



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

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

**Cyfnod 1
Stage 1**

**Dydd Mawrth, 2 Rhagfyr 2008
Tuesday, 2 December 2008**

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Procedural Motion

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg. Mae hon yn fersiwn ddrafft o'r cofnod. Cyhoeddir fersiwn derfynol ymhen pum diwrnod gwaith.

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. This is a draft version of the record. The final version will be published within five working days.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

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

Eraill yn bresennol
Others in attendance

Brian Gibbons	Aelod Cynulliad, Llafur (Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol) Assembly Member, Labour (The Minister for Social Justice and Local Government)
Reg Kilpatrick	Pennaeth yr Is-adran Polisi Llywodraeth Leol, Llywodraeth Cynulliad Cymru Head of Local Government Policy Division, Welsh Assembly Government
David Prescott	Cyfreithiwr i Barc Cenedlaethol Arfordir Penfro, Cymdeithas Awdurdodau Parciau Cenedlaethol Cymru Solicitor to the Pembrokeshire Coast National Park, Welsh Association of National Parks Authorities
Richard Smith	Prif Swyddog Tân, Gwasanaeth Tân ac Achub Canolbarth a Gorllewin Cymru Chief Fire Officer, Mid and West Wales Fire and Rescue Service
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 8.59 a.m.
The meeting began at 8.59 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Janice Gregory:** Good morning. I welcome you to this morning's meeting of the

Proposed Local Government Measure Committee. I welcome representatives from the fire and rescue service and the Welsh Association of National Park Authorities. Thank you both for coming this morning.

[2] I will just run through a few details that we need to cover at the start of every meeting. If anyone has a mobile phone, pager, BlackBerry or any electronic device, please switch it off as it interferes with our recording equipment. Welsh may be spoken in committee. If you require the simultaneous translation, it is available on the headsets, which should have been prepared for you. Channel 1 has the simultaneous translation, and channel 0 amplifies the sound. There is no need for you to touch any of the buttons on the microphones, as they will come on automatically.

[3] Finally, I am given to understand that there is no fire drill this morning. We will be in safe hands if there is. So, if an alarm sounds, we will be asked to leave the building. We will follow you out of the building, Richard. [*Laughter.*] Seriously, please be guided by our ushers, who will ensure that we leave by the safest and nearest exit.

9.00 a.m.

**Cyfnod 1 y Mesur Arfaethedig Ynghylch Llywodraeth Leol (Cymru),
Sesiwn Dystiolaeth 5
Proposed Local Government (Wales) Measure Stage 1, Evidence Session 5**

[4] **Janice Gregory:** We will now take further oral evidence on the Proposed Local Government (Wales) Measure. I am pleased that our witnesses have taken the time to come to committee this morning. For the record, I formally welcome Richard Smith, chief fire officer of Mid and West Wales Fire and Rescue Service, who is representing the fire and rescue service of the whole of Wales. I also welcome David Prescott, who is the solicitor to the Pembrokeshire Coast National Park, representing the Welsh Association of National Park Authorities.

[5] Members will have a series of questions for you. Some will be specifically for either one of you, but we will make that clear, so do not worry about that. We are two Members short at the moment, but I am sure that they will be along forthwith. If you are happy to do so, we will move straight into questions. The first question is usually mine, and is a general one to both of you. In your view, is the proposed Measure necessary? If so, does it provide the right framework to deliver continuous improvement and effective community planning?

[6] **Mr Smith:** The straightforward answer, from the fire service's perspective, is 'yes'. We became a devolved responsibility of the Assembly's in November 2004. We have been playing catch-up a wee bit with the Wales programme for improvement since then, although, during the latter years, we have been a full participant of the WPI specifically for fire, as there are one or two differences from the normal WPI. It is clear that we have come a long way from the old Best Value regime on the journey of trying to achieve continuous improvement, as opposed to just the three Es of Best Value. From a fire service perspective, it is timely that this legislation will come into force. It brings us into the legislative fold as far as continuous improvement is concerned. Therefore, with just a few caveats, which I am sure we will discuss later, we broadly welcome the proposed Measure in principle.

[7] **Mr Prescott:** The Welsh Association of National Park Authorities considers the proposed Measure to be necessary to provide an up-to-date statutory basis for performance, the improvement regime and community planning. It is likely to add clarity, certainty, and transparency, and we think that those benefits can be enhanced by detailed guidance flowing from the proposed Measure if adopted. We consider that, generally, the right framework has

been adopted, but that is subject to specific points, which I will wish to make during my evidence.

[8] I am conscious of time constraints this morning, Chair, but there are specific points on which I wish to make substantial representations. However, if I do not have anything distinctive to add, I will not do so. It may be helpful for you to know that, generally, our default position is to support the submissions already made to you by the Welsh Local Government Association.

[9] **David Lloyd:** I commend the written presentations that we have received from both your organisations. Thank you. When he attended a meeting of this committee to be cross-examined on the proposed Measure, the Minister, Dr Brian Gibbons, said that it would result in a change of principles and a refocusing in the improvement regime. My first question is specifically for the fire service. Paragraph 3.4 of the Assembly Government's explanatory memorandum asserts that the current improvement regime:

[10] 'fosters a culture of pre-determined planning to meet prespecified output targets, rather than responsiveness to complex local needs'—

[11] you would not want to say that too often. In your evidence, you question how improvement authorities can move away from this trend if Welsh Ministers set performance standards. Can you explain why you question that?

[12] **Mr Smith:** I was listening to Radio 4's *Today* programme on the way in, and there was much talk in that programme of Haringey and the baby P review, which encapsulated some of my concerns about predetermined target setting. I think that the tendency is to become over-bureaucratic with targets and evidence and with trying to achieve statutorily what is laid down. Being involved in the process, I know that the tendency is to try to concentrate on what the evidence is telling you rather than on what your gut instinct tells you. There is a place for evidence in target setting, but what this proposed Measure adds to that is the ability to determine local needs locally.

[13] Specifically on fire, there are only three fire and rescue services in Wales, but even with that small number, the differences between the three are quite stark. So, local service delivery and local service needs differ quite extensively. This is something along the lines of allowing for that local flexibility and allowing for innovation and for the humanistic side of management and continuous improvement, which I was trying to convey in the written submission.

[14] I think that the proposed Measure gives a two-pronged approach: it is about looking at evidence and the bureaucracy of target setting, but it is also about allowing for that innovation and flexibility in local service delivery.

[15] **David Lloyd:** David, do you share some of those concerns?

[16] **Mr Prescott:** Those comments have considerable force, but I also acknowledge that Part 1 of the proposed Measure enables authorities to initiate their own performance objectives, and I believe that there is merit in that.

[17] **David Lloyd:** My next question is also for the fire service. Your evidence suggests that the proposed Measure in its current form may be too prescriptive, resulting in inflexibility. Would you like to elaborate on your previous reply in answering this question?

[18] **Mr Smith:** I probably answered that in my previous response. From a fire service perspective, this is all about reducing risk in the most efficacious way depending on local

circumstances. I would not want to see an introduction of complete inflexibility in terms of my ability to shape those services and those risk-reduction activities from a local perspective.

[19] **David Lloyd:** So you would agree with the evidence that we have had from the Auditor General for Wales, who suggests that the proposed Measure presents an opportunity to move away from a focus on risk, which underpins the current arrangements, and towards driving improvements and services?

[20] **Mr Smith:** The problem for the fire and rescue service is that, for us, it is all about reducing risk and, therefore, it is all about a focus on risk. I am not quite certain about the context in which the auditor general said those things, but from a personal perspective, it is all about focusing on risk while understanding that local flexibility needs to be adopted in various situations.

[21] **Joyce Watson:** Good morning and thank you for your paper. Paragraph 2.12 of the guidance on the Wales programme for improvement indicates that the nature of the fire and rescue authorities is such that they have functions that require a distinct approach to improvement. Does the proposed Measure adequately reflect the fire service's distinct approach to improvement or would you expect that to be covered in guidance?

[22] **Mr Smith:** To answer the second part of your question first, I would expect it to be covered in guidance. It is important for the fire and rescue service—as a single service authority covering a number of local authority areas—that there is specific guidance for the service. As I said in my introduction, there is a difference between WPI on fire and WPI for local authorities. That difference predominantly relates to the professional approach to what is a unique service delivery in local authorities. We currently undertake that through peer assessment reviews with other fire and rescue services and people who have the sector competence to be able to make a judgment on our service delivery from an operational perspective. I would welcome comprehensive guidance around how that is going to be achieved through this proposed local government Measure.

9.10 a.m.

[23] **Joyce Watson:** Are you content to see the removal of the old Best Value three Es from the legislation? How will the new improvement objectives alter the way in which you deliver improvement?

[24] **Mr Smith:** I have no opinion either way on the removal of the three Es. I think that they were quite restrictive in the old Best Value regime, so a quick response to your question would be that I would welcome the inclusion of more issues around how we are going to be measured on continuous improvement, such as innovation, local flexibility and the ability to do that. Continuous improvement goes deeper than the three Es; I think that there is a lot more that we can be measured on and a lot more that our continuous improvement can be judged on than the three Es. However, I am quite ambivalent about the removal of them and I am just grateful for the inclusion of other types of measures within the proposed Measure.

[25] **Jenny Randerson:** I have a question for you as well. Do you agree with the WLGA's view that there is no need to impose a duty on improvement authorities to compare performance, because you are doing it anyway?

[26] **Mr Smith:** I have read the WLGA's response to that exact question and I will try not to repeat what Steve said. I do not think that there is a need to impose a duty. We compare at the moment and I am pretty sure that there is going to be a question on the problems with comparisons in the fire service. We compare now with the general local government family and across fire and rescue services. I think that a duty to do that is unnecessary for us as a

continuously improving authority. That is something that we would normally do as good business practice anyway. I think that I probably have repeated what Steve said to you. I do not think that it is necessary for it to be a duty. I think that it is comprehensively undertaken at the moment in local government.

[27] **Jenny Randerson:** If we take it for granted that you are doing it, do you have any specific concerns about it being included in the proposed Measure?

[28] **Mr Smith:** I guess that I do not have any specific concerns; I just think that it is probably unnecessary. However, if it was in the Measure, it would not cause me any particular difficulties. The three fire and rescue services currently undertake a comparison of performance across the board anyway, so it would not cause me any particular operational difficulties. However, I reiterate that it is probably unnecessary, as it is something that we do as a matter of good practice anyway.

[29] **Jenny Randerson:** The proposed Measure specifies the date of 31 October as the date by which authorities should have shared information. Do you think that that is appropriate, as specified on the face of the Measure and, if so, why?

[30] **Mr Smith:** Again, the three fire and rescue services operate to 31 October now for the production of our risk reduction plan. So, I have no particular difficulty with 31 October. I think that you may want to consider whether that should be in guidance, rather than enshrined in legislation. However, I think that it is necessary for there to be a point in time that all local authorities should work towards to produce their strategic plans and their comparisons. I have no particular issue with 31 October; I think that it is about the way that that is articulated and maybe it should be in guidance as opposed to legislation. I think that that is something that you probably need to look at.

[31] **Jenny Randerson:** The auditor general has suggested that it should be removed, and his reasoning appeared to be that if you put in 31 October, people will work to that date rather than undertake the work before that date. Do you think that there is a realistic possibility of performance information being available for comparison significantly before that date?

[32] **Mr Smith:** I think so. The one thing that being involved in planning has done for me is that it has made the years go by really quickly—before you turn around, you are planning for next year and the year after. The year is pretty full of local authority organisations comparing performance, setting strategic objectives and trying to continually improve. The 31 October date, or any date, merely draws a line in the sand, as though to say, ‘That is the date by which certain statutory things need to have been completed’.

[33] The practical implications of being a continuously improving authority are that it is for 12 months in the year—it is continuous. I do not think that the date would actually make any difference—if I understood the question correctly—in the form of people concentrating on that date and forgetting their planning in the meantime. I do not think that that would happen.

[34] **Jenny Randerson:** The WLGA questioned whether annual assessments by the auditor general are necessary. What are your views on the frequency of assessment?

[35] **Mr Smith:** I agree with the WLGA. As we imposed the Measure across local government, performance across different organisations would vary. I do not see the necessity for an annual assessment for an organisation that performs well and which consistently provides evidence to that effect. Resources and effort are probably better concentrated on those organisations that demonstrate a need for support in their improvement journey. An annual assessment is a bureaucratic and resource-hungry thing for an organisation to

accommodate, and anything that we can do to alleviate those burdens would be good. I do not see the necessity for a blanket annual assessment regime; there should be some flexibility with the Wales Audit Office to vary the frequency of assessments.

[36] **Jenny Randerson:** The next question is to the representative of the national parks authorities. In your evidence, you say that,

[37] ‘audit and inspection applied to Welsh National Park Authorities should be commensurate with the risk and scale of... operations.’

[38] Can you expand on that point?

[39] **Mr Prescott:** I would make it clear at the outset that Welsh national park authorities appreciate the value of proportionate, targeted audit, and we all have experience of the benefits that it can produce.

[40] We consider our audit costs to be disproportionately high when judged against the level of risk and the scale of our operations. For example, audit will tend to apply to our small-scale operation the same template analysis tools—questionnaires and so on—that it would apply when auditing an infinitely larger county council function. We consider this to be excessive, and not an efficient use of resources. Accordingly, we believe that proportionality of assessment needs to be built in to the audit regime.

[41] Another point about disproportionate costs arises from section 5 of the proposed Measure with regard to requirements to consult on improvement objectives. We submit that these are unduly onerous and inappropriate as regards national park authorities, given the limited services that we deliver directly to our residents. The fact is that many of our customers are visitors and although we regularly survey them when they use our services, we simply could not consult them effectively for the purposes of section 5. We therefore suggest that rather than being subject to the extensive, but, in our case, unproductive, section 5 consultation requirements, Welsh national park authorities’ improvement objectives should perhaps be agreed with the Welsh Assembly Government after consultation with key stakeholders and included in our strategic grant letter, which is, of course, a vehicle that is not available to local authorities. We would, thereby, be building productively on an existing process and saving resources.

[42] **Jenny Randerson:** Do I conclude from that that you would prefer that aspect to be included in guidance that would flow from the Measure rather than see it remain on the face of the Measure?

[43] **Mr Prescott:** That would be a good way of dealing with it.

[44] **Janice Gregory:** David, did you want to add anything to the answers that Richard gave to Jenny’s questions?

9.20 a.m.

[45] **Mr Prescott:** Just a couple of small points. One is that we have considered the former focus on managing risk, which remains centrally important for all organisations, and we have seen, from the credit crunch, what can happen when risk assessment and risk management are not properly addressed. We consider it appropriate for assessment of improvement to be an element of the annual audit programme, but there should not be a net increase in the overall level of audit. It chimes with the view that additional costs should not be generated as a result of the proposed Measure.

[46] **Alun Cairns:** Sections 29 and 30 talk about Welsh Ministers' support for Welsh improvement authorities and Welsh Ministers' powers of direction. What are your views on the power of Welsh Ministers 'to do anything', as it says in the proposed Measure? Do you have concerns about how Welsh Ministers might exercise the power? If so, what are the concerns?

[47] **Mr Smith:** The power 'to do anything' is quite broad. I would prefer a more detailed definition of what 'to do anything' means.

[48] **Alun Cairns:** There is a list with four points, but those are just examples of what it may include.

[49] **Mr Smith:** That is right. One would think that there are some things that 'anything' does not include, which would, I guess, be illegal or something similar. However, a more detailed definition would be of assistance. Having said that, I recognise that, when you start getting into the territory of a Minister intervening and doing anything, it is not a case of normal everyday activity—it would be the exception rather than the norm, and I understand that it would be on the basis of an authority that is, perhaps, continuing to fail, unable to improve and trying to get itself out of the problem of continuous failure. I suspect that a Minister would use that type of power very judiciously and sparingly. Having said that, it is quite a broad definition. I understand why it is included in the proposed Measure, I also understand that it would be used in exceptional circumstances, but I have issues with the terminology, which is like an open cheque book.

[50] **Alun Cairns:** I will return to the question of how you think it could be phrased; I will give you time to think about that. What does Mr Prescott think about the power 'to do anything'?

[51] **Mr Prescott:** We understand the WLGA's concerns regarding the granting of such a wide power and the risk that it produces of inappropriate micromanagement. Nonetheless, if the Assembly concludes that Ministers may sometimes need to intervene, it may be appropriate for Ministers to have flexible powers at their disposal that would enable them to tailor action to the particular circumstances with which they are faced. In relation to the power in section 30, the crucial point is that Ministers make such decisions on the basis of full evidence and information. If Ministers are to have such a power, we consider it essential to insert a statutory mechanism to ensure that any decision to exercise it is made in the light of appropriate evidence.

[52] **Joyce Watson:** Section 39 requires consensus to be reached between local authorities and community planning partners before a community strategy is produced. Local authorities are tasked with drafting that strategy. Should a statutory obligation be placed on the local authority to consult with partners, once a draft strategy has been produced?

[53] **Janice Gregory:** I apologise—we have gone slightly awry, which is my fault. Please discount that question for the moment, but we will come back to it in a few minutes. I need to go back to Alun, who has had plenty of time to think about how he will phrase his question.

[54] **Alun Cairns:** I was not sure if Joyce's question was a supplementary, which is why I let it go. Mr Smith, do you have any views on how the power 'to do anything' could be limited to make it more practical and to reassure local authorities and organisations such as yours?

[55] **Mr Smith:** I would not say that the power 'to do anything' should be limited. The definition would need to be worked out. I can fully understand why Ministers would require a power to intervene in a failing authority. David commented that intervention should be based

on sound evidence—I was going to say sound judgment, but one would take that as a given—and that comprehensive evidence of consistent failure would be necessary. There should be some kind of guidance, process or procedure, such as an intervention protocol, to go through whereby there would need to be a demonstration of such evidence and conclusions drawn from that. Any failing organisation should then be able to challenge or supplement that evidence, as it saw fit. However, that will be contained in the guidance.

[56] **Alun Cairns:** Thank you. Mr Prescott, do you have any further thoughts on that specific point?

[57] **Mr Prescott:** Yes, I would like to outline the statutory mechanism that we may need to insert in terms of the need to obtain full information. I also acknowledge that Ministers may need to have something in addition to the nuclear option of intervening where an authority is failing. I am conscious of that, and perhaps a flexible power is appropriate in that context.

[58] **Alun Cairns:** Moving on, can you confirm that you agree with the enabling power that is provided in the proposed Measure to collaborate, rather than it being a specific duty to do so?

[59] **Mr Smith:** Yes, I agree with that. Since I have worked in Wales, I have seen that collaboration has been a huge issue in such a small country. You get more improvement and deliver better services through collaboration. The three fire and rescue services see it as our duty to collaborate with each other and with other organisations. There is a specific requirement in the national framework document for fire services in Wales to do so, so I have absolutely no issue with such an enabling power for local authorities to collaborate. It is essential.

[60] **Alun Cairns:** What about the power to direct collaboration?

[61] **Mr Smith:** The same caveats exist as with the power ‘to do anything’. One would assume that if a Minister is intervening by directing collaboration that that would be the nuclear option. One can only assume that it would happen if there were two authorities, one of which wished to collaborate and one of which did not, and collaboration was clearly the best option to achieve continuous improvement. I find it hard to envisage such a situation arising, so I am sceptical as to whether the power would be needed. From a fire and rescue service perspective, collaboration is the name of the game. We achieve a lot more because of it, and I would like to think that the power to direct collaboration would not be necessary.

[62] **Mr Prescott:** We favour the enabling power approach, rather than there being a specific duty to collaborate. Welsh national park authorities are increasingly embracing collaboration with each other and with other local authorities and organisations, but we are wary of the presumption that collaboration will be the best outcome in all circumstances. We take the view that each proposal should be assessed on its own merits, examining the costs and benefits, to establish whether there is a sound business case for proceeding. Where that case is made, partnership working is embraced with enthusiasm. Where it is not, we consider that a duty to collaborate would not add value.

[63] With regard to the power to direct collaboration, a key point is that collaborative partnerships ultimately only work effectively where there is mutual trust and commitment, and a track record or genuine intent to share resources and priorities. Where they do not exist, directed collaboration is unlikely to be successful in delivering public benefit or service improvements, in fact, quite the contrary. However, if Members continue to consider that such a power is necessary, it could be rendered more acceptable by the addition of a procedural requirement. This stems from a belief that if Ministers are to consider making such

a direction, it is absolutely essential that they are in full possession of the relevant facts and arguments, rather than, conceivably, being swayed by partial information or anecdotal evidence.

9.30 a.m.

[64] One way of achieving this would be to ensure that any process whereby a Minister considers exercising the power of direction should be transparent and accountable and pay proper regard to the interests of natural justice. A practical solution may be to amend the proposed Measure, so that prior to making any direction under section 30, Ministers must first give notice to the authority in question, indicating that they are considering making a direction, as described in the notice, and giving the reasons for that. They could then give the authority a set time within which to make representations and a response, which Ministers would be under an obligation to consider before finally determining whether or not to issue a direction and, if so, on what terms. Such an approach may be considered to be fairer and more inclusive, and may also confer the advantage of providing protection against a challenge to the procedural integrity of the ministerial decision.

[65] **Janice Gregory:** We now move on to community planning, under sections 37 to 47. Alun has the question.

[66] **Alun Cairns:** Can you expand, Mr Smith, on your concerns in relation to the community planning provisions?

[67] **Mr Smith:** There are 22 local authorities, as you know, and three fire and rescue services. My service covers six county council areas, North Wales Fire and Rescue Service also covers six and South Wales Fire and Rescue Service covers 10. We currently get involved in local planning issues and community safety planning partnerships; I would not say that that is a drain on resources, but, certainly, there is an issue there around the expectation of local authorities as to the level of participation, vis-à-vis my and my fellow chief fire officers' ability to support that planning regime.

[68] Under the proposed Measure, there is a requirement for us to become involved as a partner within local authority strategic planning. I have no particular issue with that, but, again, the issue is around the expectations of local authorities as to the level of participation in that type of planning arrangement, bearing in mind that I have to facilitate six of those plans and my counterparts have to facilitate six and 10 respectively. I do not think that the resource implication should be underestimated from the fire and rescue service's point of view. We are a single service provider across a range of local authority areas, which has implications for the way that we deliver our service.

[69] **David Lloyd:** I have a question for the Welsh Association of National Parks representative on community planning. Do you agree with the duty to collaborate with community planning partners and are the partners named in the proposed Measure appropriate in your view?

[70] **Mr Prescott:** We agree on both counts. My only comment is that we would suggest that other relevant statutory bodies, for example, the Environment Agency and the Countryside Council for Wales, should also be considered for inclusion as statutory consultees in the process.

[71] **David Lloyd:** Building on that, can you elaborate why the proposed Measure should ensure that it acknowledges that a community strategy that relates to a national park should take into account and embrace, for example, the policies of the national park management plan?

[72] **Mr Prescott:** We consider that to be necessary to ensure that the existing statutory requirement in subsection 62(1) of the Environment Act 1995 is met. Subsection 62(1), which amends the National Parks and Access to the Countryside Act 1949, provides that:

[73] ‘In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to’

[74] national park statutory purposes. The statutory purposes of the national parks are set out in section 5 of the National Parks and Access to the Countryside Act 1949, as amended by the Environment Act 1995, and are defined as first,

[75] ‘conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified’

[76] and, secondly,

[77] ‘of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.’

[78] Furthermore, such an acknowledgement that a community strategy relating to a national park should have to take into account the policies of the national park management plan would achieve, perhaps very neatly, one of the conclusions of the Welsh Assembly Government’s 2005 review of national park authorities, namely the need to strengthen relevant authorities’ compliance with the section 62(1) duty, which I quoted a few moments ago.

[79] We submit, therefore, that this Measure provides a golden opportunity to formally recognise and embed the influence that national parks’ statutory purposes and the provisions of the national park management plan should properly exercise over policy and practice affecting national parks.

[80] **Joyce Watson:** I am sorry that I asked the question early; we will return to it now.

[81] **Janice Gregory:** It was my fault; I beg your pardon.

[82] **Joyce Watson:** Section 39 requires a consensus to be reached between local authorities and community planning partners before a community strategy is produced. Local authorities are tasked with drafting that strategy. Should a statutory obligation be placed on the local authority to consult with partners once a draft of the strategy has been prepared? That question is to both of you.

[83] **Mr Smith:** The answer is ‘yes’. Out of necessity, we will be involved in local authority planning. Much of our work around community safety and community fire safety has a direct link with local authorities’ community safety planning. We will be involved in the very early stages in the production of such a strategy, and it is only right that a local authority should go back to its partner organisations to consult following its completion.

[84] **Mr Prescott:** We are concerned that the section 39 obligation is framed slightly curiously. As drafted, the obligation to produce the community strategy document only arises when the authority is of the opinion that there is consensus with the community planning partners as to the community strategy objectives for the area. There is perhaps a degree of subjectivity and imprecision here that could make it difficult to require the effective discharging of this obligation in the event of a problem; it could perhaps cause uncertainty for planning partners. We therefore consider that there should be a statutory obligation on the

local authority to consult with partners and that this would perhaps mitigate the potential lack of accountability in the arrangements as drafted.

[85] **Joyce Watson:** I move on to my last question. In its written evidence, the WLGA expressed some concern about the concept of the review as a periodic event, and in particular the four-yearly review period for community strategies set out in section 40. Do you think that community strategies should be reviewed every four years, or over a shorter period?

[86] **Mr Smith:** I think that four years is an appropriate timescale. The very nature of the strategies that we are talking about is long term. Four years is therefore wholly appropriate.

[87] **Mr Prescott:** We believe that the requirement to review is desirable, but perhaps there should be some flexibility to allow a response to material changes in certain circumstances.

[88] **Janice Gregory:** My final question is to David. Could you explain further why it would be appropriate to replace the word 'objectives' with 'policies' in paragraph 4(3)(b) of the proposed Measure?

[89] **Mr Prescott:** My written evidence identified a potential difficulty in the wording of the proposed Measure compared with the wording required in national park management plans. However, I have reflected on this, and I now consider that the difficulty can be removed by inserting a statement into our management plans declaring that its aims or strategic policies should be treated as objectives for the purposes of the said section 4 provision. I am accordingly pleased to confirm that the difficulty can be fixed, as it were, at our end, and so will not require further consideration by the Assembly. I hope that that is helpful.

[90] **Janice Gregory:** Thank you, and thank you both for taking the time to come to committee this morning.

[91] **Mr Prescott:** Thank you for the opportunity.

[92] **Janice Gregory:** My apologies for the confusion over the question, again—I will keep my eye on the ball from now on.

9.40 a.m.

[93] We are now joined by the Minister, who is making his second visit to the committee. Good morning, Minister. Thank you for coming to committee. I am sorry; we have overrun slightly. I am sure that we will make up the time as we go along. We will go straight into questions, if you are okay with that, Brian. I have the first question. Dr Tom Entwistle told the committee last week that, in comparison with the legal framework in the Local Government Act 1999, the proposed Measure, as it stands, is very detailed and may need to be frequently amended as policy develops. Can you tell us why the proposed Measure has been drafted in such a way?

[94] **The Minister for Social Justice and Local Government (Brian Gibbons):** We started off by asking whether it is fit for function. You say that Dr Entwistle feels that it is too detailed, but we can deal with matters only on a case-by-case basis. We would have to look at the particular item to see whether there is legitimacy or justification for saying that. Our view is that the legislation has a particular objective and that the detail—if that is what it is—that is in it gives people an understanding of what is required of them under the legislation.

[95] **Jenny Randerson:** It is fair to say that, although no-one else has made that sweeping

statement, individual witnesses from the auditor general through to representatives of the Welsh Local Government Association have put forward the view that certain aspects of the proposed Measure are very detailed and that some of the detail could be more flexibly placed in guidance, where it could be amended. Are you open to such proposals?

[96] **Brian Gibbons:** That is what I said. We would look at such aspects on a case-by-case basis. However, in the main, I think that we would resist that for some of the areas that people have suggested, because they are at the heart of what the proposed Measure is about and bring clarity to its intent. You might want to raise some of those specifics later in the scrutiny session and we can discuss them then. However, in general terms, I do not agree with Dr Entwistle's view.

[97] **Janice Gregory:** The Auditor General for Wales told the committee that section 2 of the proposed Measure should be amended to require authorities to put effective arrangements in place for continuous improvement—the current wording just specifies arrangements. Other witnesses shared that view. What would your view be on the auditor general's suggested change?

[98] **Brian Gibbons:** Clearly, it is important that the legislation strives to be effective, but we must be realistic that certain circumstances may arise and that factors beyond the control of the local authority may work against the proposed Measure's being effective. If we were to set a certain target for educational achievement and then there was pandemic flu, it would be impossible to achieve it, and the local authority should not be held to account for that failure. Equally, there may be a teachers' strike, which could affect the performance of a local authority. So, there are many situations that local authorities are not in control of, and it would be unreasonable to say that they would be performing illegally for those reasons.

[99] **David Lloyd:** Staying with improvement, as a committee, we have heard evidence about the improvement objectives in sections 2, 3 and 4. The auditor general was reluctant in particular to lose the three Es, because he says that they are well understood. Are you satisfied that sections 2, 3 and 4 of the proposed Measure will be well understood?

[100] **Brian Gibbons:** I believe that what we are proposing will be well understood at this early stage in the legislative process. I suppose that people in the street are not talking about them, but—

[101] **David Lloyd:** Give them time. *[Laughter.]*

[102] **Brian Gibbons:** Indeed. However, I am sure that they will be as well understood as the three Es, bearing in mind that the three Es have been in existence for nine or 10 years. In some respects, the three Es live on in some of the auditor's functions as set in other pieces of legislation, particularly the Public Audit (Wales) Act 2004, under which the auditor looks at the performance of the local authority in strictly financial terms, as opposed to service terms. Therefore, the three Es remain there. If you look at efficiency, and the definition of it in the proposed Measure, you can see that there is a specific reference to the efficiency with which resources are used. 'Resources' obviously refers to money, so I believe that that captures the requirements around value for money and the use of money that, presumably, the auditor refers to.

[103] **David Lloyd:** That takes care of another couple of questions. In its written evidence, the WLGA considers that the areas of improvement should be extended by a further improvement area relating to community leadership and planning duties. It also said that, if retained, definitions in section 4(2) should be amended to ensure that reference is made to the exercise of function, as well as the delivery of service. What are your views on that?

[104] **Brian Gibbons:** I read the transcript on that. If you put it the other way, and if you look at the list, you can see that the improvement objectives, for example, could be described as qualities—they have a qualitative content to them—whereas community leadership, in many respects, is a service. Therefore, it would stand out like a sore thumb on the list. If you are going to include community leadership, why not include delivering good social services, or delivering better education? Community leadership is more of a function than a qualitative measure, and the list, from (a) to (g), includes that qualitative effect, and I do not believe that community leadership would sit easily with that list.

[105] **Janice Gregory:** Slipping back into previous questions, what is your view on the suggestion that the improvement objectives would be better set out in guidance?

[106] **Brian Gibbons:** A Measure for local government improvement with no reference to the specifics of the improvement objectives would be, as I said elsewhere, rather like *Hamlet* without the Prince of Denmark. It is about improvement, but what are we improving, and how will we judge it? Having that list there means that ‘improvement’ is clearly defined. Therefore, it is at the heart of what we are proposing, and the list gives a clear understanding to anyone coming to the legislation as to what ‘improvement’ is—is it nebulous or is it concrete? This gives it a concrete feel.

[107] **Joyce Watson:** Good morning, Minister. I have some questions on improvement, planning and information—sections 13 to 15. The WLGA considers that there is no need to impose a duty on local authorities to collect and share information when they are already carrying out that activity. Therefore, why was it decided to make that a duty for improvement authorities in the proposed Measure?

[108] **Brian Gibbons:** The whole purpose of the legislation is to create a legal framework that will be consistent across Wales. One thing that we know about local government performance in Wales is that it is variable—it goes from the very good to the not-so-very good, and it is at the heart of the improvement agenda. Therefore, if we were to say that we should not have a standard set of criteria by which performance should be judged, I suspect that we would end up with the same variation in performance.

9.50 a.m.

[109] The legislation would provide a clear national framework for measuring performance across all improvement authorities in Wales.

[110] **Joyce Watson:** On providing information on collaboration activities in section 52(c), the WLGA was concerned that it looks fairly bare and blunt in the legislation and suggested that the wording was imprecise. Can you clarify what kind of collaborative activities improvement authorities are expected to report on, what purpose collecting that information would serve and what value it would have for the public?

[111] **Brian Gibbons:** We are in a process of transition from a time when local authorities worked within their own geographical boundaries to deliver a service and to deliver improvement. So the purpose of this is to capture the change in culture. I would not argue with the WLGA’s view that we are in a transition period and that the spirit of collaboration is much more alive and real than it probably was two years ago. So we are in an evolving situation. However, looking at where we are at the moment in this transitional phase, it is reasonable that we ask local authorities to detail what they are doing on collaboration, because that is one of the key new elements of driving improvement in Wales. We have said that collaboration is the alternative to structural reorganisation. We know that many projects are going on in terms of local government and regional collaboration. So, I think that it is to highlight its importance and to ensure some accountability for the collaboration that is taking

place.

[112] **Joyce Watson:** Do you intend to include what you just said in the guidance?

[113] **Brian Gibbons:** Yes. Much of this document, notwithstanding the opening question, will be underpinned by a fair amount of guidance to clarify many of the specifics and the idiom.

[114] **Joyce Watsons:** The Auditor General for Wales and the WLGA have suggested that specific dates for publishing material should be removed from the proposed Measure and set out in ministerial orders or guidance. What is your view on that?

[115] **Brian Gibbons:** It is in the legislation because we think that the retrospective element is not unreasonable, namely that local authorities should exercise their functions in terms of reporting what they have achieved in the previous year by the end of October in a particular year. Again, that takes us back to the question of variability of performance. So, to expect a retrospective view within six months of the end of the financial year is not unreasonable, and it sets out a clear expectation.

[116] I do not think that we have made a final decision, but we are willing to have a look at the point about the auditor general's being expected to do all of his work within a month of the deadline for the improvement authorities' reports. However, we would hope that, in practice, not all the improvement authorities will produce their reports by 31 October; hopefully, they will produce them in a steady stream, and the auditor general will therefore be able to respond in a measured way. However, I suppose that it is conceivable that all 28 improvement authorities could submit their plans on the last day of the month, which might create problems for the auditor general. So, we are willing to look at that further and have discussions with the auditor general on it.

[117] **Joyce Watson:** On the same theme, some witnesses have suggested that the date for submission is too generous. Will you look at that?

[118] **Brian Gibbons:** Hopefully, 31 October is not regarded as the optimal date; it is the last possible date, so the hope and the expectation is that people will be producing these evaluations on a consistent basis well before 31 October. That date is the close of play.

[119] **Joyce Watson:** In its written evidence, the Welsh Local Government Association suggested that the reference to an improvement plan in section 15(6) of the proposed Measure was unnecessary, and said that a number of authorities argue that a separate improvement plan is increasingly unnecessary as improvement priorities should be mainstreamed and embedded in corporate and service plans. What is your view on that?

[120] **Brian Gibbons:** I do not dissent from that last point. Clearly, if it is not embedded in mainstream activities, it is not going to happen. Every authority needs to evaluate where it is, and, having done that, it must have a clear, strategic overall improvement plan to outline what it wants to achieve in the next 12 months or two years. If an authority does not have an individual overall strategic plan, there will be a complete lack of focus on its priorities.

[121] **Joyce Watson:** This is my last question. Some witnesses have said that it is high-profile local issues like school closures that engage citizens. How will the information requirement of the proposed Measure relate to these high-profile issues? In addition, how will the proposed Measure help citizens to make a link between performance measures and the services that they receive daily?

[122] **Brian Gibbons:** I am sure that you are right that certain things like the closure of a

school or a care home are more likely to make the headlines of the local paper than other aspects of improvement. However, if a school closure was being proposed, I would be very surprised if the challenges leading up to that school closure had not been highlighted as part of the improvement plan in the preceding years. In many respects, if the school closure, for example, were to address or to improve a particular problem, there would have been a preceding debate on it. Very often, what happens is that the first time the citizens find out about school closures or other such big decisions is when they open the local paper, but, as part of this process, if there are excess school places, we hope that that challenge will have been flagged up in the preceding years. The rationale for going down that road should certainly not come as a surprise, like a hand grenade going off.

[123] **Jenny Randerson:** My questions are on sections 16 to 28, on regulation and inspection. Minister, what is your view of Estyn's comment that the phrase 'inspection, audit and regulatory body' would be better than 'regulator' in section 16?

[124] **Brian Gibbons:** I do not know, but it is rarely the case that five words are better than one, if one describes it accurately. The start of section 16 defines what is meant by the word 'regulator', and it specifically includes an inspector. If that definition had not been included in the proposed Measure, there would be cause for confusion. We understand the point that Estyn is not a regulator in the sense that the others are; it is, essentially, an inspectorate. Hopefully, any confusion will be covered by the definition that is explicit in section 16(2).

[125] **Jenny Randerson:** Thank you. The WLGA and the fire service earlier this morning questioned whether assessment by the auditor general is necessary for all authorities on an annual basis, although the auditor general and other inspection bodies are content with that. Why have you included annual assessments in the proposed Measure?

10.00 a.m.

[126] **Brian Gibbons:** An annual health check is desirable, but it should be proportionate. In other words, if there is reason to suspect that a particular improvement authority is not doing as well as it should be doing, one would expect the assessment to be far more rigorous than that for an authority that is felt to be doing well. An annual health check is not unreasonable, but the extent of it should not be as standard. Certain things will be required, but if an authority is doing very well, one would expect a lighter touch than that taken with one that is vulnerable to failure, for which you would expect a root-and-branch approach.

[127] **Jenny Randerson:** That addresses the concerns of the fire service in particular. Will that proportionality be spelt out in guidance?

[128] **Brian Gibbons:** We take that view, yes.

[129] **Jenny Randerson:** Thank you.

[130] The Care and Social Services Inspectorate Wales and Estyn expressed concern about the wording of section 19, which requires them to provide reports to the auditor general. In his evidence to the committee, the chief inspector of CSSIW stated that,

[131] 'There must be no clouding of my statutory functions as an independent Inspectorate. A duty to co-operate would be sufficient'.

[132] Estyn supported that view. What is your response to those concerns?

[133] **Brian Gibbons:** This part of the legislation refers to when the auditor general does a global health check of the wellbeing of an organisation, at which time other inspectorates

would be expected to contribute. In that respect, it is reasonable for the auditor general to expect reports from the other inspectorates.

[134] You could say that the other inspectorates should have a duty to provide those reports, but it could be argued that the auditor general may take the view, 'Well, we do not need a view from Estyn this year; we had a view last year, and we may not require it to do it'. As it is written, the section gives the auditor general a bit more discretion as to whether he would require the other regulators or inspectorates to provide a report. That means that, to come up with the holistic health check, in most but not all instances, the auditor general would expect the other inspectorates to provide a report. It brings a bit of flexibility into the system.

[135] **Jenny Randerson:** The proposed Measure includes a duty to co-operate on the audit, inspection and regulatory bodies specified. Why have you included that?

[136] **Brian Gibbons:** Do you mean the duty to collaborate?

[137] **Jenny Randerson:** Yes.

[138] **Brian Gibbons:** It is included for a couple of reasons. In some organisations, service failure is confined to a particular area of service, but we frequently find that, for others, service failure can be systemic. If we are to have an overall view of how an organisation is performing, we do not want all the inspectorates working in isolation; we want them pooling their resources, their expertise, and their professionalism. Co-ordination is necessary as well to reduce the burden on the inspected improvement authority, because one of the big complaints of improvement authorities is that no sooner has one inspector gone out the door than the next one is coming in, and they are collecting exactly the same information in many instances, which is unnecessary and burdensome. The only way in which you can get rid of that duplication and poor timing is through better co-ordination of the inspectorate's activity.

[139] **Jenny Randerson:** There is a view from other inspectorates and regulators that that could cut across their other legal obligations requiring them to do an inspection at a particular point, and that may not always fit in with the auditor general's overall approach.

[140] **Brian Gibbons:** Yes, but there is a requirement for the auditor general to consult. He cannot just wake up on the morning and say, 'This is the timetable'. He has to consult, and there is a reference in section 24(3) that,

[141] 'the Auditor General for Wales must, after consulting the relevant regulators, produce a timetable'.

[142] However, we must bear in mind that good evaluation needs a joined-up approach, and the inspected authorities do not exist to be inspected; they exist to deliver services. The improvement authorities frequently complain that they spend more time responding to regulators than getting on with their main job.

[143] **Jenny Randerson:** Sticking with the timetable issues and the auditor's general views of them, my next question relates to sections 17 to 20 and section 24. When the auditor general came to committee, he said the following.

[144] 'It seems to give me a power to set a timetable, but not to prescribe what the relevant regulators do in their slot in the timetable, which seems a bit strange.'

[145] He also said that he did not fully understand it. That balances the view of CSSIW, which I have already put to you, about the wording of section 24, in that the auditor general's

timetable could constrain its work. So, it is not just the other regulators and inspectors that are concerned; it is the auditor general as well. Can you comment on what the proposed Measure aims to achieve in section 24 with that timetable?

[146] **Brian Gibbons:** In some respects, I have explained that. It is to bring some order to the inspection process where there is value in timetabling that, such as for a joint inspection. It also has the advantage of local authorities knowing for at least 12 months and hopefully even earlier when the inspection regimes are likely to take place, so that they can plan their main core business of delivering public services more effectively. So, it is difficult to see what the argument against the timetable is, because it seems self-evident that it is a good thing. However, I do not think it appropriate for the auditor general to tell other professional inspectorates how to do their job. If the auditor general was in a position to give those directions, there would be no point in having a separate inspectorate. The whole point of having a separate inspectorate is that it has its own skills and expertise and it does its job in a separate way, in line with the functions of the organisations that it inspects. So, I do not think that the case has been made for the auditor general to stray into the professional expertise of other inspectorates.

[147] **Jenny Randerson:** Okay, thank you. My next question is about something that was touched on earlier, namely the 31 October date. The view of the auditor general is that, in practice, organisations will work to that date, and so it has implications for his work. You took an optimistic view of it earlier, Minister, but the auditor general said to the committee that he will have to write 44 reports each year between 31 October and the end of November. Will you therefore revisit that issue to address that specific question?

10.10 a.m.

[148] **Brian Gibbons:** That is a fair point, which I accept. It has the potential to be even more than 44 reports, because if you add the two fire and rescue authorities and the three national parks, it is even more. However, we take that point on board, and we probably have to have a discussion with the WLGA to get a feel as to whether or not your doomsday scenario is the most realistic. If that was the case, it might be a bit unreasonable to expect the auditor general to turn around 28 reports.

[149] **Alun Cairns:** The point was made to the committee, Minister, that the Measure does not appear to capture UK regulatory bodies that work jointly with Welsh bodies, such as HM Inspectorate of Probation. Why does the UK Measure not capture UK audit, inspection and regulatory bodies in terms of the joint work that goes on?

[150] **Brian Gibbons:** I am unsure whether that is correct. There is specific reference to non-devolved bodies, but we can only get involved with non-devolved bodies if they, first, have public functions here in Wales, and, secondly, it is within our legal competence to do so.

[151] **Alun Cairns:** When we pressed this further with the witnesses who made the point, they talked about joint agreements with, for argument's sake, the Home Office, in terms of ensuring that we have effective dovetailing, rather than simply operating unilaterally. What discussions have you had with UK Government departments?

[152] **Brian Gibbons:** When we saw this, as things stood, we struggled. The only area in which we thought that this issue might currently come up was in the youth justice service; that might fit in with your comments.

[153] **Alun Cairns:** What about the probation service?

[154] **Brian Gibbons:** Yes, that is what I mean. The probation service is non-devolved, but

as part of the youth offending team, which involves a lot of devolved organisations, it could have issues in that regard. I do not know whether Reg or Sioned want to come in on this. We certainly picked up that point as something that needed to be looked at, but we could not think of a clear-cut, practical example that was currently relevant.

[155] **Ms Tobias:** You have already referred to the relevant agreements that some of the regulators have with other Government departmental bodies. As the Minister has already mentioned, there is a duty to consult on the Auditor General for Wales, so whatever arrangements they have under those separate agreements should come to light during that consultation exercise, before the timetable is finalised or before coming to any conclusions on it. That is important to bear in mind. In the meantime, policy instructions have been that these are the relevant regulators that we, at this stage, intend to catch. That might change in the future, which is why there is a Measure-making power in there, and we would then have to look at legislative competence for every relevant regulator that we proposed to add to that section.

[156] **Alun Cairns:** Referring to sections 29 to 33, which I have raised with previous witnesses, the committee has heard evidence expressing concern about the proposed power for Welsh Ministers ‘to do anything’. How would you allay people’s fears about the wide-ranging nature of the power, and why do you need such a wide-ranging power?

[157] **Brian Gibbons:** On the face of it, that does seem very tempting. *[Laughter.]* However, I think that the answer is in the heading of the section to which that makes reference; the heading is ‘Welsh Ministers: support for Welsh improvement authorities’. So, the power to do anything is in support of what the improvement authority—

[158] **Alun Cairns:** With the greatest respect, Minister, your interpretation of support might be different to that of the autonomous authorities that we are talking about.

[159] **Brian Gibbons:** That may or may not be the case, but the test would be that, if it was felt that that support was being refused, and the organisation continued to demonstrate failure, we could not use section 29 to direct that organisation—we would have to move on to section 30, which is where the powers of direction lie. There is no mandatory element in section 29—it is about support and assistance. If we wanted to get involved in intervention, we could not use section 29—that is not the nature of the section, which is intended to support. If we felt that the organisation was continuing to fail, or was at high risk of failing, we could not use section 29—we would have to move on to section 30 to do anything. The range of options under section 30 is more constrained than the ‘do anything’ nature of section 29.

[160] **Alun Cairns:** I accept the positive intention, but the wording of section 29 gives you very broad liberty before you move on to section 30. It says that Welsh Ministers ‘may do anything which they consider is likely to assist’. Is it not therefore fair to say that authorities and organisations could be concerned about that breadth? What can you do to alleviate that concern? Previous evidence suggested that something could be done in guidance, but let us not forget that the guidance that you issue tends to be for others rather than for Ministers. So, what action can you take, as a Minister or a Government, to use limitations or definitions to curtail that power—accepting the broad principle that you outlined?

[161] **Brian Gibbons:** If a local authority was looking for help in a particular case, it would be reassured that we had as much discretion to help it as possible. The more you curtail our power to help local authorities, then the more concerned local authorities should be about the help that might be on offer. The whole purpose of phrasing the section in that way is to ensure that all options that the Assembly Government could deploy to assist an authority are there at its disposal. It is a facilitating, supportive range of powers. If it was to be a directive set of powers, which seems to be implicit in your question, it would not be in section 29—it would

be in section 30.

[162] **Alun Cairns:** I accept that, but the way that it is written—it does not matter whether it falls in section 29 or 30—you could do anything.

[163] **Brian Gibbons:** We could not do anything unless the legislation was phrased that way.

[164] **Alun Cairns:** I appreciate what you want to do, but does it not go much further than is necessary?

[165] **Brian Gibbons:** If you appreciate what we want to do, then you must understand why we need this on the face of the proposed Measure. It would not make sense for us to want to achieve something, but to put something different on the face of the proposed Measure.

[166] **Alun Cairns:** I do not accept that. I accept that there is generally a positive intention to be able to support local authorities. However, in saying that Welsh Ministers ‘may do anything which they consider is likely to assist’ in improvement, you are using your judgment rather than their judgment. Do you see what I mean? I am not saying that you want to go further, but this goes much further than is necessary.

[167] **Brian Gibbons:** We can hardly change the phrasing to ‘anything which they consider is unlikely to assist’.

[168] **Alun Cairns:** You are being facetious now. I have made the point.

[169] **Janice Gregory:** I think that the Minister has answered Alun’s point.

[170] **Brian Gibbons:** We will look at this again—

[171] **Janice Gregory:** It may be that everyone has looked at section 29 and seen the phrase ‘may do anything’ and gone ballistic, like Alun, without reading the section in its full depth and seeing that the power lies in section 30. We must move on.

[172] **Alun Cairns:** I accept that.

[173] In its written evidence, the WLGA said that it was unconvinced of the principles, merits or deliverability in practice of the power to direct collaboration set out in sections 30 and 31. It suggests that they should be removed from the proposed Measure. Yet collaboration is voluntary and direction is not voluntary. How do you square that dichotomy?

10.20 a.m.

[174] **Brian Gibbons:** I agree that if an organisation absolutely, categorically, 110 per cent refused to engage, it would probably be counterproductive to use the powers of direction to enforce collaboration. There has to be some sort of reasonableness about that decision. Nonetheless, we can all think of instances when an organisation, albeit slightly unwilling perhaps, has said, ‘Right, we will collaborate with you because we have been directed by the Assembly Government to do so’. Being directed by a third party—in this instance, us—can be the final impetus that leads to collaboration taking place. So, I think that there is a value in it, but I agree that there is no point if an organisation, for whatever reason, feels that it is totally beyond the boundary—kicking down the door and telling that organisation to get on with it would not be helpful. However, there are instances when, if a third party insists on it, that will help to open the door.

[175] **David Lloyd:** I will turn to community planning, sections 37 to 47, particularly as regards the police in the first instance. We heard evidence a few weeks ago from representatives of the Wales Association of Chief Police Officers, who told this committee that it should not be included in section 38(g) as a community planning partner, as it already has a duty under the Crime and Disorder Act 1998. Why did you decide to include chief police officers in the proposed Measure?

[176] **Brian Gibbons:** Our understanding is that the existing powers in this regard are much more focused on the more easily identifiable policing duties—in other words, duties that are strictly to do with law and order: community safety in a narrow sense, and possibly drugs and alcohol. So, the chief constables are probably correct. However, as part of the wider community strategy, police have a contribution to make outside the confines of that relatively narrow area, and I understand that the chief constables in their own evidence conceded that point, that their involvement in community planning is wider than that required in the narrow interpretation of law and order roles under the 1998 Act.

[177] **David Lloyd:** Can you confirm that, in your view, it is within the competence of the National Assembly for Wales to include chief police officers as community planning partners?

[178] **Brian Gibbons:** That is our view. I do not know whether Sioned wants to elaborate on that. The police have conceded that they are doing some of this work already.

[179] **Ms Tobias:** The National Assembly would be relying on matter 12.4 of Schedule 5 to the Government of Wales Act 2006 to make this Measure, and that competence includes imposing requirements in connection with strategies on persons with functions of a public nature. Given that relatively broad competence in matter 12.4, we are confident that the police authorities and the chief constables would fall within that category.

[180] **Alun Cairns:** This goes back to something that I touched on earlier. In her evidence, Dr Wilding raised the issue about the territory of tripartite agreement. We talked about, for example, the probation services. In the broader sense, what discussions have you had, say, with the Home Office about this proposed Measure with regard to the areas that we have talked about?

[181] **Brian Gibbons:** I think that it would be fair to say that I have not had any ministerial discussions on the specifics. I think that there were discussions about getting powers under the Local Government and Public Involvement in Health Bill at a ministerial level. However, I understand that officials have been involved with Home Office officials on the specifics of what has been proposed and that they are content. It has not been necessary for Ministers to get involved.

[182] **Alun Cairns:** With regard to community planning, it was suggested to us that it should be extended to include higher education, further education and potentially other organisations. What is the Minister's view on that?

[183] **Brian Gibbons:** I do not think that it is a point of principle. I think that it is a pragmatic view that some of these organisations might usefully be brought within this ambit.

[184] **Alun Cairns:** It is not explicit within the proposed Measure.

[185] **Brian Gibbons:** No. However, I think that the present list is appropriate at this stage because I think that we have captured the key players to be planning partners. It will not place an undue burden on them and there is a relatively good match between the population and

territorial responsibility of those institutions and the lead community planning agent, which is the local authority. An argument could be made for possibly including further education colleges but it would be very difficult to make an argument for including universities, because people come from all over the place to university.

[186] **Alun Cairns:** In view of the need for pragmatism in this area, which I accept, do you think that the Measure should include a power for you to develop this? I am not necessarily just thinking directly of this list, but let us not forget that this will, we would assume, be in statute for a long time and there will be changes in structures and in organisations. Do you think that there needs to be an explicit power in the Measure to allow the Minister at the time to consider changing it?

[187] **Brian Gibbons:** We have the powers to do that under subsection 38(3). As I say, an argument could certainly be made for the inclusion of further education colleges. Let us suppose that the number of local authorities in Wales were to reduce to four—

[188] **Alun Cairns:** Is that an exclusive?

[189] **Brian Gibbons:** No, but in terms of the expectations of some agencies, it would be reasonable for the Environment Agency to interface with four organisations, but unreasonable to expect it to routinely interface with 22 organisations. Therefore, in changing circumstances, the organisations that would be statutory planning partners could easily change.

[190] **Jenny Randerson:** Would you be willing to think again about your dismissal of the impact of higher education? I know that people who attend higher education institutions come from all over in most cases, but that is not always the case. The University of Wales, Newport, for example, is very much a locally based university. However, if you look at the impact of higher education on Pontypridd, for example, you will see that it has had a major impact on the whole community. Even in a big city such as Cardiff higher education institutions have a major impact. Do you accept that there is a case for ensuring that higher education has a voice and an obligation in relation to community planning?

[191] **Brian Gibbons:** It is specifically stated in subsection 44(2) that, in the development of the community plan, a local authority has to involve:

[192] ‘persons resident in the local authority’s area’

[193] and

[194] ‘other persons who, in the opinion of the authority, are interested in the improvement of the area’s social, economic or environmental well-being.’

[195] Therefore, there will be a statutory duty on local authorities in developing their community strategy to engage with the universities in Newport or Cardiff, for example. Therefore, that statutory duty will be there. Whether or not those organisations need to become a statutory community strategy partner is a judgment call but it would be inconceivable that a community strategy would be developed under subsection 44(2) without there being engagement with such a big local player as a university in the circumstances that you described.

[196] **Alun Cairns:** Would you offer guidance on that?

[197] **Brian Gibbons:** Yes, I understand that there will be guidance outlining how the community planning process will be undertaken.

10.30 a.m.

[198] **Janice Gregory:** Minister, you have previously said that community planning partners would, without doubt, have the capacity to comply with the duty to participate. However, some organisations, such as the fire and rescue services, appear to disagree with that, particularly as they will need to liaise with several bodies within their geographical area. Do you have a view on that?

[199] **Brian Gibbons:** I am sure that that will represent capacity challenges. However, do not forget that the fire and rescue authorities will be interfacing with the local authorities in a relatively narrow area of activity. It would be impossible for fire and rescue authorities to engage with local authorities across the full ambit of the community strategy. However, in most instances, they will interface in only a relatively narrow area of community strategy and, hopefully, that will not be particularly burdensome. Again, we would consider it to be a pity if they were not involved.

[200] **Janice Gregory:** Thank you. I have one more question. In its written evidence, the WLGA expressed some concern about the concept of review as a periodic event, particularly the four-year review period for community strategies as set out in section 40. Other witnesses also shared that view. Do you think that the proposed Measure could be strengthened to encourage community strategies to be subject to continual review, with a major review every four years?

[201] **Brian Gibbons:** I think that it is stated that it should be no longer than four years. So, if someone wants to do a review more often, they are free to do so. There is a requirement that, every two years, progress towards delivering the community strategy should be monitored and a report produced on that. So, as I said, if people feel that, because circumstances change dramatically—if a new university opens, a new big employer comes into the area, or a factory closes—it is necessary to review the community strategy, there is nothing to stop them from doing so. It must be done every four years, but it is not the case that it can only be done every four years.

[202] **Janice Gregory:** Thank you very much indeed, Minister. I also thank both of your officials for coming here this morning.

10.33 a.m.

Cynnig Trefniadol Procedural Motion

[203] **Janice Gregory:** To bring Members up to date, the consultation has now closed. We will receive hard copies of the consultation responses, which will also appear on the internet shortly. Our next meeting will be held next week, and I ask that we resolve to hold it in private. I propose that

in accordance with Standing Order No. 10.37(vi), the committee resolves to exclude the public from the next meeting of the Proposed Local Government Measure on 9 October and future meetings at which the Stage 1 report is to be discussed.

[204] I see that the committee is in agreement.

*Derbyniwyd y cynnig.
Motion carried.*

*Daeth y cyfarfod i ben am 10.33 a.m.
The meeting ended at 10.33 a.m.*