] **Jenny Randerson:** How does Part 2 of the proposed Measure take account of the developing role of local service boards?

[110] **Brian Gibbons:** You will see here that there are community planning partners, who will contribute to the development of a community strategy. Equally, as a part of this, as I said to Joyce, actions will be outlined as to what is necessary to deliver the community



strategy. We know that local service boards are there to address collaborative opportunities that have proved a bit trickier to move forward within the ordinary routine framework of business, and so the local service board would seem to be the obvious forum to allow the community strategy to be delivered for the more tricky or difficult areas of collaboration.

[111] **Jenny Randerson:** I realise that not every local authority has an LSB, but given that they are developing, would it not have been reasonable to specify in the legislation ‘and local service boards, where they exist’?

[112] **Brian Gibbons:** At the moment, local service boards are not statutory organisations, and if we were to establish them as statutory bodies in the legislation, the first thing we would hear would be that this was local government reorganisation through the back door. It would probably be seen to be undermining the organisational integrity of the various bodies that make up the local service board. So, given where we are at the moment, it would not be appropriate. Despite the fact that local service boards are beginning to deliver dividends, they are still at a fairly early stage of development or evolution, and it might be a bit premature to put them on a statutory footing or to find a way that would be acceptable to all the stakeholders.

[113] **Jenny Randerson:** In section 38, you specify a local authority’s community planning partners. Are there any other organisations that contribute to community planning that are not provided for in that section? If so, why did you exclude them?

[114] **Brian Gibbons:** There are a few other national organisations, such as the Environment Agency and the Countryside Council for Wales. We hope that they will be involved, where appropriate, but felt that it would be challenging for them to interact with 22 local authorities on a daily basis. We know that the police in Wales have a good relationship with local authorities, but they can struggle at times to work with all 22 local authorities, although, in fairness, they are positive. The fire service also finds it difficult to interface with all 22 authorities on a day-to-day, routine basis, despite the fact that it does so as and when needed.

[115] **Mr Pomeroy:** The list would apply times 22. For instance, we could have put in further and higher education institutions, but it is difficult to specify which matches up with which—you could not just match Cardiff University with Cardiff Local Service Board. There is talk in England of getting the armed forces involved in community planning, which sounds alarming, but it starts to make sense when you consider that the armed forces are a major local employer, landowner or land user in some parts of England. You would want to universalise that across all 22 authorities, so this is only the lowest common denominator, if you like.

[116] **Nick Ramsay:** That rolls into my next question, actually. It says in the explanatory note that a person who does not have a function of a public nature cannot be designated as a community planning partner. I presume that that includes the voluntary business sector. Why is that the case? Will it be a barrier to the effective discharge of a local authority’s duties?

[117] **Brian Gibbons:** I will ask Sioned to come in on that, but the whole point of this is to address the public service functions of an organisation. Some organisations may have non-public service functions, and so the purpose of this legislation is not to introduce obligations on those organisations for those. For example—and I am sure that Sioned will shoot me down for this—a consultancy firm may have some functions vis-à-vis public service delivery, but it may also have other functions vis-à-vis other clients. This legislation can have an impact on their duties only insofar as they affect public services in Wales and not the other activities that they might be doing for other clients. I do not know whether that is right.

10.40 a.m.

[118] **Ms Tobias:** The limitation in section 38 is due to the National Assembly for Wales's competence. Matter 12.4 of Schedule 5 to the Government of Wales Act 2006 is the matter that the National Assembly for Wales will be relying on when it, hopefully, makes the proposed Measure in due course, and that matter is limited to the involvement of bodies that have functions of a public nature. So, that is what the provisions of section 38 seek to cover. When making any Order under that section in relation to other institutions, the functions must be of a public nature. We would look at whether an organisation or body falls within that category on a case-by-case basis.

[119] **Brian Gibbons:** There are limits to our legislative competence. It is constrained in any event, so, even if we wanted to do it, we would not have the competence to.

[120] **Joyce Watson:** I have a supplementary question along the same theme. There are voluntary organisations that have a remit to deliver only a public service, such as Women's Aid, and, you could argue, Mind Cymru. You can see where I am coming from. I do not want to place a duty on voluntary organisations where that might inhibit what they do, but neither do I want to see them excluded where their only function is to serve the public good. I know that there are other pieces of legislation that might catch this, such as the general equality duty and procurement under that, but I am concerned that, by excluding voluntary organisations that clearly deliver only a public service—

[121] **Brian Gibbons:** I am struggling to think of an example, but let us take the two examples that you gave. Those organisations would be involved in campaigning, and that would count as a civic duty but not, as I understand it, a public duty. Presumably, they are involved in fundraising for their organisations, and we could not prescribe how they go about doing that unless perhaps they had a public service function in the limited sense.

[122] **Ms Tobias:** We would have to look at each body on a case-by-case basis to consider the extent to which it had functions of a public nature, which is sometimes difficult to establish. It is worth bearing section 44 of the proposed Measure in mind, which imposes a duty on the local authority and its partners to involve voluntary organisations in its continuous consultation, taking into account their views in the process of community planning.

[123] **Janice Gregory:** Sorry, Steve wanted to come in.

[124] **Mr Pomeroy:** Sioned has largely covered what I was going to say. Let us assume that a body, such as Mind Cymru, had functions only of a public nature. If it were to be named, it would come under the same category as the Environment Agency, as we were just talking about. It would have to be in the legislation multiplied by 22; you cannot cherry-pick. Is there resourcing for that? I would not be sure, and it would be open to argument. Secondly, as Sioned said, I think that we have gone as far as we can by creating a requirement for statutory partners to seek the involvement of voluntary organisations. That is a provision that we discussed at length with the Wales Council for Voluntary Action. I do not want to speak for it, as it is for the committee to speak to the WCVA, but I think that it would say that we have gone as far as we can, too.

[125] **Nick Ramsay:** In that case, you are clearly confident that the community planning partners that have been identified up to this point have sufficient capacity to comply with section 37.

[126] **Brian Gibbons:** Yes, I think that they have that capacity, without any doubt.

[127] **Nick Ramsay:** There is no obligation on local authorities to consult with partners

once they have prepared a draft community strategy. Is that correct?

[128] **Brian Gibbons:** As Sioned just said, there has to be a dynamic dialogue. I suppose that the community strategy gets put on the shelf for 15 years, really, and there might be a case for further consultation on that. However, these community strategies will be dynamic documents with a minimum of two-yearly monitoring and a four-yearly review, which will, as Sioned said, involve dialogue, debate and discussion with a wide range of non-statutory stakeholders. So, this is an ongoing and dynamic process, rather than a consultation and that is the end of the story. The devolutionary nature of the community strategy asks for a different form of engagement.

[129] **Janice Gregory:** Thank you, Minister. That brings us to the end of this evidence-taking session. I thank you and your officials for the frank and open way in which you have answered Members' questions this morning. It gives us a firm footing on which to take evidence from the other organisations that will come in.

[130] The next meeting will be next Tuesday, 11 November, when we will take evidence from the Wales Audit Office and the Welsh Local Government Association. Thank you for your attendance. I declare the meeting closed.

*Daeth y cyfarfod i ben am 10.46 a.m.*  
*The meeting ended at 10.46 a.m.*