



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

**Y Pwyllgor ar y Mesur Arfaethedig ynghylch Teithio  
gan Ddysgwyr  
The Proposed Learner Travel Measure Committee**

**Cyfnod 2  
Stage 2**

**Dydd Iau, 19 Mehefin 2008  
Thursday, 19 June 2008**

**Cynnwys**  
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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**

Lorraine Barrett	Llafur Labour
Alun Cairns	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Ann Jones	Llafur Labour
Ieuan Wyn Jones	Plaid Cymru (Y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth) The Party of Wales (The Deputy First Minister and Minister for the Economy and Transport)
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

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

Mike Clancy	Pennaeth, Tîm y Mesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru), Llywodraeth Cynulliad Cymru Head, Proposed Learner Travel (Wales) Measure Team, Welsh Assembly Government
Iwan Roberts	Cyfreithiwr, Llywodraeth Cynulliad Cymru Lawyer, Welsh Assembly Government

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

Gwyn Griffiths	Cynghorydd Cyfreithiol y Pwyllgor Legal Adviser to the Committee
Ruth Hatton	Dirprwy Clerc Deputy Clerk
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 9.33 a.m.*  
*The meeting began at 9.33 a.m.*

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

[1] **Alun Cairns:** I call this meeting of the Proposed Learner Travel Measure Committee to order. We are considering school transport and transport for educational purposes in a range of areas. There are no apologies or substitutions to report. As for the handling of the meeting, the usual Standing Orders will apply, and you have the right to speak in Welsh or English, as is always announced at the beginning of every committee.

9.34 a.m.

**Y Mesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru)—Cyfnod 2:  
Ystyried Gwelliannau  
Proposed Learner Travel (Wales) Measure—Stage 2: Consideration of  
Amendments**

[2] **Alun Cairns:** I have some speaking notes that will, I hope, help Members of the committee.

[3] **Ann Jones:** Before you do, may I place on record my disappointment at the lateness of the papers? They came to us on Tuesday afternoon, and a further paper came yesterday afternoon, which is not acceptable. I realise that this is one of the first Measure committees to go through the Stage 2 process, but I feel that the timescale involved in our receiving the papers has hampered our ability to do justice to the Measure. That is no criticism of the committee's secretariat, but I just mean that I do not think that this process will be as clear as it should be.

[4] **Alun Cairns:** Your comments have been made on the record, and people will, no doubt, take note of them. It is important that we recognise that this is one of the first Measure committees to get to Stage 2. One Measure has passed through the Assembly previously, but this one is a little more complicated than that one, and many more amendments have been tabled to this proposed Measure. We are all learning the process as we go on, but I have no doubt that the scrutiny will be as robust as it would be if we were experienced.

[5] Members were sent a note from the clerk explaining the principles of how Stage 2 works. I just want to explain in more detail, however, how this morning's meeting will run and how I intend to handle the discussion.

[6] In relation to this item, Members should have before them a copy of the proposed Measure, the marshalled list of amendments, and the groupings of amendments for debate. The marshalled list of amendments lists the amendments tabled according to the order of the sections to which they refer in the proposed Measure. Schedules will be considered with the relevant sections that introduce them. So, for the purposes of our meetings, we will consider the amendments tabled to the following divisions of the Measure: sections 1 to 25; Schedule 1; section 26; Schedule 2; sections 27 to 29; and finally any new sections proposed.

[7] You will see from the groupings list that amendments have been grouped to facilitate debate, but that the order in which they are called and moved for a decision is dictated by the marshalled list. Members will need to follow the two papers, although I will advise Members when I call them of whether they are being called to speak in the debate or to move their amendments for a decision.

[8] There will be one debate on each group of amendments. I will call the proposer of the first amendment in a group, and he or she should speak to and move that first amendment, speaking to all the other amendments in that group as well. I will then call other speakers, including the proposers of any other amendments in that group, but they should not move their amendments at that stage; it is only the first amendment in the group that should be moved. Members who do not have an amendment in the group but who wish to speak should indicate their wish to do so in the usual way.

[9] I will call the Minister to speak on each group, and, to conclude each debate, I will call the proposer of the first amendment in the group to wind up. Following the debate on the group, I will clarify whether the Member who moved the first amendment still wishes to press

it to a decision. If not, he or she may seek agreement from the committee to withdraw it. If it is not withdrawn, I will put the question on the first amendment in the group that the amendment be agreed to. It is my intention that the votes be recorded so that the names of those who vote for, against or who abstain are recorded in the minutes.

[10] I will call the proposers of other amendments in each group to move their amendments at the appropriate time in accordance with the marshalled list. If you do not wish to move your amendment, you should say so clearly when the amendment is called. For the record, only committee members may propose amendments.

[11] Members will be aware that they may only debate a section of the proposed Measure if an amendment to it has been tabled. If there are issues with any other sections that do not have amendments tabled to them, unfortunately, there will not be an opportunity to speak, although we will seek to clarify the position if people have individual points to be clarified.

[12] Any sections to which amendments have not been tabled will be deemed to have been agreed, as will any sections for which tabled amendments are not agreed to. I will announce which sections have been agreed at the end of the meeting.

[13] I propose to adjourn proceedings for short breaks as and when Members feel the need. I therefore ask that you indicate that at the appropriate times.

[14] Our next meeting is scheduled for 3 July 2008. Any amendments not disposed of today will be dealt with at that meeting. If it appears that further meetings are required, the clerk will contact Members about suitable dates and ask the Business Committee for permission.

[15] For any sections not disposed of today, there will be a further opportunity to table amendments to them, and the clerk will notify Members of the tabling deadline and the process involved. The information will also be published in the business notice.

9.40 a.m.

[16] Finally, I would like to clarify my role as Chair in today's proceedings. While I will be responsible for applying, impartially, the procedural rules and for giving everyone their fair opportunity to contribute, as those contributions apply to the committee's work, I will also need to move and debate the amendments that I have tabled in my capacity as my party's member on this committee. I will also seek support for my arguments.

[17] Are there any questions at this stage in terms of the process? I see that there are not. As I said earlier, this is new to us all, and I have no doubt that we will be depending on the clerk for guidance to ensure that we follow Standing Orders and that everyone is clear as to what we are doing.

**Mannau Lle y Darperir Addysg Feithrin (Adran 1)**  
**Places Where Nursery Education is Provided (Section 1)**

[18] **Alun Cairns:** The first grouping to be considered is amendment 7. I call on Kirsty Williams to propose and speak to amendment 7.

[19] **Kirsty Williams:** I propose amendment 7.

[20] Amendment 7 refers to section 1 of the Measure, outlining the main terms that are used within the rest of the Measure. I very much welcome the fact that the Measure makes provision, potentially, for transport to nursery settings, and note that, as it currently stands,

nursery settings that would be included include those that are directly provided by the local authority, with which many of us will be familiar. Also, it makes provision for nursery settings that have financial assistance from the local authority. Members will be aware, for instance, that provision for three-year-olds is made available in a variety of settings, not just in a traditional school setting, or a setting attached to school, but in privately run nurseries and in voluntary sector nurseries.

[21] The purpose of my amendment is to add an additional paragraph that would allow for the inclusion of organisations that may not receive financial assistance directly from a local authority, but from an agency of the Welsh Assembly Government; for instance, Mudiad Ysgolion Meithrin receives money directly from the Welsh Language Board. My intention is to ensure that such organisations are covered by this Measure; it should cover not only organisations that are supported by the local authority, but also those that are supported by, as it states, Welsh Ministers or the Welsh Assembly Government. That would ensure that no-one fell outside of the scheme. If the Assembly Government is providing financial assistance to an institution, it makes sense that transport to that institution is treated in the same way as transport to institutions that receive money directly from the local authority.

[22] **Alun Cairns:** Thank you, Kirsty. As a supporter of this amendment, it is now my opportunity to speak to it formally. I will seek to highlight some examples where this amendment would provide support and clarify the transport arrangements to nurseries. Kirsty has made the point about Mudiad Ysgolion Meithrin. I am familiar with a number of Welsh-language nurseries and, because they are not present in large numbers in some parts of Wales, there can be some distance between those nurseries and where people live. I am familiar with a number of examples of cases where parents have been almost compelled to use the local playgroup and nursery, provided by the voluntary sector, although financially supported by the public sector. The children have been unable to go to the Welsh-language nursery simply because it is further away and they did not have access to private transport; even if they had such access, they were not being given their rights on that basis. Therefore, parents were compelled to start the child's education at an English-language nursery or playgroup.

[23] In many areas, where the demand for Welsh-medium education is not as high as in other places, it is inevitable that a number of Welsh-language playgroups will be further away. Therefore, if we are genuinely going to offer that equal choice, of whether a child should be educated through the medium of Welsh or English, we quite obviously need to be prepared to financially support the transport arrangements, for reasons of safety to allow the youngest of children to access education. Are there any other Members who wish to speak in relation to this?

[24] **Lorraine Barrett:** You say playgroup; can we have clarification on what constitutes nursery education, for the record? You have mentioned playgroups, but, to me, a playgroup is different to nursery education.

[25] **Alun Cairns:** From the age of two and a half, funding is provided by the Welsh Assembly Government and from various other sources for pupils to enter playgroup and nursery education. Sure Start is one obvious example. The point that I am making is that, at present, many children aged two and a half have to travel much further for the opportunity to attend a Welsh-medium setting. This amendment would create an obligation to support travel to the Welsh-language nursery, as one example.

[26] **Kirsty Williams:** Alun has given one very good example, but the issue for me is that it does not make sense to not make explicit reference to bodies that are in receipt of financial assistance from organisations supported by Welsh Ministers. This Measure will potentially last a long time, and, in the future, there may be different funding arrangements for nursery education; we may move away from a system that is based on local authorities, so it seems to

me to make sense to have a reference to organisations that are supported by Welsh Ministers.

[27] **Alun Cairns:** You are right. In terms of the rules that I mentioned with regard to who should contribute when and where, I am sorry, Kirsty—I should have called you at the end. I apologise for that.

[28] **Kirsty Williams:** That is fine; we are all learning.

[29] **Ann Jones:** While we are discussing the terms—I have some sympathy with the amendment that has been tabled—I seek clarification on the statement of independent schools under the Education Act 1996. I seek assurance from the Deputy First Minister that we are not looking to provide transport for those who decide to opt out of local education authority education. I have some sympathy with the amendment, and I would like to hear what the Deputy First Minister has to say on the argument that has been put forward.

[30] **Alun Cairns:** Thank you, Ann. I ask the Deputy First Minister to speak to the amendment.

[31] **The Deputy First Minister and Minister for the Economy and Transport (Ieuan Wyn Jones):** Thank you for the opportunity to contribute to what is a historic occasion for us all. This is the first time that I have been involved in an Assembly Measure, as is the case for all of us, at this Stage of its proceedings, and it is unfortunate that, at the first hurdle, as it were, the Government has to resist an amendment put forward by a Member. Although I understand the point that has been made by Kirsty and Alun, the amendment is based on a misunderstanding.

[32] I have asked for this to be clarified before today's proceedings. The Welsh Assembly Government does not directly fund persons providing nursery education. The Welsh Assembly Government, through an Assembly sponsored public body, may be providing funding to an organisation for things other than the nursery education, which may be for Mudiad Ysgolion Meithrin, but for the specifics of nursery education, that funding is channelled not directly by the Welsh Assembly Government, but through local authorities. That is why the provision that is currently in the Measure, which is down at clause 1(4)(i), states:

[33] 'places where nursery education is provided—

[34] (i) by a local authority'.

[35] I hesitate to mention this, but I will. Alun, when you moved in support of the amendment you were not quite sure whether it was the local authority or whether it was the Welsh Assembly Government and then you said that it was to catch all public bodies. The reality is that, in this case, it is local authorities. The duty to provide free part-time nursery places is placed on each local authority, so the funding from the Minister is made available to local authorities through the revenue support grant settlement. Therefore, this amendment could muddy that understanding of the current integrated approach to the planning and delivery of early years education provision in authorities. The current funding arrangements are as I have described.

[36] The School Standards and Framework Act 1998 places a duty on local authorities to secure sufficient education provision for under-fives, under the early years development and childcare partnerships. It is, therefore, appropriate that each local authority determines where that provision is made, taking into account the needs of the children and their parents, the supply of providers and local circumstances.

[37] The proposed amendment concerns the definition of a relevant place, which comes into play, for instance, in section 2 on the duty to assess learner travel needs. I am satisfied that the existing wording in section 1 is sufficient to allow coverage of travel to places where nursery education is provided. The definition of relevant places can already encompass both maintained and non-maintained nursery settings—for example, an authority’s nursery units in schools and playgroups run by voluntary organisations with some financial support from the authority. Therefore, I cannot accept the amendment.

[38] **Alun Cairns:** I call on Kirsty to reply to the debate.

[39] **Kirsty Williams:** Thank you, Alun, and I thank the Deputy First Minister for his explanation. I regret the fact that the Deputy First Minister is trying to resist this amendment. We have not tabled this amendment to try to undermine the Deputy First Minister in any sense, or to pull a fast one; it is just, in my opinion, to future-proof arrangements. The Deputy First Minister used the word ‘current’ in his explanation. The current arrangements for funding nursery provision do channel that funding through local authorities and are therefore captured by the Measure; I accept that. However, he did use the word ‘current’. My argument is that, by including this amendment, we are not expanding it to cover any more bodies, but it would cover any future changes to financial arrangements and funding arrangements in this particular setting. If there was a change in the current arrangements and we were to move to a situation where we were looking at more direct funding from central Government, rather than via local authorities, this amendment would actually cover that and we would then not be in the position of having to come back to a Measure committee to amend the legislation because we did not cover it all on this particular occasion.

[40] **Alun Cairns:** Kirsty, do you wish to move to a vote or do you wish to withdraw your amendment?

[41] **Kirsty Williams:** I wish to move to a vote, Chair.

[42] **Alun Cairns:** The question is that amendment 7 be agreed to. I call for a vote.

*Gwelliant 7: O blaid 2, Ymatal 0, Yn erbyn 3.  
Amendment 7: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ann  
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 7.  
Amendment 7 defeated.*

**Dyletswydd i Asesu Anghenion Dysgwyr ac i Wneud Trefniadau Cludo ar gyfer Addysg a Ddarperir gan Ysgol sy’n Grefyddol o ran ei Chymeriad (Adrannau 2 a 3)  
Duty to Assess Learner Travel Needs and to Make Transport Arrangements in respect of Education Provided by Schools of a Religious Character (Sections 2 and 3)**

[43] **Alun Cairns:** The next group is amendments 8 and 9. These relate to the duty to assess learner travel needs and to make transport arrangements in respect of education provided by schools of a religious character.

[44] I call on Kirsty Williams to propose amendment 8, and to speak to the other



amendment, amendment 9.

[45] **Kirsty Williams:** I propose amendment 8.

*Cafodd gwelliannau 8 a 9 eu grwpio ar gyfer y drafodaeth.  
Amendments 8 and 9 grouped for debate.*

[46] I will say from the outset that I am aware that many local authorities in Wales already make voluntary decisions with regard to funding travel for learners to schools of a religious character. However, that is not universally the case. I believe that children and their parents in all parts of Wales should have the opportunity to make choices about their child's education in a way that they feel best suits them and their families. Those choices should not be curtailed due to, perhaps, an inability for that particular family to afford travel arrangements.

[47] Perhaps I could give the committee an example from my own constituency, in Powys. Whereas the neighbouring authorities pay for children to travel to Catholic schools, if that is the choice that their parents make for them, Powys County Council refuses to pay for travel arrangements to schools of a Catholic nature. For many parents, the choice to have their child educated in that way is therefore removed from them, because they cannot afford to make the necessary travel arrangements. For instance, I am currently dealing with a family that would like the children to be educated at the Catholic school in Brecon, but they are not able to get free transport to that school because it is not Powys authority's policy to provide it. I am also dealing with another family whose child is in secondary education and travels from Ystradgynlais to the Catholic secondary school in Swansea. That family has to make all the travel arrangements itself, because the local authority does not currently have a duty to provide transport. That sits uncomfortably with me, if we are talking about treating everybody equally. My county does not have a duty to provide transport to Welsh-medium education either, but it feels that parents who make that choice for their children should be able to access that education, for which I am very thankful. However, if it is my right as a parent to make a choice relating to a particular aspect of my child's education and get free transport, it is then unfair for other families, who are making different choices for their children, not to be able to get free transport.

[48] As I said, I am well aware that many local authorities are already doing this on a voluntary basis and, therefore, I believe that the costs to local authorities would not be significantly greater. Members will be aware of a letter that was circulated yesterday by the Archbishop of Wales, who I believe summed up the situation perfectly. We have a proud tradition, in Wales, of religious institutions providing educational opportunities. It is not about forcing people to go to those schools; it is about allowing parents to make a choice. In a climate of a squeeze on local authority budgets, my concern is that more and more local authorities will remove the current provision in order to save money because they are not required to provide this transport. These amendments seek to ensure that the practice that already exists is underpinned on a statutory basis and that those local authorities that are not making such provision at the moment are compelled to do so.

[49] **Alun Cairns:** I am in support of the amendment. There are 260 schools of a religious character in Wales, serving 50,000 young people. I think that unless we offer equal rights to those pupils to attend a school of a religious character and have safe and secure transport to school, it would bring shame on the Assembly for failing to meet its obligations in relation to the rights of those individuals to be educated at a faith-based school and to have transport that is safe and secure. There is a huge principle here and if the amendments in this group are not carried, I think that we will be ignoring the safety and discipline requirements and regulations that this Measure would introduce for the safety of children being taken to school.

10.00 a.m.

[50] Some pupils would be travelling to school in a safe and secure environment, which this Measure would introduce, but others would not necessarily have the same safe, secure environment if transport was arranged by another means. That is wholly inappropriate and unfair, and it is nothing other than discriminatory.

[51] With regard to what local authorities already provide, Kirsty Williams highlighted some cases where we have had to battle as individuals. However, by and large, local authorities are responsible and, in effect, deliver what is proposed in this amendment on a day-to-day basis to allow pupils and parents to have the choice of a school of a religious character. The cost implication is almost insignificant, because this is already being done. However, as we have seen in the south-west of England and in Oxfordshire, when local authorities are in cost-cutting mode because of tight financial settlements, should we allow this to remain discretionary, this provision will always be under threat. The Archbishop of Wales said in his open letter to the Minister that it would be unrealistic to offer denominational education within each small local community, hence the importance of ensuring travel arrangements that ensure a safe and viable journey to school for every child.

[52] While local authorities will always be under pressure to reduce costs and waste, and rightly so, it is sometimes easier to reduce costs than waste. If authorities were to reduce costs in this way and withdraw provision, they could undermine the viability of Church in Wales schools, Catholic schools, and schools of any other religious character. As a member of the committee, I ask Members to think long and hard when they vote on this amendment in the hope that we can preserve and guarantee the rights of parents and pupils who really want, for their own strong reasons, to attend a school of a religious character. Do any other Members wish to speak to this amendment before I call the Minister?

[53] **Ann Jones:** I have thought long and hard about this one, and I think that it is a matter of conscience. I am quite upset that the Government cannot accept this amendment. Like you, I think that most local authorities are very responsible in looking at the needs of faith-based schools and of parents who make that choice. However, you are right that it is a matter of social justice; it is a matter of equality. This Government's stance on this amendment has placed me in a dreadful situation. I know that we have a policy on Welsh-medium education, but I do not believe that there is a Government policy on faith-based schools at the moment. Therefore, I now ask for the first of our adjournments. I would like to listen to what the Minister has to say first, but I ask for a five-minute adjournment to seek further clarification on whether, on a matter of conscience, the whip's advice can be ignored.

[54] **Alun Cairns:** Before we adjourn—

[55] **Ann Jones:** I would like to hear what the Minister says first.

[56] **Alun Cairns:** Okay. If members of the committee are happy, I would like to continue with the debate on this amendment and adjourn immediately before the vote. Is everyone content with that?

[57] **The Deputy First Minister:** Sorry, what was the advice?

[58] **Alun Cairns:** Are you content that we continue the debate on this grouping of amendments, but adjourn before the vote, because an adjournment has been requested? We will then return to vote. We will have a short adjournment for a specified time.

[59] **The Deputy First Minister:** Okay.

[60] **Alun Cairns:** Would any other Members like to speak before I call on the Minister?

[61] **Lorraine Barrett:** Does that mean that I cannot speak after the Minister?

[62] **Alun Cairns:** What is the procedure in terms of the order of speakers and who should speak?

[63] **Mr Williams:** Any other Member who wishes to speak can do so before the Minister responds.

[64] **Alun Cairns:** Therefore, the Minister is the last one to speak.

[65] **Lorraine Barrett:** I have some sympathy with the principle of what has been said by Kirsty, Ann and you. The Minister will obviously give the Government's view, but, as I see it, while we have a duty to promote the Welsh language—Welsh-medium education has equal status—it is not the policy of this Government or this country to promote faith schools. I see such schools as being in a different category to Welsh-language provision. I have sympathy along the lines of equality of opportunity; I can see that point of view, but I cannot support the amendment. For me, a school is a school; it should teach a curriculum, and the faith element can be obtained elsewhere. However, that is getting into my personal views. Thinking about it from the perspective of Welsh Assembly Government policy, there is a difference between provision of and access to Welsh-language education and education in a faith school.

[66] **Alun Cairns:** I shall call on the Minister to speak and then on Kirsty to reply. We will then adjourn for a brief time if Members are content with that.

[67] **The Deputy First Minister:** I just wish to mention the fact that I have not seen the open letter that has apparently been sent to me. However, I believe that I am aware of the arguments. I mention that because someone mentioned that there was an open letter to me. I have had a letter from the Bangor diocese, but I have not had a letter from the archbishop.

[68] **Alun Cairns:** It was copied to members of the committee.

[69] **The Deputy First Minister:** Right, okay. I am mentioning it as a matter for the record, rather than because it would change the way in which I would present my evidence to the committee. I just wanted to make that point as the matter was raised.

[70] I understand the arguments, and what I am saying in response is that, as I think both Alun and Kirsty have mentioned, there is nothing in the proposed Measure that reduces the powers of local authorities to support transport to schools on the basis of religious preference. Therefore, the amendment would be a fundamental shift away from the principle that the authority considers its transport provision on the basis of the nearest suitable school for the learner without taking the religious character of the school into account. That principle has worked well in practice, it seems to me, because local authorities, by and large, provide that discretionary travel.

[71] A link has been made, which I perfectly understand, because it is in the Measure. However, the considerations in policy on denominational schools are different from those on Welsh-medium schools. When the matter about faith and Welsh-medium education was raised in the scrutiny committee, I promised to go away and think very hard indeed about how we could address the concerns that had been raised in the committee. However, if I remember correctly, the scrutiny committee made no recommendation on either of these issues. I think that it asked me to reflect on the evidence that had been heard, but from memory there was no recommendation by the committee, following the scrutiny, that we should move in this direction. I thought long and hard indeed about both areas.

[72] There is a clear distinction, as Lorraine has said, between Welsh-medium education and faith schools, because it is Government policy, and statutory policy for the Assembly, to promote Welsh-medium education and the Welsh language in particular. The Government of Wales Act 2006, the Welsh Language Acts and policies related to promoting the Welsh language are clearly Government policy and, because the Government of Wales Act 2006 also binds the Assembly, would apply here. There is no similar provision placing a responsibility on the National Assembly for Wales or the Assembly Government to promote faith schools.

10.10 a.m.

[73] Let us look at how we have worded the Measure. I am obviously now dealing with other amendments, but it is important to do that for clarity. Section 10 of the proposed Measure as it stands states that,

[74] ‘Each local authority and the Welsh Ministers must promote access to education and training through the medium of the Welsh language when exercising functions under this Measure.’

[75] I thought long and hard about that provision, but we were able to do it in that way, because that is already Government policy—it is already a statutory duty upon us. We have no similar provision in relation to faith schools. If it were Government policy or a statutory duty, that would be a different category. However, that is not the case.

[76] There is another reason why we have to be extremely careful here. If we were to legislate on the basis of—and this would have an unintended consequence, in my view—an entitlement to provide transport to a school that provides religious education, which accords with a parental wish, we would have to provide the same entitlement to those who did not want a faith-related education. The problem is that, once you have established a duty, the duty must apply to everyone. Therefore, that entitlement could create a discrimination in the context of the European convention on human rights. That is always the problem when you have duties—they must apply equally. We all come at this from a social justice angle, but the social justice angle must always look at the whole picture. That would be the unintended consequence of passing this amendment.

[77] Therefore, what we are saying is that, where local authorities are currently providing transport—and we would encourage local authorities to continue with their discretion to provide transport—I do not believe that it would be appropriate for us to make it a duty on local authorities to do that. To a greater or lesser extent, local authorities across Wales provide such transport. In my recently issued, non-statutory guidance on home-to-school transport, I encourage local authorities to continue to use their discretion to provide transport to denominational schools. Therefore, in that non-statutory guidance, I have made it clear that I would like to see their continuing to use their discretion to provide transport to denominational schools.

[78] In response to the consultation, some organisations wanted transport to faith schools to be made an entitlement, while others wanted the current provision to remain. There was no clear view in the consultation. As I have indicated, when we discussed this at some length in the scrutiny committee, the committee, when it considered the evidence, did not come back to me with a recommendation that we should be doing this, and I believe that we should consider that matter. In planning, authorities would need to estimate the number of learners who would be interested in attending schools of a religious character, but this could be covered in the guidance, rather than in the Measure itself.

[79] Therefore, to conclude, I was not persuaded that there was a strong enough case to

change the proposals in the Measure to introduce transport entitlements in relation to schools of a religious character.

[80] **Alun Cairns:** Thank you, Minister. I call on Kirsty to reply. If Members then wish to seek a brief adjournment, we can do so, if Members are comfortable with that.

[81] **Kirsty Williams:** I am disappointed with the Government's attitude. The Minister says that the current system has worked well in practice. I am bemused that the Minister is therefore reluctant to enshrine that system, which he says has worked well in practice, in the Measure—it does not seem to follow logically. I accept the fact that the Minister and the Government, have a duty to promote the Welsh language, but do not have a similar duty to promote religious education. However, we are not asking the Minister to promote religious education; we are asking the Minister, in this amendment, to facilitate choice for parents in this particular area.

[82] Although I accept that it does not have a duty to promote religious education, I believe that the Assembly has a duty to promote equality of opportunity, which is being taken away from parents in the current circumstances. It is the parents who can least afford to pay for transport, and their children, whose ability to choose is being removed. The parents who have the wherewithal to make these choices will continue to do so without great sacrifice for that family. It is our poorest families who are struggling to meet the costs of school transport who are being affected.

[83] So, I accept that this is a matter of individual choice, and perhaps other parents will want to make different choices for their children. However, I am trying to establish a level playing field for all children in Wales who, regardless of where they live, have a basic right for any religious views that they may have to be considered when making their transport arrangements. If it is good enough for people in some parts of Wales, then I believe that that right should be enshrined across Wales.

[84] **Alun Cairns:** Thank you very much. The proposal was that we adjourn at this stage for five minutes before I invite Kirsty to decide whether she wishes to withdraw the amendment or put it to a vote.

[85] **Kirsty Williams:** I wish to put it to a vote.

[86] **Alun Cairns:** Okay, but we will adjourn before that vote. I suggest that we return at 10.20 a.m..

*Gohiriwyd y cyfarfod rhwng 10.16 a.m. a 10.22 a.m.  
The meeting adjourned between 10.16 a.m. and 10.22 a.m.*

[87] **Alun Cairns:** I bring committee back to order. Thank you, everyone, for your understanding on that brief adjournment. As we said, this is a new process, and there has not been a Stage 1, so I recognise that people may need some thinking time. I will now ask Kirsty again whether she wishes to move to a vote on amendment 8 alone, at this stage, or to withdraw the amendment.

[88] **Kirsty Williams:** I would like to have a vote on amendment 8, please, Chair.

[89] **Alun Cairns:** I therefore call for a vote.

*Gwelliant 8: O blaid 3, Ymatal 0, Yn erbyn 2.  
Amendment 8: For 3, Abstain 0, Against 2.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Jones, Ann  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ieuan Wyn

*Derbyniwyd gwelliant 8.  
Amendment 8 carried.*

[90] **Alun Cairns:** We will vote on amendment 9, which was also debated in that group, at a later stage, when we come to that part of the legislation. However, the discussion of amendments 8 and 9 is now closed.

**Dyletswydd i Asesu Anghenion Dysgwyr ac i wneud Trefniadau Cludo ar gyfer Addysg a Gyflwynir drwy Gyfrwng y Gymraeg neu'r Saesneg (Adranau 2 a 3)  
Duty to Assess Learner Travel Needs and to make Transport Arrangements in respect of Education Provided through the Medium of the Welsh or English language (Sections 2 and 3)**

[91] **Alun Cairns:** I call amendment 18 in my name, which is grouped with amendment 19.

[92] I propose amendment 18.

*Cafodd gwelliannau 18 a 19 eu grwpio ar gyfer y drafodaeth.  
Amendments 18 and 19 grouped for debate.*

[93] Amendment 18 relates to the duty to assess learner travel needs for Welsh-medium education, and amendment 19 concerns the duty to provide transport to Welsh-medium places of education. In many ways, this debate is similar to the last one, and you will recall that the debate on the previous amendments was much focused on Welsh-medium education. As it stands, this is a discretionary responsibility that falls on local authorities. However, I would say that almost all local authorities bar the odd isolated individual case—and that involves individuals, not even an authority in general—meet the demands of local people, although it is a discretionary matter.

[94] There is a further section in the Measure, section 10, which the Deputy First Minister believes, judging from the explanatory notes and briefings and debates that have been in the public arena, places an obligation on local authorities to provide for the learner travel needs of those in Welsh-medium education. I firmly believe that section 10 will not place the same obligation on a local authority in relation to Welsh-medium pupils as it has in relation to English-medium pupils. I will give a simple example. Section 10, in my view, would permit someone to be transported to an English-medium school at which access to Welsh-medium education could be provided over the internet. If I wanted to be flippant about section 10 and the loose way in which it is phrased and worded, I could interpret 'access to Welsh medium education' to include a new car park, because that would provide access to Welsh-medium education. So, a local authority's obligation under section 10 is not robust.

[95] We are not playing here, with the rules, with debates and with strategies; we are writing new laws at this stage. This is fundamental. If we are properly to address our constituency cases in which a local authority is at best making it awkward for an individual, or at worst opposing the provision of free transport to Welsh-medium education, I believe that this is the time to put it right. If ever there was a purpose for the National Assembly for Wales, I would have thought that it would be to provide equality of access to the Welsh and English languages. I firmly believe that the Measure as it currently stands, without these

amendments, means that we are not giving equal access to Welsh-medium and English-medium education. The point has been made that one consequence of placing equal access in a legislative form would be that of community schools in some parts of Wales having to identify whether they are Welsh-medium or English-medium schools. The phrasing of this amendment has been careful to overcome that, so that we do not need to have that designation. Even if we did have to go down that route, for a long time, a Welsh-medium unit in an English-medium school has been the way forward for many communities. Unless we place an obligation on local authorities to provide a safe and secure means of transport for learners to Welsh-medium schools—which is just to place them on an equal footing to those in English-medium education—the Assembly will have, without question, missed out on fulfilling one of its huge moral obligations.

[96] Finally, given the ambiguity of section 10, if a parent wanted to challenge it, the only way to do so would be through the courts. That would be the only way to enforce it. Would we expect a parent to spend £10,000 or £20,000 on going to court to seek the absolute clarification of section 10? I have given an example in which a local authority could argue that it is meeting its obligations. We are not playing anymore; we are writing laws. If we cannot offer pupils in Welsh-medium education the same access as pupils in English-medium education have, we will have abdicated our responsibility.

[97] I call on Kirsty Williams, who is the supporter of this amendment.

10.30 a.m.

[98] **Kirsty Williams:** I just want to reinforce the points that Alun Cairns has made. The reality is that most local authorities already make this provision, but we want to enshrine that in statute, within this Measure. I remember colleagues in the second Assembly, from the Labour Party and Plaid Cymru, attacking Liberal Democrat Members because of a question that had been raised in Bridgend County Borough Council about transport to Welsh-medium education settings. I admit that it was a Liberal-Democrat led council at the time, which is why it was so easy to make those attacks on us. It was looking to save money, and so it was looking at the things that it had to do by law and at those things that it could do if it wanted to but for which it had no statutory responsibility. I am afraid to say that one thing that it considered was the removal of free transport to Welsh-medium education settings. I remember well the stinging criticism from Plaid and Labour Members that that local authority was even considering doing that. We have heard in the previous debate that councils are often faced with having to look at where they can save money—understandably. Unless we carry this amendment today, I am concerned that Welsh-medium education will become the preserve of those who can afford it, or who are capable of taking their children to those schools, and will not be a right for children in Wales.

[99] I appreciate that the Government has reflected on the views of the Enterprise and Learning Committee and has tried to amend its previous document, but what we have here in section 10 is nothing more than a fig leaf trying to save the Deputy First Minister some embarrassment; it is not a robust defence of the rights of children in this country to be educated through the medium of Welsh. It does not give the strength, legally, that we need to defend that right. As Alun Cairns said, this amendment has been carefully worded after careful consideration and careful advice from the legal teams—and I appreciate that we do not want to give rise to the law of unintended consequences, which I know is what the Deputy First Minister will say when he responds—to give strength to that right, and to try to avoid some of the issues that I believe the Deputy First Minister will try to raise in defence of his rejection of this amendment.

[100] **Alun Cairns:** Are there any other Members who wish to speak to this amendment? I see that there are not. I call the Deputy First Minister to respond.

[101] **The Deputy First Minister:** I had hoped that we would have a reasonable debate on this section today, because we all feel strongly about it, but I want to say on record that I regret some of the language that has been used in the debate. Words have included ‘shame’, ‘lack of discretion’, ‘discrimination’, ‘saving embarrassment to the Minister’, ‘abdicating responsibility’ and ‘playing at making laws’. I want to make it clear that we are all here trying to do our best at creating these laws, and I would have preferred this debate, of all the debates on this Measure, to be held in a much better political context. That is my first point.

[102] As everyone knows, when I was before the committee, I was scrutinised pretty strongly on these measures, particularly on the previous group of amendments and this one. I sent a letter to the committee, setting out some of the legal issues in relation to this provision, and I considered carefully the views that had been expressed. Although those views were expressed quite strongly in the committee, by Alun and Kirsty, when the committee’s recommendations came to me, I was surprised to see that no recommendation had been made on this provision at all. So, I was left trying to explain the legal position to committee—and I had expressed a wish to try to overcome them—but no advice came from the committee. Had I accepted the committee’s recommendations, I probably would have done nothing, because I had been given no indication that the committee wanted me to do anything. So, we went away and considered this very carefully indeed.

[103] The first point that we had to bear in mind was that if we put ourselves in a position of imposing a duty—and I come back to the point that I made on the previous amendment—on local authorities to make this provision, we have to ensure that that duty is wide enough to ensure that there are no unintended consequences as a result of it. If that duty is imposed, we all have a responsibility to understand the nature, extent and effect of the duty that we are imposing on local authorities.

[104] I looked at all the possible angles, and I expect all Members who have made a contribution to the debate to respect the time and effort that we have taken, and not to treat that so lightly. I am asking the committee to accept that we have considered all the arguments, including the legal arguments, and that we have come to the view that the proper way in which to proceed is to acknowledge that, because there is Government policy and because there is a statutory duty on us to make proper provision for the promotion of the Welsh language, this provision should be included in section 10, which is what we have done. I believe that that is the best way to proceed.

[105] It is not always easy—and I think that this point has been overlooked—to determine the true definition of ‘Welsh-medium education’, because it differs across Wales. Alun was talking about the challenge that a parent might face in relation to section 10, but you have to consider what other challenges would arise when a local authority determines that the level of Welsh-medium provision in a school is below that required to call it ‘Welsh-medium education’ but a parent believes that it is not. A parent could go to court to challenge the provision that you have laid down, by asking, ‘What do you mean by Welsh-medium education?’. That is a sensible point to be putting forward, because Welsh-medium education varies in its content and extent in many parts of Wales.

[106] I ask the committee to understand that this is not a fig leaf; it is a serious attempt to address a matter that had been raised in committee and that we have thought long and hard about it. We have looked at the consequences in relation to social justice and equality of access, and we have come to the best conclusion possible under the current circumstances. Were we to accept the amendment as it has been tabled, we would be opening up all the arguments that we have considered and rejected.

[107] **Alun Cairns:** I thank the Deputy First Minister. With the committee’s permission, I



will now seek to close this small debate on the groupings of amendments, with my contribution.

10.40 a.m.

[108] The Deputy First Minister made his best attempt at putting forward a defence for this, but I want to go back to a couple of points that he mentioned First, he said that he has been scrutinised heavily during this debate. I accept that there has been scrutiny; the subject committee was ably chaired and this Measure was discussed by all Members at that time. However, given the form of debates on legislative processes, sadly we have not had the opportunity to test, clarify and explore further, or even to offer more detailed line-by-line scrutiny, at Stage 1. Unfortunately, that was not allowed. The scrutiny was robust at that committee, but I think that a Stage 1 Measure committee would also have given us more opportunity to clarify and probe in terms of what agreements we could reach. This is an issue on which I am sure we all want to reach agreement—the last thing that we want is for the language to become a divisive issue.

[109] There is a four-stage process. The Deputy First Minister mentioned the letter that he had received from the subject committee and that there were no recommendations in relation to languages; he said that, if he had acted according to the recommendations of that subject committee, he would not have done anything. However, in fairness to him, section 10 has been included, which the Minister believes seeks to overcome the concerns that were expressed orally, if not in the report. I remind the Deputy First Minister that a subject committee seeks to reach a consensus and controversial issues, in general, are left out because an agreement cannot be reached; otherwise, we would end up with minority reports. So, the point is that there was no consensus at that stage and I would say that the level of debate that we had was broadly political rather than legislative.

[110] I accept in good faith that the Deputy First Minister has sought to find the best way around this to provide access to Welsh-medium education without having to classify Welsh-medium or English-medium schools. I accept that argument. However, this amendment comes up with a better and more effective way of doing so than does section 10, because that section, as I have already stated, is exceptionally ambiguous. I do not believe for a second that a parent or child could go to court on the strength of section 10. I have just given one simple example where a local authority could easily get around the requirements of section 10 by, for example, providing internet-based learning through the medium of Welsh at an English-medium school. If that were my child, or the child of a constituent, I would think that that was wholly inappropriate; it would not be what we consider to be Welsh-medium education.

[111] The Deputy First Minister talked about the unintended consequences of the amendment. The amendment has been phrased very carefully. He asked how much would be taught through the medium of Welsh and how much through the medium of English, but the amendment is very careful on this point. I draw your attention to the second line of amendment 18 and the third line of amendment 19 where it states,

[112] ‘primarily through the medium of the Welsh language’.

[113] So, the Minister’s objections on those grounds do not stack up. ‘Primarily’ does not mean that you have to classify schools absolutely. Furthermore, as I said earlier, in extreme cases, you could have an English-medium unit in a Welsh-medium school or a Welsh-medium unit in an English-medium school, as has been the practice in many parts of Wales for a long time.

[114] This comes down to the Minister’s logic. He was prepared to allow one loophole in section 10, so that local authorities could get out of this, because of his fear of allowing

another loophole for people to challenge what is meant by ‘Welsh-medium education’. Stage 1 might have offered a bit more clarification, but we are allowing loopholes to appear where we should not be doing so. Therefore, given that we are writing laws and seeking to offer equal access to Welsh-medium and English-medium schools, as we did in relation to faith-based schools, and given the specific example from Bridgend County Borough Council, where my party was also part of the administration—I wholly opposed the policy, and I can remember the Minister for education at the time being exceptionally condemnatory in the Chamber, because of the threat of withdrawing that—this is our opportunity to close that down.

[115] This is our opportunity to make it an obligation on local authorities. This is an opportunity not to impose additional costs on authorities, because they are already doing it. They are under pressure to reduce expenditure, especially given the tight financial settlements, and I think that we can all agree that the settlements for the next three years will be tighter than they have been in recent times. This is an opportunity to guarantee that absolute right for parents to have safe, secure transport for their children to Welsh-medium education, should they wish it. I would urge Members to support it in writing this law.

[116] The question is that amendment 18 be agreed to. I call for a vote.

*Gwelliant 18: O blaid 2, Ymatal 0, Yn erbyn 3.  
Amendment 18: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ann  
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 18.  
Amendment 18 defeated.*

[117] **Alun Cairns:** We will come to amendment 19 later, in line with the order of consideration, following the marshalled list.

#### **Addasrwydd y Trefniadau Cludo (Adrannau 3 a 4) Suitability of Transport Arrangements (Sections 3 and 4)**

[118] **Alun Cairns:** Amendments 22 and 23 relate to the suitability of transport arrangements. These amendments have also been tabled in my name, so I will propose amendment 22 and speak to the other amendment in the group as I have done previously.

[119] I propose amendment 22.

*Cafodd gwelliannau 22 a 23 eu grwpio ar gyfer y drafodaeth.  
Amendments 22 and 23 grouped for debate.*

[120] The specifics of this amendment relate to time. The Measure, as it stands, calls for the local authority to take account of ‘an unreasonable amount of time’ spent travelling to school, under section 3(5). It says, specifically, that transport arrangements are not suitable if they take an unreasonable amount of time. This is another opportunity to clarify what is reasonable and what is unreasonable. This is an opportunity to place explicit rules within the guidance. The Deputy First Minister and other Members will be aware of the cases that I am about to raise, because I have raised them in the Chamber. At the moment, a four-year-old child in my

area is expected to travel for 70 minutes every day in order to get to a Welsh-medium primary school. I think that 70 minutes for a four-year-old child is wholly unreasonable. When the authority said that that was one isolated case, because of the route that was taken, lo and behold, we found another case, where a child from a completely different part of the area was also travelling for 70 minutes. So, I think that this is far more common than we expect it to be.

[121] In reality, what often happens, and what certainly happened in this individual case that I am highlighting, is that the parent ends up transporting the child. What about the parent who does not have the opportunity to transport his or her child? In this case of 70 minutes, the direct route takes 25 minutes, but the bus route that the local authority has arranged in order to reduce the number of vehicles on the road—I accept the rationale behind that—means that a four-year-old child has to travel for 70 minutes in order to get there. I think that that is wholly inappropriate. There is guidance in England, which we do not yet have in Wales, that makes the transport unsuitable if it involves a journey of more than 45 minutes. I am calling on the committee to consider this amendment and to include a clear distinction regarding what is unreasonable. I am not being unreasonable; I am calling for a limit of 45 minutes for primary-school pupils and 60 minutes for secondary-school pupils. If there are issues of traffic jams and so on, quite obviously, the time or the route would need to be assessed. Ordinarily, it is 45 minutes and 60 minutes for primary and secondary education respectively.

10.50 a.m.

[122] If the Minister was to offer guidance—saying that the way of overcoming this is by clear guidance—the question is then about the status of that guidance. Is it statutory or non-statutory guidance? How specific would it be? Why on earth do we not just clear it up? Asking any primary-school pupil to travel for more than 45 minutes is wholly unreasonable, so why does it need to be in guidance? Why can we not put it in legislation in the first place, so that those aged between four and 10 do not travel for more than 45 minutes, and that those aged between 11 and 19 do not ordinarily travel for more than 60 minutes? I ask the committee to support the amendment. I now ask Kirsty Williams, who has added her name in support of the amendment, to offer her comments.

[123] **Kirsty Williams:** I will be brief, because the amendment is self-explanatory. The reason why I support this is that we want to give further definition of what constitutes a reasonable amount of time for children to travel. It is self-explanatory. We just want a statutory limit set on what those timings should be; I do not believe that we have been particularly restrictive and punitive in the times that we have allowed. I am sure that there are many people who would argue that 45 minute for a four-year old is not acceptable, but we acknowledge the challenges that local authorities sometimes face when organising bus routes, so we have been broad in the amount of time specified. I am very happy to support the amendment.

[124] **Lorraine Barrett:** My initial reaction is that it is too prescriptive. What about 44 minutes, 43 minutes or 42 minutes? By leaving it as ‘an unreasonable amount of time’, that lends itself to common sense. However, having listened to your example there, I would not like to think of my four year-old granddaughter travelling for 70 minutes every morning.

[125] You mentioned traffic jams; again, I am not being facetious, but sometimes it can take me 45 minutes to travel four miles from my home to the Assembly in the morning. I imagine that, if a school bus had to pick up a few children on the way, and if the traffic is really bad, you could be travelling for more time. I would be interested to hear what the Deputy First Minister has to say. Could guidance be introduced on top of the Measure, saying that, if it regularly took 70 minutes, local authorities should find other ways of ensuring that children get to school in a more reasonable time, whether it is 40 minutes or 50 minutes? I

presume that you have based the 45 minutes on the guidance from England, and used that as a yardstick, but I think that it is too prescriptive. I would be interested to hear what the Deputy First Minister has to say.

[126] **Ann Jones:** I have some sympathy with these amendments, for the reasons that have been given. Could the Deputy First Minister look at putting what you are looking for into regulations, rather than into guidance? In many areas, there may be other ways in which children are transported to school. We should look at that. I think that 45 minutes or 60 minutes could be challenged, and we could get into situations such as that mentioned by Lorraine—what if it is 44 minutes or 46 minutes? Having ‘unreasonable amount of time’ on the face of the Measure, but with stricter regulations, rather than guidance, that we would not expect it to be more than the time that you mention in your amendment, might mean that we could find other ways of transporting children. As I say, I have sympathy with the amendment, and I will listen with great interest to what the Deputy First Minister has to say on this amendment before deciding how to vote.

[127] **Alun Cairns:** Thank you, Ann; I am grateful to you for that. I call on the Minister to respond to the debate.

[128] **The Deputy First Minister:** Obviously, we have sympathy with the arguments that have been advanced. Clearly, we want to ensure that a child’s journey is reasonable in terms of the time that it takes. However, it is not normal to have fixed times like this in a proposed Measure; it is not the normal way to proceed. What tends to happen is that you have a more general provision in the proposed Measure, which allows you to draft either guidance or directions that are more flexible. In that way, you can look at all of the circumstances and account for them rather than trying to cover every eventuality in a Measure, which would clearly be inappropriate as that is not the purpose of a Measure. The purpose of a Measure is to provide the power to do things. In directions or guidance, you can cover the kind of things that Lorraine mentioned.

[129] Lorraine made some interesting points. If the Measure were to specify 45 minutes, what happens if a bus is held in traffic and cannot get there in 45 minutes? Does that breach the Measure? You need a reflection in the directions and guidance that allows you to look at appropriate circumstances. So, although I am sympathetic to the principle that you have set out, it would be wrong to be prescriptive on the face of the proposed Measure.

[130] There was a question about the force of the directions and the guidance that would be made, which is a fair question. Section 15(3) states:

[131] ‘In making arrangements under section 3, 4 or 6 a local authority must comply with any directions given by the Welsh Ministers.’

[132] So, if we were to give those directions, they would have to comply with them. I do not think that there is any question of their being able to wriggle out of them, because they are not statutory.

[133] **Ann Jones:** I would like to raise a point for clarification, although I am not sure whether I can do so at this time. Having listened to what the Minister has said about the directions under that section, is a direction the same as a regulation? What would be the legal standing? Is there a way in which a direction could be inferior to a regulation? What is the pecking order? If it is a regulation, does it have more power than a direction or than guidance? Can we seek your assurance that you would use the topmost regulation with the most legal standing to prevent long journeys?

[134] **The Deputy First Minister:** That would be the intention. Section 15(3) states that ‘a

local authority must comply’.

[135] **Alun Cairns:** I will seek to respond to the Minister and close this debate. Lorraine asked about 43 or 44 minutes, which would be acceptable. It needed to specify what would be acceptable and what would be unacceptable; that is the logic of it. Forty-five minutes would be deemed to be acceptable, but anything longer would not be. The Minister asked a fair question about buses being held up in traffic jams, which was also raised by Lorraine. The phrasing is quite specific:

[136] ‘a journey to school which normally takes more than 45 minutes’.

[137] Therefore, an accident or a traffic jam on one particular day would not mean that they would be in breach of the guidance.

[138] **The Deputy First Minister:** Have you seen the traffic in Cardiff every day?

[139] **Alun Cairns:** The other option is that, if it is included in regulations later, as has been suggested may well be the case, a future Minister—it does not necessarily have to be this Minister—may have regulations that say that an hour or 70 minutes is appropriate. This is our opportunity to close the debate regarding what is acceptable and what is not. There is no guarantee.

11.00 a.m.

[140] There will be different parties and different colours—there may be parties that do not yet exist—that will come together and, in light of severe cost-cutting measures, will want to be as accommodating to local authorities as possible in order to reduce the costs and the obligations on them.

[141] Therefore, if the regulations are there—and let us say that 45 minutes and 60 minutes would be the time within those regulations—what on earth is the difference if they must be enforced, as the Minister said in his response? Section 3(5) details what would make transport arrangements ‘not suitable’, and section 15(3) states that, in making arrangements under this section, local authorities

[142] ‘must comply with any directions given by the Welsh Ministers.’

[143] as the Minister has said clearly. That would create the same obligation on them anyway, but it gives leeway for a future Minister—

[144] **The Deputy First Minister:** May I intervene?

[145] **Alun Cairns:** Yes, of course.

[146] **The Deputy First Minister:** As you have asked this question, it is appropriate that I seek to reply in an intervention. Because the amendment as it currently stands is so prescriptive, it does not allow you to look at the other things that need to be put into place in the way that you would be able to in a direction or regulations, which would allow you to consider all the circumstances. As a general principle—and this is not in relation to this particular amendment—you do not have these things in Bills or proposed Measures. That is a well-accepted practice—the proposed Measure would normally enable you to have the power, which you then detail through directions and regulations. Therefore, we accept that there is an argument in favour of doing this, and we agree that it should be done, but we are saying that it should be done under directions.

[147] **Alun Cairns:** I am grateful to the Minister for that point. I have a further question for the Minister, if Members are happy for me to do that rather than follow strictly what has been laid out—as long as we are not in breach of Standing Orders of course. The Minister said that he wants to consider circumstances surrounding it, and that those would go into the regulations. However, I cannot imagine any circumstances under which it would be acceptable for a four-year-old child, for example, to be on a school bus for longer than 45 minutes. That would cause the child pressure and stress before he or she began the school day. I highlighted the example of a 70-minute journey as an example. If a four-year-old child leaves home at 7.50 a.m. and the school bus leaves at the end of the school day at 3.20 p.m., which would mean the child would get home at 4.45 p.m., or whatever time that works out at, it is a pretty exhausting day as it is—that is why the school day is shorter than the average day. The Minister talks about taking into account much wider circumstances, but I cannot imagine any circumstances—

[148] **The Deputy First Minister:** It is not so much—

[149] **Alun Cairns:** Before I allow you to come in, I have a specific question that I would like you to answer. If it was in regulations, would it be subject to affirmative procedure and have to come to Plenary?

[150] **The Deputy First Minister:** It is not that the directions of themselves would have different times—so I accept your point, and I believe that I have made that clear. It is not an argument about whether I agree or disagree with you about the times, because the directions themselves would probably include times. However, it is appropriate that, in order to deliver something that is broadly acceptable to all parties, I must consult with local authorities. There has been no consultation whatsoever with local authorities about the times of 45 minutes and 60 minutes. I cannot think that there would be massive disagreement about that, but it is appropriate that there should be consultation with local authorities before something is put down in either a Measure or in directions.

[151] Therefore, it is not so much that there would be disagreement between us about the times, because I would agree with the example that you have given—I have no problem in agreeing with you on the basic principle. What I am saying is that the guidance and/or directions would be able to expand on this. They would say that it must be 45 minutes, but set out circumstances under which there would be exceptions. They may refer to re-routing transport at particular times of the year or whatever. In that way, you can actually look at it in the round; you cannot do that in a Measure, because you have to be prescriptive. That is why I believe that that would be appropriate. However, I believe that, in the case of directions, they would be issued by Ministers only.

[152] **Alun Cairns:** I am partly persuaded by the Minister's comments, and on the point that you made, diversions came into my mind as an example. I would think that, if a road was being dug up for a short period, that might be one reason for this to be considered in regulations rather than in a Measure. So, I accept the argument, and with permission I will happily withdraw the amendment, but I ask the Minister to consider long and hard whether he will make such regulations subject to the affirmative procedure, so that they come before the Chamber. I accept that he is reasonable as regards this debate, but who is to say that we will not have an unreasonable Minister in the future, and if the whole Assembly could vote on something like this, that might be useful. I will seek permission to withdraw the amendment anyway, and the Minister does not necessarily need to respond now, but I would like him to reflect upon whether it should be done under the affirmative procedure or not.

[153] **The Deputy First Minister:** I cannot give you that assurance today.

[154] **Alun Cairns:** I appreciate that.

[155] **The Deputy First Minister:** However, I will reflect upon the debate, and perhaps we could come back to this issue at the next stage of proceedings.

[156] **Alun Cairns:** Does any Member object to the withdrawal of amendment 22? I see that no-one objects.

*Tynnwyd gwelliant 22 yn ôl drwy ganiatâd y pwyllgor.  
Amendment 22 withdrawn by leave of the committee.*

[157] **Alun Cairns:** I am getting used to this procedure now. We now move to dispose of another couple of amendments in line with the marshalled list. We have had the debates on these amendments, but we have not yet voted on them. I call amendment 9 in the name of Kirsty Williams. It was debated earlier with amendment 8, which was carried, under a group of amendments concerning faith schools. I invite Kirsty Williams to formally propose amendment 9.

[158] **Kirsty Williams:** I propose amendment 9.

[159] **Alun Cairns:** The question is that amendment 9 be agreed to. I call for a vote.

*Gwelliant 9: O blaid 3, Ymatal 0, Yn erbyn 2.  
Amendment 9: For 3, Abstain 0, Against 2.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Jones, Ann  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ieuan Wyn

*Derbyniwyd gwelliant 9.  
Amendment 9 carried.*

[160] **Alun Cairns:** I now call amendment 19 in my name; this has already been debated with amendment 18.

[161] I propose amendment 19.

[162] The question is that amendment 19 be agreed to. I call for a vote.

*Gwelliant 19: O blaid 2, Ymatal 0, Yn erbyn 3.  
Amendment 19: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ann  
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 19.  
Amendment 19 defeated.*

**Diogelwch y Trefniadau Cludo (Adrannau 3 a 24)**  
**Safety of Transport Arrangements (Sections 3 and 24)**

[163] **Alun Cairns:** I call amendment 15 in the name of Kirsty Williams, which is grouped with amendments 10, 20, 40, 11 and 21. The amendments relate to the safety of transport arrangements. I invite Kirsty Williams to formally propose amendment 15 and speak to the other amendments in the group. We will then follow the procedure, as before, of voting on the lead amendment and disposing of the other amendments in the group as they arise in the list.

[164] **Kirsty Williams:** I propose amendment 15.

*Cafodd gwelliannau 15, 10, 20, 40, 11 a 21 eu grwpio ar gyfer y drafodaeth.  
 Amendments 15, 10, 20, 40, 11 and 21 grouped for debate.*

[165] I will try to explain and to make myself clear with regard to the issue here. The Measure as currently worded refers to the nearest route as being one that is measured. That makes sense, but as we have heard, for many children travelling to school, the most convenient school is not actually the one that is nearest to their home. I will give you an example. A family in my constituency wished to send their children to a certain school. The council refused this, saying that it was not the nearest school. The reality was that bus routes in the area meant that it took significantly longer to get to the so-called nearest school than it did to get to the school that they preferred.

11.10 a.m.

[166] The length of time that it would take the children to travel to the school was one of the reasons why the parents wanted to make that choice. Even though it was nearer to them geographically, it was not the nearest school practically; it took significantly longer to travel to that school than to the parents' preferred school. The bus route that the council operated would have got the children to the preferred school in a shorter time, although it was geographically further away from the house. So, I am trying to establish here that the nearest route should be the most practical route that a child could be expected to take.

[167] My other amendments in this grouping are trying to clarify what is regarded as safe, and trying to set a benchmark for what is regarded as a safe and appropriate route to school. The Measure talks about a route being available if it is safe in certain circumstances. I am trying to beef that up. To give you another practical example, I am aware of a family whose nearest school fell just outside the regulations in terms of the distance beyond which the council would pay for transport. These were secondary school children, who lived just under two miles from the school, but taking the two-mile route required those children, who were 11-years-old, to walk along the side of the A470, which is the major trunk road in mid Wales. There is no footpath or pavement along the side of the A470, so the children were expected to walk on the road to get to the school. The council regarded that as safe and reasonable. Therefore, the children did not qualify for transport because they were inside the distance limit and the council regarded the route as safe for them to walk.

[168] I recently had another case where the child fell inside the distance, and we accept that the council does not have to provide transport in terms of the distance, but where again there was a problem with the quality of the route. The council had assessed it as safe, even though it is along a narrow country road with no grass verge, footpath or pavement. Children were expected to walk along that route to get to school. So I am trying to set some minimum standards for what constitutes an available route in terms of safety. I regard that slightly differently from how Alun regards it; I regard the availability of a footpath or a pavement as the benchmark of what should be considered safe. I am sure that the Minister would agree,



knowing the A470 as he does, that walking along the A470 from Builth Road down to the school in Builth is not what we want our children to be doing. By any reasonable definition that is not safe and I do not consider that route to be available for children.

[169] **Alun Cairns:** This is my opportunity to speak to amendments 20, 21 and 40. They all relate, as do all the amendments in this grouping, to the safety of transport arrangements. In credit to the Assembly Government, this is unquestionably the prime motivator for this Measure and it is welcome as one of the early Measures that have been introduced. Amendments 20, 21 and 40 specifically relate to footpaths and many of the points that Kirsty has already made. I support Kirsty's amendment 10, which talks about walking 'along a footway or footpath', but I have gone further in a separate amendment, amendment 20, proposing that the footway or footpath should be lit. Amendment 20 pushes amendment 10 a bit further, and I am supporting Kirsty's amendment as a backdrop, because, following discussions with Stuart's Campaign, there are instances where pupils are expected to walk across a field. In some rural areas, walking across a field at 4 p.m. or 4.30 p.m. on a winter's evening in December or January is wholly inappropriate for young children, even with an adult. I do not think that it is up to us to force people to consider doing that or not. Therefore, I not only support what Kirsty has said in terms of the footpath, but I have also called for that footpath to be lit, because if it is in a rural area, over a field, there is no street lighting, and that would not necessarily be a safe route for a pupil of any age to take. So, let us at least give them that option.

[170] Amendment 40 in this grouping relates to the risk assessment, and, again, that comes from discussions with Stuart's Campaign, which has been involved in a series of debates and discussions with local authorities on behalf of people. From representations that I have received from my support staff and from lawyers in this field, it is interesting to note that, when you ask about the date and the times that risk assessment has taken place, it is not unheard of—although it seems ludicrous—for a risk assessment to be conducted in the middle of the day in the school holidays, or during school transport times in the school holidays, when we all know that the school run is not taking place, so there is not the same congestion. The purpose of amendment 40 is to change that.

[171] Amendments 11 and 21 are definitions that are linked to amendments 10 and 20, which relate to the footpath. There are several technical issues there. Rather than making a meal of it, I will summarise by saying that I support the points that Kirsty has made in terms of taking account of the appropriateness of the route and the need for a footway or footpath, in other words, for a designated route—obviously, there is legal terminology that needs to be used there. Amendment 20 goes further in calling for a lit route, because of the dangers of a footway or footpath being across a field. That is the purpose of including 'lit'. Arguably, if a local authority put a light on the footpath across a field that may qualify the route, but my amendment seeks to exclude that. The risk assessment, surely, must be done when the transport would normally take place, at periods when the school run would normally occur. Do any other Members want to contribute?

[172] **Lorraine Barrett:** Again, I would be interested to hear the Minister's argument or consideration in regard to these amendments. It is very useful to have examples, such as Kirsty's example of walking along the A470—which I am sure that we have all driven along—in daylight and at night time, and long stretches of that road do not have lighting. You mentioned a field, Chair, which I had also written down earlier this morning as an example, because I thought, 'What if crossing a field was the only option?'. Looking at section 3(8), which states:

[173] 'A route is "available" for the purposes of subsection (7) if—

[174] (a) it is safe for a child ... to walk the route alone'.

[175] Kirsty makes the point that that should be ‘along a footpath’ and then you, Chair, are seeking to add, ‘which is lit’, and I want to ask the Minister, when he responds, about that statement ‘it is safe for a child’, and whether it would be accepted by everyone that, of course, a route can only be safe for a child if there is a footpath, and that it would not be deemed safe to walk along the A470, where there is no footpath at all. I can see that that could be a bit ambiguous, and you could have a local authority saying, ‘Of course it is safe for them to walk along that stretch of the A470’, but common sense tells me that it would not be safe. I want some clarification from the Minister when he responds as to whether it is generally accepted by local authorities that a route would not be considered safe if there is no footpath along it, if you see what I am getting at.

11.20 a.m.

[176] On risk assessments, we all have those examples. Even if it is about determining whether a zebra crossing is needed, often the measurements are taken at a very quiet time when there is not much traffic. To me, the amendment is common sense but, again, I would like to know why the Minister would have a problem with that. I cannot see that it would cause any extra cost for local authorities to do these risk assessments at the riskiest time of day or year.

[177] **Ann Jones:** As you rightly pointed out when you spoke to your amendments, Chair, I think that this is the crux of the Measure. This is all around safety issues. We all have experiences of how local authorities will consider a risk assessment and satisfy themselves that they have carried out the assessment according to their obligation. You are quite right; the assessments are often carried out in the middle of the summer or on a nice day when it is quite nice to stand to allow the traffic to pass. However, if it is pouring with rain in the middle of winter and you are trying to walk with a youngster across a dual carriageway, because that is the only way of getting to where you want to go, that is hardly safe. The Government and the Assembly have placed a lot of emphasis on and invested a lot of money in making routes to school safer. However, other routes then often lose out, and I am disappointed that the Minister is not minded to accept the amendment on risk assessments.

[178] The footpaths and footways must be looked at. No-one wants to see children walking down a road, whether it is the A470 or a B road, without there being a footpath or verge on which they can stand to allow traffic to pass. Local authorities should not be authorising those routes and there should be some strict rules on how we stop authorities from thinking that they have absolved themselves of their responsibility when they have not exercised the responsibility that they have for the children whom they wish to educate in schools, or their parents. I will listen to what the Minister has to say, but I would urge that the risk assessment be carried out as the amendment states. I think that we can all point to examples. The crux of the Measure is a child’s safety when travelling to and from school. We must be very clear about what we want to provide through this legislation in terms of the safety of children in Wales.

[179] **Alun Cairns:** Thank you. I call on the Minister to comment.

[180] **The Deputy First Minister:** It has been a very interesting debate and there is hardly any disagreement between us. As was the case with the previous debate on the previous amendments, I am very sympathetic to the points that have been made. Who would not want to ensure that a child’s journey to school is the safest that it could possibly be? The suggestions that you highlighted, in terms of amendments to the Measure, would go some of the way, but not all the way, towards meeting that requirement. In a way, I am making the same kind of argument that I made on the previous set of amendments, which is about where it is appropriate to define exactly what ‘safe’ might be under these circumstances. I am pretty

sure that, if we drew up a list of the kind of things that have been highlighted by this committee, it would be a very long one.

[181] When we issue detailed guidance to local authorities to coincide with the implementation of the Measure, we want to ensure that we could include examples in consultation with local authorities as to what might be a safe journey. You have indicated some, but there may be others such as footpaths and footways, bridleways, cycle paths, and routes that are not designated as highways but that are still safe to walk along—subject, of course, to carrying out the appropriate risk assessment. So, if the committee is content, I will ensure that we look carefully at the guidance that is issued, so that examples as well as those included here are considered for inclusion. All of us want to ensure that these journeys are as safe as possible and, once the guidance is issued to local authorities, it could cover and capture more of the examples than we have been able to discuss this morning.

[182] I have listened very carefully to the arguments on the requirement to carry out a risk assessment, so I want to make an offer to the committee: if you are happy to withdraw these amendments, I will work with my officials to see how we can amend the Measure to ensure that that duty to carry out a risk assessment is placed on local authorities. I am not sure that it is absolutely necessary, because the fact that we have specified that a route must be safe means that, in effect, the authority should carry out a risk assessment, but I have reflected on what you have said this morning and there may be ways in which we can accommodate your suggestions. I give this undertaking to the committee that I will seek ways to introduce that into the Measure if you are prepared to withdraw the amendments.

[183] **Alun Cairns:** A couple of requests have been made to come back to you, Deputy First Minister. Would you be happy to see them as interventions, given that you have finished?

[184] **The Deputy First Minister:** I can intervene on you, if you like.

[185] **Alun Cairns:** That is useful. I wish to clarify, before I bring others in—

[186] **The Deputy First Minister:** Is there not a final speech?

[187] **Alun Cairns:** Yes, but before that, a few people want you to clarify some points. Are you comfortable with that? The procedures do not really allow for it, but if you are comfortable with it, hopefully, you can accommodate us.

[188] **The Deputy First Minister:** That is fine.

[189] **Alun Cairns:** Can I ask you to clarify what you were proposing? Were you asking us to withdraw amendment 40 on the risk assessment?

[190] **The Deputy First Minister:** No, I was asking for all the amendments in the group to be withdrawn on the basis of what I had said on the guidance and on the risk assessment. That is a matter for you, of course.

[191] **Alun Cairns:** Yes, I appreciate that. I wanted to clarify whether you were talking about one amendment or all of them.

[192] **The Deputy First Minister:** No, as in the previous discussion, my suggestion was that those amendments be withdrawn if the committee is content that all the issues that we have discussed would be considered with a view to including them in the guidance. On the risk assessment, if I undertake to look for ways to include that in the Measure, would the committee be happy to withdraw the group of amendments?

[193] **Alun Cairns:** I have one final point of clarification, if that is okay. When would you expect to publish draft guidance? Would that be before the Stage 3 debate?

[194] **The Deputy First Minister:** No, I do not think so.

[195] **Alun Cairns:** Okay. We will go to Ann Jones next, although Kirsty has the right to reply at the end because she proposed the first amendment in the group.

[196] **Ann Jones:** I am confused now. I thought that I had understood what the Deputy First Minister had said on the risk assessment. I thought that he was offering to consider making it an amendment to the Measure and not to include it in the guidance, if it were withdrawn. If the offer is for us to withdraw all the amendments in the group, can I take it that you would consider, in that amendment on risk assessment, looking at incorporating some of the points of these amendments and possibly others in safe routes to schools, or are you just looking to include the risk assessment amendment as an amendment to the Measure, with a view to relying on regulations to further support that amended Measure? I am slightly confused now as to what you are proposing.

11.30 a.m.

[197] **The Deputy First Minister:** Perhaps I need to clarify. There are two sets of amendments: amendments that relate to defining a safe route to school, and others that say that, to determine what a safe route to school is, a risk assessment ought to be carried out. On the first, it is the same argument as that which we deployed on the previous set of amendments: I do not think that it is appropriate. You could, quite properly, include that on the face of the Measure, because it has to be fairly narrow—unless you wanted to make it a very long Measure—but miss some routes that are deemed to be safe, which would be totally unintended. The Measure, as I have made clear before, is broadly an enabling Measure, which then allows you to pass regulations, guidance, directions, or whatever may be appropriate in the circumstances that would define what ‘safe’ means in this context, following consultation with local authorities. So, that is what I propose in relation to the definitions on safety. I am trying to persuade the committee to agree to have the things mentioned today included in the guidance, or at least considered. There is unanimity of view in the committee, which would need to be reflected in the guidance.

[198] On the risk assessment, we have looked at that issue, and I do not want to make a suggestion today because we need to reflect on it, but there is an opportunity to include that as an appropriate statutory requirement within the current Measure, on which I have had a brief discussion. Although it is not strictly necessary, I am prepared to undertake to look at ways of including it, because I can see that the committee is persuaded that that should be on the face of the Measure. Given that that is not a prescriptive addition, it seems to me that it is perfectly appropriate for it to be put on the face of the Measure.

[199] **Ann Jones:** Can we clarify ‘guidance’ versus ‘regulations’, please? Sorry, but this is important. If you are to put this in regulations, I may be able to accept what you are saying, but if you are just going to put it in guidance, I may not, because we all know what happens with guidance in reality. We find ourselves in this situation of local authorities doing their assessments based on the fact that they think that they have fulfilled that obligation, and often, you have to argue the case. If you are saying it might be included in regulations as opposed to guidance, that would be fine, but I need to be clear in my own mind as to which it is.

[200] **The Deputy First Minister:** It would be in guidance, in our view. There is a feeling that guidance is somehow discretionary, but guidance is statutory. The guidance would be that particular things agreed in consultation with local authorities would then be—

[201] **Ann Jones:** I do not think that local authorities believe that it is statutory. It is guidance; they may or may not follow it.

[202] **Alun Cairns:** Would it help if—

[203] **The Deputy First Minister:** The guidance would be statutory and so, for obvious reasons, the local authority would need to follow that guidance—unless there were particular circumstances. Is that not right?

[204] **Alun Cairns:** Can I—

[205] **The Deputy First Minister:** Can I just say what I think, rather than having these discussions, which are clearly not satisfying the committee? If the committee would be content to do so, I think that this would be an appropriate point at which to adjourn for five minutes, so that I can get proper advice on regulations, guidance, directions and all the rest, and then come back to you. One thing that I am particularly clear about is that there is no disagreement between the committee and the Government, or all of us on the committee, as to what we would like to do; the issue is just how we achieve it.

[206] **Alun Cairns:** I agree absolutely. However, I have had a request for you to clarify something else during our adjournment, if you would be happy to hear it.

[207] **Lorraine Barrett:** The Deputy First Minister talked about the appropriate place to define what is safe and that we need to ensure that there is detailed guidance. He said that there may be other routes, such as footways, bridleways, cycleways and so on. However, Kirsty's amendment 11 seems to be a catch-all. It seems to cover everything.

[208] “‘footpath’ (‘llwybr troed’) means a highway over which the public have a right of way on foot only, not being a footway;’

[209] I would say ‘the public has’, not ‘the public have’, but that is by the by. Does that not cover everything, including something that a car or a motorised vehicle cannot drive over? I think that covers everything without being specific and saying ‘bridleway’ or ‘cycleway’. There may be another type of access that we are not aware of now. I just wanted to make the point that I thought that it was a good catch-all.

[210] **Alun Cairns:** Those questions will be for the Deputy First Minister to come back on, if we have a proper adjournment. Kirsty, you will have the right to reply at the end anyway, but do you also want to contribute at this point? I was going to propose that we have an adjournment immediately after you had spoken, if you wish to do so now, but you will also have the right to reply later as well.

[211] **Kirsty Williams:** I am happy to let the Deputy First Minister speak to his officials, and I will listen to what he has to say before I summate on the amendments, if that is acceptable.

[212] **Alun Cairns:** I see that Members are happy with that, and so I suggest that we adjourn until 11.45 a.m..

*Gohiriwyd y cyfarfod rhwng 11.36 a.m. ac 11.47 a.m.  
The meeting adjourned between 11.36 a.m. and 11.47 a.m.*

[213] **Alun Cairns:** I now reconvene the meeting. I thank Members for coming to order. In order to facilitate constructive debate and discussion, I ask the Deputy First Minister to offer

further comments in relation to the debate that we are having on the amendments.

[214] **The Deputy First Minister:** I will clarify the issue. Here, we are talking about the issuing of statutory guidance to the local authority. Local authorities must have regard to the guidance issued by a Welsh Minister and they can only divert away from that guidance if they are able to justify that, in all the circumstances, it was reasonable to do so. However, if we consider that a local authority is acting unreasonably in disregarding that guidance, Welsh Ministers have the power to issue directions to the local authority that it must comply with, and that would have the force of law. So, what I am asking the committee to do is to withdraw that set of amendments and, on that basis, I will look for ways to include a statutory requirement on local authorities to carry out a risk assessment.

[215] **Alun Cairns:** If there are any further questions of clarification from Members, would you be happy to answer them? I am conscious that we are diverting from the procedure that we had agreed. I see that you are happy to do that.

[216] **Ann Jones:** On that last issue about amendment 40, I thought that I heard you say that, if the other amendments were withdrawn, you would look to put in an amendment to the Measure that would include the risk assessment and the needs around that. However, that is different to what you have just indicated. Which is it?

[217] **The Deputy First Minister:** I made it clear in my second remarks, as I did in my first, that if the amendment relating to the requirement on local authorities to prepare a risk assessment is withdrawn, I will undertake to look for ways to include that requirement in an appropriate place in the Measure.

11.50 a.m.

[218] **Ann Jones:** Okay, thank you.

[219] **Lorraine Barrett:** In that event, we would not have the opportunity to debate this any further, would we? Would it be brought back to us at any point?

[220] **The Deputy First Minister:** Yes, it would be brought back to Plenary.

[221] **Alun Cairns:** Stage 3 would come before the Assembly, but, just to clarify, would the guidance be available as to—

[222] **The Deputy First Minister:** I could update the Assembly on that. Another alternative is for you to withdraw the amendment; I think that we were going to ask for guidance in this regard, but if an amendment is withdrawn, the question is whether or not it could be tabled again at another Stage. For example, if you were to agree to withdraw the amendment, we could do the work on what might be included in the guidance. When would the next Stage of proceedings take place in the normal course of events?

[223] **Mr Williams:** Stage 3 is scheduled for the autumn.

[224] **Kirsty Williams:** If you have a discussion, you cannot bring it back to the committee—you can only table it at Stage 3.

[225] **Alun Cairns:** With respect, Deputy First Minister, that is when Members have a second chance to table an amendment, if it has been lost. It would be an option to table similar amendments at that stage, but not in a committee session.

[226] **The Deputy First Minister:** The danger otherwise is that if the amendment is carried

in committee, the Government would intend to have an amendment to withdraw it at Stage 3. Then, of course, there is nothing, because we have not had the opportunity to look at the alternative in the meantime.

[227] **Alun Cairns:** Can you table amendments to amendments?

[228] **The Deputy First Minister:** Once you have included an amendment in the Measure, you can have amendments to withdraw it at the next stage.

[229] **Mr Williams:** Yes, that is correct; you could have an amendment to withdraw it at the next Stage and you could leave out something and insert something in its place, or whatever. So, that is appropriate.

[230] **Alun Cairns:** So, we shall try to move forward on this. If there are no further questions of clarification, I will ask Kirsty to respond to the debate, which is her right. Is everyone comfortable with that, because this will be the last contribution on this group of amendments?

[231] **Lorraine Barrett:** I am a little confused with the different options that we have on the table. I just want to make the point on the record that I wholeheartedly support the amendments. I am prepared to take the Deputy First Minister on trust—if I can put it like that—that he will do right by the strength of feeling around this table, particularly from Ann and me, on our support for the amendments. If he is prepared to come back with assurances that we will have something that will give us what is being asked for here, I am prepared to support the Deputy First Minister on that, I think.

[232] **Alun Cairns:** Before you make your final decision, we also have Kirsty's response to it.

[233] **The Deputy First Minister:** The committee has that undertaking.

[234] **Ann Jones:** How will that happen, in terms of procedure? I am confused about it.

[235] **Mr Williams:** It will be subject to the Deputy First Minister bringing forward an appropriate amendment at Stage 3, if my understanding of the situation is correct.

[236] **Ann Jones:** Do we have another opportunity to do so in this committee?

[237] **Mr Williams:** Not in this committee, no. Once this section has been debated and voted on, that section is deemed agreed for the purposes of this committee and there can be no further proceedings on decisions that have been voted on.

[238] **Alun Cairns:** If an amendment is carried today, amendments can be made by any of us or any other Assembly Member when we have the debate in the Chamber on that amendment—in an amendment to an amendment. Is that correct?

[239] **Mr Williams:** If an amendment is carried, the Measure is reprinted with that amendment as part of it.

[240] **The Deputy First Minister:** As if it was part of the Measure?

[241] **Mr Williams:** Yes. It would then be part of the Measure, and it would be for Members to table amendments to the proposed Measure as agreed at Stage 2 by the committee.

[242] **Alun Cairns:** Kirsty, we come back to you to try to sum up the debate, which is your right under the Standing Orders.

[243] **Kirsty Williams:** Thank you, Alun. I appreciate what the Deputy First Minister said with regard to accepting the principle of the amendments, but that he does not feel, for whatever reasons, that it is appropriate to have them on the face of the Measure. On amendment 10 and associated amendment 11, because they go together—they depend on each other—the Deputy First Minister says that he will take it out to consultation and that it will potentially become the subject of guidance to local authorities. My concern is that, in taking it out to consultation, local authorities will resist it in the same way as they think that it is currently acceptable for them to put children on the side of a road. There is no reason to think that they will suddenly have a road-to-Damascus type of conversion and say, ‘We have been wrong in thinking that it is safe to put people on footpaths, and therefore we will respond to the consultation in a positive way’. Local authorities have made it clear what they consider to be safe and what they do not. The Deputy First Minister says that it does not include other things, and I accept that it does not include other things that the Minister might want to put in guidance, but it is not exclusive—it does not stop him from publishing guidance subsequently. This puts in a benchmark below which I am not comfortable to go.

[244] **The Deputy First Minister:** May I intervene, because this is an important issue?

[245] **Alun Cairns:** Kirsty, are you comfortable with that?

[246] **Kirsty Williams:** Yes.

[247] **The Deputy First Minister:** The problem with Kirsty’s approach is that, once you have defined it in legislation, you cannot undo that in regulations. If the word in the Measure is ‘safe’, you can define what you mean by that in guidance or in whatever. Once you have defined it in the Measure, you cannot undo it and include other things in guidance.

[248] **Kirsty Williams:** I accept what the Deputy First Minister is saying in that, once it is in the Measure and defined in that way, that is it; that is precisely why I want to persist with this. I want this as a bare minimum standard on the face of the Measure. I do not accept that, subsequent to that, you cannot have guidance that elaborates on it. That is why I want to see it included—I want ‘safe’ to mean, as a minimum, these elements of a footpath or a footway. I have not gone as far as Alun Cairns has gone with regard to street lighting, because I appreciate that, especially in rural areas, it could cause a huge amount of difficulties, and we do not want lights in fields and things like that. In a country setting, I am happy for children to walk on footpaths, because that is how it is in the countryside. I appreciate that the Deputy First Minister is trying to be helpful, but I think that this will be resisted by local authorities, and I would feel uncomfortable in not pushing it to a vote.

[249] With regard to risk assessments, the Deputy First Minister has accepted the need for this to be included, but it seems that he wants to take it away and bring it back in his own words. However, I think that we have adequate wording, so I do not see why we should wait any longer. The Deputy First Minister says that if we pass this, the Government will be forced to amend it. However, I cannot see why the Government would be forced to amend it by taking it out, leaving us with nothing. That is not the case. If the Government wants to take this out of the Measure—although I do not know why it would want to do that—it can subsequently table an amendment in the Stage 3 debate. So, it is not fair to say that if we persist with this amendment, the Government will be forced to backtrack and we will be left with nothing, because that is not the case. The Government could table an amendment to withdraw it at Stage 3 and table a subsequent amendment to have the wording that it wants. That is my understanding of how amendments work; I accept that Ieuan has been a politician for far longer than I and that he perhaps knows the rules and regulations better, but I see that



that is how it could work, and I wish to move to a vote.

[250] **Alun Cairns:** Therefore, Kirsty has given a formal indication that she wishes to move to a vote. The question is that amendment 15 be agreed to. I call for a vote.

12.00 p.m.

*Gwelliant 15: O blaid 2, Ymatal 0, Yn erbyn 3.  
Amendment 15: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ann  
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 15.  
Amendment 15 defeated.*

[251] **Alun Cairns:** I call amendment 10, in the name of Kirsty Williams, which has already been debated. I invite her to propose the amendment.

[252] **Kirsty Williams:** I propose amendment 10.

[253] **Alun Cairns:** The question is that amendment 10 be agreed to. I call for a vote.

*Gwelliant 10: O blaid 3, Ymatal 0, Yn erbyn 2.  
Amendment 10: For 3, Abstain 0, Against 2.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Jones, Ann  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ieuan Wyn

*Derbyniwyd gwelliant 10.  
Amendment 10 carried.*

[254] **Alun Cairns:** As amendment 10 has been agreed to, amendment 20 in my name falls.

*Methodd gwelliant 20.  
Amendment 20 fell.*

[255] **Alun Cairns:** I now call amendment 40 in my name, which has already been debated.

[256] I formally propose amendment 40.

[257] The question is that amendment 40 be agreed to. I call for a vote.

*Gwelliant 40: O blaid 4, Ymatal 0, Yn erbyn 1.  
Amendment 40: For 4, Abstain 0, Against 1.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Barrett, Lorraine

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Jones, Ieuan Wyn

Cairns, Alun  
Jones, Ann  
Williams, Kirsty

*Derbyniwyd gwelliant 40.  
Amendment 40 carried.*

[258] **Alun Cairns:** I ask for Members' indulgence while I seek guidance with regard to amendment 23.

[259] Amendment 23 would have been the next amendment to be dealt with. However, as amendment 23 was grouped with amendment 22, which I withdrew, it no longer applies. I will therefore not propose amendment 23.

*Ni chynigiwyd gwelliant 23.  
Amendment 23 not proposed.*

[260] **Kirsty Williams:** Can you clarify what happened to amendment 11?

[261] **Mr Williams:** Amendment 11 will be considered at the point at which it arises in the marshalled list, and so will be dealt with in the next meeting.

[262] **Alun Cairns:** Thank you. Before we move to the next group of amendments, we have an issue with time. It is now midday; the scheduled end of this meeting is 12.30 p.m.. We have the grouping of amendments 24, 25, 26 and 28 to deal with, which relate to the provisions of the proposed Measure as they apply to learners with special educational needs. If we start the debate on this group of amendments now, we will need to go to the end of the debate and agree or vote on it, because we will not be able to adjourn and consider any matters that arise at the next meeting. I therefore propose that this be the last group of amendments that we consider at this meeting. It is highly likely that we will need to consider a third meeting rather than confine ourselves to a two-meeting Stage 2 committee. Are Members content and comfortable with that as a way of moving forward?

[263] **The Deputy First Minister:** I would like to resist having a third meeting, as I think that we have enough time to complete in two.

[264] **Alun Cairns:** That is something for us to consider, but we can at least keep going until 12.30 p.m. today, which is the scheduled time. Are Members comfortable with that? I see that they are. Thank you.

**Darpariaethau sy'n Berthnasol i Ddysgwyr ag Anghenion Addysgol Arbennig  
(Adrannau 5, 7 a 14)  
Provisions as They Apply to Learners with Special Educational Needs (Sections 5, 7 and  
14)**

[265] **Alun Cairns:** I call amendment 24 in my name, which is grouped with amendments 25, 26 and 28.

[266] I propose amendment 24.

*Cafodd gwelliannau 24, 25, 26 a 28 eu grwpio ar gyfer y drafodaeth.  
Amendments 24, 25, 26 and 28 grouped for debate.*

[267] Amendment 24 is a technical amendment linked to amendment 25, which in turn touches on one of the key issues of transport between schools for pupils who have special

educational needs.

[268] Provisions for pupils who have special educational needs are very strong in the proposed Measure and, without question, they are provided for pupils to and from school. The point that I want to make is that some special educational needs statements will offer split placements. These placements could mean that a pupil will attend a special school in the morning and a mainstream school in the afternoon. The Measure as proposed does not allow for transport between the special school and the mainstream school should provision be split.

[269] In fairness, split placements on that basis are quite rare, but they do happen. They would normally follow a pattern in which Monday, Tuesday and Wednesday would be spent at a special school with Thursday and Friday, for argument's sake, at a mainstream school, but applications can be, and have been, made to make the split between morning and afternoon if one setting is considered to put too much pressure on a child who has special educational needs, particularly at a time of integration, when that is required. However, some special educational needs statements, without question, will require the morning to be spent in one setting and the afternoon in another, and I think that we need to make it a requirement on local authorities to supply the transport between the two educational settings.

[270] Amendment 26 relates to post-16 special educational needs. It relates to special schools in that the Measure would place an obligation on local authorities with regard to pupils with special educational needs up to the age of 16. However, we all know that some pupils with special educational needs and statements would want to attend school until they are 18 or 19. The amendment therefore would mean local authorities having to comply accordingly. I have visited Ysgol Penmaes, a special school outside Brecon that offers fantastic services. There is provision up to the age of 16, but up to 18 or 19 it is at the discretion of the local authority. Bearing in mind the position that special needs pupils find themselves in, the discretionary basis of any provision only raises questions and uncertainty. It also takes an awfully long time to fight for a statement on that basis.

[271] Amendment 28 is different. I have tabled this as a probing amendment because it would detract from pupils with special educational needs, which is not my intention for a second. The amendment relates to exclusion. If children with special needs are unruly or their behaviour poses a potential threat to others, although I want to preserve their rights as pupils with special needs, if they endanger themselves and other pupils, I would not want for them not to be excluded on the grounds of their special needs.

[272] What I am trying to say is, if a pupil has something like attention deficit hyperactivity disorder, that would be a legitimate defence for the pupil's unruly behaviour on a bus. If such a pupil is excluded from travelling by bus on the grounds of his unruly behaviour, then a case could be made that the Disability Discrimination Act 2005 has been breached. Therefore, I will not be pushing amendment 28 to its ultimate conclusion, but I will ask the Minister to consider the matter and return with possible amendments or regulations of his own to guarantee that where pupils who have special needs pose a threat to themselves and to others, they could be excluded from the bus on those grounds.

[273] In summary, amendment 25 relates to transport between schools for special needs pupils. Amendment 26 is for post-16 special educational needs for those at school until they are 19 years old. Amendment 28 is a probing amendment that seeks clarification on the intentions of the Minister should a child who has special needs pose danger to himself and to others on transport such as a bus to and from school. I now invite other Members to contribute.

[274] **Kirsty Williams:** As Members can see, I formally support the amendments tabled by Mr Cairns. Given the shortness of time today, I will just concur with Alun's remarks and hope

that the Government will find itself able to support the amendments.

[275] **Alun Cairns:** Thank you. Are there any other contributions?

[276] **Lorraine Barrett:** I do not quite understand your reasoning behind amendment 28. I accept that it is a probing amendment, however. Are you saying that, in the case of pupils with ADHD, their condition could not be taken into account, or have I read it wrongly? Or is it that it should not be taken into account when considering whether transport should be withdrawn?

[277] **Alun Cairns:** If Members come through me for clarification, my only official opportunity to answer questions is in closing the discussion, unless you are happy for me to deal with them now.

[278] Section 14 relates to the enforcement of a travel behaviour code and withdrawal of travel arrangements. It says under section 14(11) that,

[279] ‘In determining whether a decision to withdraw travel arrangements is reasonable’,

[280] consideration must be given to

[281] ‘any special educational needs the learner may have’.

12.10 p.m.

[282] The point that I am making is that that could be used as a defence. Therefore, if a child’s ADHD manifests itself as poor behaviour, the parent of that child could use that condition as a defence against the child being excluded from the coach or bus. If that is the case, such children could well be a danger to themselves and to others, and, although I would passionately support the rights of children who have ADHD, I would not want that support to exclude my support for the safety of other pupils and the child concerned. I will not be pushing amendment 28 to a vote, but I will ask the Minister in his response to reflect on that issue so that we can find a way of satisfying the concern that the parents or guardians of a child who has special needs could use his condition as a defence for him to continue using the bus regardless.

[283] Do you have any other points, Lorraine?

[284] **Lorraine Barrett:** No.

[285] **Alun Cairns:** Ann, do you have any comments?

[286] **Ann Jones:** I am happy to hear what the Minister has to say.

[287] **Alun Cairns:** In which case, I invite the Minister to respond.

[288] **The Deputy First Minister:** On amendment 25, any particular transport requirements linked to a particular educational need for a learner with a statement of special educational needs, which may involve split placements during the day, should be specified in the individual’s SEN statement. In those circumstances, a local authority is obliged to meet the learner’s needs, including transport needs, in accordance with the statutory provision for a statement of educational needs.

[289] The SEN statementing system is designed to look at each individual child’s circumstances, and that seems the best way to consider whether split placements are required

and what transport implications arise. As I said previously, if it is required, this would then be specified in the individual's statement, and the local authority has a duty to provide under those circumstances. I therefore consider the amendment to be unnecessary.

[290] On amendment 24, the argument is the same, in a sense, and I therefore regard the amendment in the circumstances as unnecessary.

[291] Amendment 26 is not necessary either, as any regulations made using the existing regulation-making provisions under this section can include, if necessary, any particular requirements for SEN learners. So, we already have the ability to do it if we need to.

[292] With regard to amendment 28, as Alun said, it runs the risk of inappropriate withdrawal of transport applying to learners who have special educational needs. The proposer of the amendment therefore seems content for disabilities to be taken into account when an authority determines whether transport should be withdrawn, but not special educational needs. That is therefore quite inconsistent. It is therefore right in principle and good practice to take into account special educational needs. Indeed, I added this explicit reference to learners who have special educational needs to ensure that any sanctions would take account not only of the effect of a learner's special needs on his or her behaviour, but the effect of withdrawing the transport that that person was using.

[293] Poor behaviour by a learner with special educational needs, as I am sure we are all aware, could be the result of changes in routine, having a different carer or teacher and so on. In these circumstances, tackling the cause of unacceptable behaviour is likely to be more effective than applying the sanction of withdrawal of transport. Such issues need to be considered at the local level, which is why line 30 is a key part of the sub-section. I therefore do not agree with the amendment.

[294] **Alun Cairns:** Thank you. I will seek to close the discussions on this issue. Just because a split placement is part of a special educational needs statement, it does not, in my mind and according to my understanding of regulations and legislation, place an obligation to provide transport on a local authority. Rejecting the amendment would preserve that situation. My understanding, after having the legislation checked, is that local authorities do not have that obligation, which is why the amendment has been tabled.

[295] In relation to amendment 26, on post-16 special educational needs provision, the Minister said that regulations could include that where necessary. Again, regulations are in place, but this offers an opportunity to clarify and close down that issue by guaranteeing those rights for pupils with special educational needs post 16, particularly those who wish to continue at a special school until they are aged 18 or 19, as their school age may be. In relation to amendment 28, I will not push it to a vote, because that would be wholly unfair on pupils with special educational needs, but the purpose of raising it was to highlight potential contradictions with the Disability Discrimination Act 1995. I ask the Minister to look further at that and the potential challenges of an excluded child with special educational needs. For example, if an attention deficit hyperactivity disorder sufferer is excluded on the grounds of his or her behaviour, and therefore the grounds of his or her special educational needs, that contravenes the Disability Discrimination Act. What I am saying, therefore, is that I do not think the legislation is sufficiently robust and it needs to be considered in the light of the Disability Discrimination Act. I am not trying to change what we are trying to achieve, but I do not think that the legislation at the moment satisfies what we would all like to see. We all want to go the same way, but there is a potential challenge regarding children whose special educational needs manifests in poor behaviour. That would be grounds to challenge this: that they are being excluded because of their special needs, rather than because of their poor behaviour. Rather than the Minister rejecting it outright, I ask that he at least gives further consideration to that in preparation for Stage 3.

[296] Unless there are any further comments, we come to dispose of amendment 24.

[297] Amendment 24 is a technical amendment linked to amendment 25, in relation to transport between schools for split placements of children with special educational needs. The question is that amendment 24 be agreed to. I call for a vote.

*Gwelliant 24: O blaid 2, Ymatal 0, Yn erbyn 3.  
Amendment 24: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ann  
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 24.  
Amendment 24 defeated.*

[298] **Alun Cairns:** As amendment 24 has not been agreed to, amendment 25 falls.

*Methodd gwelliant 25.  
Amendment 25 fell.*

[299] **Alun Cairns:** For the record, sections 1 to 5 of the proposed Measure are deemed agreed. The remaining amendments need to be disposed of in committee by 4 July. We will consider how best to achieve this in consultation with Members; it may involve scheduling a further meeting, but I recognise the Minister's comments in relation to that. The alternative is holding a longer meeting on 4 July.

[300] **The Deputy First Minister:** We still have 13 minutes of this meeting, Chair.

[301] **Alun Cairns:** Are Members content to deal with the next group of amendments? I see that you are. We will proceed to the next group, which is on travel arrangements for post-16 education.

### **Trefniadau Teithio—Addysg Ôl-16 (Adran 7) Travel Arrangements—Post-16 Education (Section 7)**

[302] **Alun Cairns:** This amendment is in a group of its own, and is in my name.

[303] I propose amendment 39.

[304] This amendment is aimed at making the provision of travel arrangements for post-16 education an obligation for local authorities. By and large, local authorities already provide it, so there is no additional cost, and this, again, would preserve the rights of individuals to post-16 education and ensure that the transport is provided to give them that opportunity. I call on Kirsty Williams, who has added her name in support of the amendment.

[305] **Kirsty Williams:** I support this amendment. The Government has clearly stated that it is its intention to encourage as many people as possible to continue in education and training after the age of 16 as part of its education and skills policy, and I support that wholeheartedly. In supporting this amendment, I am trying to ensure that children who are completing post-16 education can travel to the education provider free of charge. My concern

is that it is often learners from more vulnerable or less prosperous families who are leaving education at 16. Those are the very pupils that would most need guaranteed assistance in the form of free travel to help them to continue with their studies after the age of 16. So, I am happy to support the amendment.

12.20 p.m.

[306] **Alun Cairns:** Thank you. I see that there are no other contributions from Members. Therefore, I ask the Minister to comment.

[307] **The Deputy First Minister:** It is my view that it is wholly appropriate that Welsh Ministers retain the discretionary power to make regulations in this particular policy area rather than it being—as it would be under this amendment—a mandatory duty. In some circumstances, it is appropriate to make a mandatory duty, but I do not think that it is appropriate here. The Government clearly sees regulations as a possible way forward with travel arrangements for post-16 learners or we would not have sought the power in the Measure. However, policy in the area is still developing and has not been concluded. We need to evaluate fully the pilot schemes and the crucial point is that regulations may not be immediately necessary. Therefore, the Government believes it to be imperative that we retain the discretion to make, or not to make, regulations and retain the discretion to make those regulations at a time that is commensurate with the real need for them, which is obviously the time at which the policy—

[308] **Ann Jones:** I hear what you are saying, but there are moves among local authorities to stop post-16 travel provision. I know that we have pilot schemes. You have said that you could make regulations, but if we were to accept this amendment and include ‘must’ instead of ‘may’, do we not stop you from making that set of regulations or having to go down that route? Is it not safer and cleaner just to make it an obligation under the Measure?

[309] **The Deputy First Minister:** No, because there is no policy decision by the Government yet to make those regulations. Until there is a policy decision, any requirement would be defunct. That is my point. The Government has to come to a policy decision first, because there is little point in making this mandatory if the Government has not yet formulated finally its policy. So, there is a need for discretion. We could have—and I am sure that the lawyers around the table will realise this—an arcane debate for hours about the difference between ‘must’ and ‘may’, and ‘will’ and ‘shall’ and so on; that debate could take us until 3 p.m.. However, that is not why we are here. The Government is addressing this issue, we are developing the policy, there are pilot schemes out there, and we are asking the committee to allow the discretion for the Government to conclude the formulation of that policy. In the light of that policy, regulations may well be forthcoming. However, to force the Government into that position before that would be premature.

[310] **Alun Cairns:** Thank you. I see that there are no further comments. I will sum up this debate. The skills agenda is deemed to be an important part of Welsh Assembly Government policy; there are exceptionally high inactivity rates and, therefore, if we are ever going to tackle the root causes, then I feel that post-16 education and training is essential. In view of the fact that local authorities, by and large, provide it and that the cost obligation would be minimal, if any, I therefore suggest that this amendment should be supported in order to preserve the rights of those individuals. I therefore move this to a vote.

[311] The question is that amendment 39 be agreed to. I call for a vote.

*Gwelliant 39: O blaid 2, Ymatal 1, Yn erbyn 2.  
Amendment 39: For 2, Abstain 1, Against 2.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ieuan Wyn

Ymataliodd yr Aelodau canlynol:  
The following Members abstained:

Jones, Ann

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 10.33.*

*As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 10.33.*

*Gwrthodwyd gwelliant 39.  
Amendment 39 defeated.*

[312] **Alun Cairns:** I now call amendment 26 in my name. It was debated with amendments 24, 25 and 28, which relate to learners with special educational needs.

[313] I propose amendment 26.

[314] The question is that amendment 26 be agreed to. I call for a vote.

*Gwelliant 26: O blaid 2, Ymatal 0, Yn erbyn 3.  
Amendment 26: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Cairns, Alun  
Williams, Kirsty

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Barrett, Lorraine  
Jones, Ann  
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 26.  
Amendment 26 defeated.*

[315] **Alun Cairns:** For the record, sections 1 to 7 are deemed agreed. We now have three options: a further meeting, a longer meeting on 3 July, or to seek an extension from the Business Committee to the timetable that requires us to finish by 4 July.

[316] **The Deputy First Minister:** On what basis do we need a third committee meeting? How many amendments are left?

[317] **Alun Cairns:** I seek guidance from the clerk in terms of the schedule.

[318] **Mr Williams:** There are a fair few amendments still to get through, and the danger is that if we have a meeting on Thursday, 3 July, as currently scheduled, we may not complete all the business, and the committee must complete its business by 4 July. Having a further meeting, or seeking an extension, would provide a safeguard to ensure that all the business is completed.

[319] **The Deputy First Minister:** I wish to test that, because today we have dealt with eight groupings, and we have five left.

[320] **Kirsty Williams:** Yes, but there are 22 amendments left.



[321] **The Deputy First Minister:** They are grouped.

[322] **Mr Williams:** Given the number of amendments, despite the groupings, I would not want to be in a position where the nature of the debate was such that it took a long time and we were therefore unable to dispose of amendments because Members have other commitments on the Thursday afternoon. We could explore the possibility of having a longer meeting on 3 July to ensure that all amendments are dealt with before the deadline of 4 July.

[323] **Alun Cairns:** I will intervene at this stage, because I do not think that it is fair to put the clerk in this position. We need to agree between us on how we will proceed. We can have a discussion out of committee in terms of how we can best approach it on an all-party basis and we will come to an agreement at that stage. Amendments to sections 8 to 27 may be tabled, and the clerk will notify Members of the deadlines, which will depend on the date of the next meeting. I declare this meeting closed.

*Daeth y cyfarfod i ben am 12.28 p.m.*  
*The meeting ended at 12.28 p.m.*