



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

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

**Dydd Iau, 20 Ionawr 2011
Thursday, 20 January 2011**

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

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Rosemary Butler	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Andrew Davies	Llafur (yn dirprwyo ar ran Ann Jones) Labour (substitute for Ann Jones)
Chris Franks	Plaid Cymru The Party of Wales
Val Lloyd	Llafur Labour
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Keith Bush	Cyfarwyddwr Gwasanaethau Cyfreithiol Cynulliad Cenedlaethol Cymru Director of Legal Services, the National Assembly for Wales
Jane Davidson	Aelod Cynulliad, Llafur (Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai) Assembly Member, Labour (The Minister for Environment, Sustainability and Housing)
Huw Davies	Swyddfa Cwnsleriaid Deddfwriaethol Cymru Office of the Welsh Legislative Counsel
Edwina Hart	Aelod Cynulliad, Llafur (Y Gweinidog dros Iechyd a Gwasanaethau Cymdeithasol) Assembly Member, Labour (The Minister for Health and Social Services)
Ann Jones	Aelod Cynulliad, Llafur Assembly Member, Labour
Dr Chris Jones	Cyfarwyddwr Meddygol, NHS Cymru Medical Director, NHS Wales
Robin Lewis	Cyfreithiwr, Tîm Cynllunio a'r Amgylchedd, Llywodraeth Cynulliad Cymru Lawyer, Planning and Environment Team, Welsh Assembly Government

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

Steve Boyce	Gwasanaeth Ymchwil yr Aelodau Members' Research Service
Karl Gomila	Dirprwy Glerc Deputy Clerk
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

Owain Roberts	Gwasanaeth Ymchwil yr Aelodau
	Members' Research Service
Liz Wilkinson	Clerc
	Clerc
Gareth Williams	Clerc
	Clerc

*Dechreuodd y cyfarfod am 12.29 p.m.
The meeting began at 12.29 p.m.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[1] **Rosemary Butler:** Good afternoon, and welcome to today's meeting. We have received apologies from Ann Jones, but we are pleased that Andrew Davies is substituting for her. Welcome, Andrew. I remind you all that the committee operates bilingually, and you can use the headsets to listen to a translation of Welsh contributions, or as an induction loop to hear proceedings more clearly. Please turn off any mobile phones, pagers or other electronic devices—as long as doing so does not threaten your life—because they interfere with the broadcast and translation system. If there is a fire alarm, the ushers will escort us from the room. I remind you not to touch the microphones, as that disables the system. They operate automatically.

12.30 p.m.

Gorchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Iechyd a Gwasanaethau Iechyd) 2011 Proposed National Assembly for Wales (Legislative Competence) (Health and Health Services) Order 2011

[2] **Rosemary Butler:** We move to the first substantive item on the agenda. Members will be aware that we have agreed our timetable and the terms of reference for our scrutiny outside committee. The role of the committee will be to consider the general principles of the proposed Order, whether legislative competence in the areas identified in matter 9.3 should be conferred on the Assembly, and whether the terms of the proposed Order are too broadly or narrowly defined. We are due to report by Friday 4 February, so the schedule is tight. We have issued an online consultation in the form of a survey to take views from the public, and we have also written to organisations that might have an interest in this issue, notifying them of the survey. The consultation period closes tomorrow.

[3] I would now like to welcome the Minister for Health and Social Services, Edwina Hart. We hope that you are feeling better today, Minister.

[4] **Edwina Hart:** I am afraid not, Chair.

[5] **Rosemary Butler:** We will try not to be too tough on you this afternoon, then. I understand that you are accompanied by Dr Chris Jones, who is the medical director for NHS Wales and the Deputy Chief Medical Officer for Wales, and by Huw Davies, from the Office of the First Welsh Legislative Counsel. Minister, would you like to say a few words before we move into questions?

[6] **Edwina Hart:** Yes, if I may, Chair. There may have been some confusion when I made my statement to the Assembly last week, largely caused by the rather unfortunate timing of an e-mail from the Wales Office. It is worth offering some clarification at the start

of this session. On Friday 7 January, the Wales Office advised that the Attorney-General had not confirmed that the proposed Order was within the scope of Schedule 5 to the Government of Wales Act 2006, but had agreed that the LCO should go forward for pre-legislative scrutiny. Once the Secretary of State for Wales agreed that it should be laid before Parliament for pre-legislative scrutiny, I decided that it would be right to lay it before the Assembly, too, to ensure that the Assembly and, in particular, this committee, had the opportunity to scrutinise it as soon as possible. The e-mail from the Wales Office that, as Members will be aware, I only saw as I was delivering my statement last week, outlined certain areas that the UK Government felt warranted further scrutiny. These include one issue raised quite properly by the Attorney-General in his role in agreeing the proposed Order, as to whether it is within the scope of Schedule 5 to the Government of Wales Act. Some people have questioned why we introduced the proposed Order before the issues raised by the UK Government had been resolved. If I had not introduced it last week, it would not have been before you today. I do not believe that it is right that colleagues in Westminster should be given the opportunity to scrutinise our proposed LCO but that that opportunity should be denied to the National Assembly for Wales.

[7] **Rosemary Butler:** I will start the questioning. Why are you seeking the power to legislate in relation to organ donation now?

[8] **Edwina Hart:** The statistics on this are really quite stark. If you speak to individuals and look at public opinion, everyone says that they think that donation is a good thing. However, when you then look at the number of people who donate, only about a quarter of people actually register. So, for me, it was an issue of ensuring that what people really feel becomes a reality. I do not know if Dr Jones wants to add anything.

[9] **Dr Jones:** The key issue at stake is the massive impact on survival and quality of life that transplant surgery can bring for so many patients. Clearly, to enable a full programme of transplant surgery and to avoid people waiting inordinately long times and even dying on transplant waiting lists, one needs to increase the rate of organ donation. This is all about increasing the rate of organ donation. It is about seeking to change to a system of presumed consent as part of a wide range of other measures and issues, all designed to increase the rate of availability of organs for transplant surgery.

[10] **Eleanor Burnham:** Byddaf yn gofyn fy nghwestiwn yn y Gymraeg. Mae'r memorandwm esboniadol yn dweud bod llawer o gynnydd wedi ei wneud eisoes. Mae gennyf ffigurau, ac yr wyf yn siŵr eich bod yn gyfarwydd gyda hwy. O ystyried y cynnydd hwn, sy'n seiliedig ar weithredu argymhellion y tasglu rhoi organau, a allwch egluro pam y mae angen pwerau deddfu hefyd?

Eleanor Burnham: I will ask my question in Welsh. The explanatory memorandum states that much progress has been achieved in recent years. I have figures, with which I am sure that you are familiar. Given this progress, which is based on the implementation of the organ donation taskforce recommendations, can you explain why legislative powers are also needed?

[11] **Edwina Hart:** This is a dual course. We have been quite successful in trying to get better public awareness. Some of the campaigns that we have co-sponsored with Kidney Wales and other charities have definitely hit people between the eyes and made them think about what more they need to do. We have also looked at the health infrastructure that we require to ensure that we have beds available. In terms of transplants, an extension is being built at the University Hospital of Wales. In the discussions that we have had, particularly with the British Medical Association and the voluntary sector, we have been told that there is one more thing to do and that is to have legislation within this area.

[12] As you know, the Health, Wellbeing and Local Government Committee undertook an extensive inquiry into all these issues and visited Spain to look at how it had dealt with consent in conjunction with ensuring that the facilities were available to increase the numbers. We have also done a considerable amount of work within the structures to have the appropriate people in place to speak to relatives and so on when the need arises. Work has been undertaken and is ongoing, and the Welsh organ donation implementation group is continuing to undertake it, but we feel that this legislation is an additional issue for us.

[13] **Eleanor Burnham:** Ym mis Gorffennaf 2008, argymhellodd yr ymchwiliad i ganiatâd tybiedig i roi organau, a gynhaliwyd gan Bwyllgor Iechyd, Lles a Llywodraeth Leol y Cynulliad Cenedlaethol, **Eleanor Burnham:** In July 2008, the Health, Wellbeing and Local Government Committee's inquiry into presumed consent for organ donation recommended that

[14] 'na ddylai'r Cynulliad, ar hyn o bryd, geisio Gorchymyn Cymhwysedd Deddfwriaethol er mwyn cyflwyno system o ganiatâd tybiedig yng Nghymru.' 'the Assembly should not at this stage seek a Legislative Competence Order, to allow the introduction of a system of presumed consent in Wales.'

[15] O ystyried y farn hon, a allwch egluro pam yr ydych yn ceisio'r pwerau hyn? Given this view, can you explain why you are seeking these powers?

[16] **Edwina Hart:** We discussed the committee's report in Plenary and I understood why individual members of the committee and others felt like that at that stage. There has also been discussion within Government and with other parties, such as the BMA and charities. Even though I respect the committee's report and all of the background work involved, I still feel, on behalf of the Government, that it was right to legislate to increase the numbers of organs that are available for transplant.

[17] **Eleanor Burnham:** A oes achos dros barhau i weithio ar lefel y Deyrnas Unedig er mwyn cynyddu'r cyflenwad o organau sydd wedi eu rhoi, yn enwedig o ystyried bod awdurdod Gwaed a Thrawsblaniadau'r gwasanaeth iechyd gwladol yn gyfrifol am y gwaith o nodi organau addas a'u dyrannu ar lefel y Deyrnas Unedig? **Eleanor Burnham:** Is there a case for continuing to work at the United Kingdom level to increase the supply of donated organs, particularly given that NHS Blood and Transplant arranges organ matching and allocation at the United Kingdom level?

[18] **Edwina Hart:** There is a fundamental misunderstanding about what will happen. If we pass the legislative competence Order and then go to a Measure, that is when these detailed issues will be explored. We are still part of the United Kingdom and the European Union. Wales is saying 'We want these rights within Wales'. These organs will then become available for anyone in the UK and, I understand, any European nationals from countries that are party to the agreement.

[19] **Mr Davies:** I think that that is correct. There is a set of European agreements dealing with organ transplantation and the supply of health services. Nothing that we will be doing under the LCO will change those arrangements.

[20] **Edwina Hart:** So, Wales as a nation is being altruistic in what it wants to undertake, because these organs cannot be guaranteed to people in Wales. They will form part and parcel of the national list for the appropriate matches to be made.

[21] **Eleanor Burnham:** Yn olaf, ar hyn **Eleanor Burnham:** Finally, for now, many

o bryd, yn aml, bydd pobl o Gymru yn cael eu trawsblaniad yn Lloegr; er enghraifft, yn Lerpwl os ydynt o ogledd Cymru, neu ym Mryste os ydynt o Gaerdydd. Beth yw goblygiadau hynny, tu hwnt i'r hyn a ddywedasoch yn gynharach, ar gyfer unrhyw Fesur caniatâd tybiedig i Gymru, ac felly, ar gyfer y pwerau yr ydych yn eu ceisio?

transplants for people in Wales are carried out in England; for example, in Liverpool if people come from north Wales, or in Bristol if they come from Cardiff. What are the implications of that, beyond what you said earlier, for any presumed consent Measure for Wales and accordingly the powers you are seeking?

[22] **Edwina Hart:** The presumed consent Order for Wales applies only to adults who live and die in Wales. Transplants are sometimes carried out elsewhere in the UK, but we will have to look at these detailed issues when we explore the Measure. If we are successful in obtaining the legislative competence Order, my wish is that there would be discussions on a Measure about all of these issues prior to anything being subject to legislation by the National Assembly for Wales. So, I appreciate that we have taken our time over this issue. We have had two detailed consultations previously and we have taken people along with us, in the main, and it is important to do that when we move on to the next stage. This is not to be rushed, because it is very much a matter of principles and priorities, and it is about life, is it not?

12.40 p.m.

[23] **Nick Ramsay:** The memorandum accompanying the proposed Order states that

[24] 'The Welsh Assembly Government seeks to introduce an opt out system of organ donation for those living and dying in Wales, in addition to continuing to participate in the existing UK-wide opt-in system'.

[25] Can you give an indication of how this interaction between the Welsh and UK-wide systems will work in practice?

[26] **Edwina Hart:** We do not think that there will be any difficulty at all. We will have our system in Wales and, as I indicated in my response to Eleanor, we will be a part of the wider UK system and, of course, there are other issues within Europe. We do not see this being a problem at all.

[27] **Dr Jones:** The fact that we will be different from England in this respect is not, in itself, a particular difficulty. It is clear from a health policy and NHS care-provision point of view that the direction of travel in England is making our health systems very different anyway. So, we will have a huge number of differences in the way health policy is operated in Wales and England. Without being able to speculate about the operational details of this system, we would hope that what we propose in Wales will support the systems that exist in England.

[28] **Nick Ramsay:** You have mentioned European law; given that European law gives nationals of the European Economic Area and Switzerland equal access to the NHS and thereby to donated organs, what are the implications for this legislation?

[29] **Mr Davies:** I do not think that it has any implications for the legislation. As I mentioned earlier, nothing that we are doing in the proposed LCO will alter any of the existing law in operation. So, any additional organs made available through the work that we do through a Measure will be brought within that system. There may be cross-border implications between Wales and England that need to be thought through depending on the detail of what we are doing, but it is too early to tell exactly what those might be. However, I do not envisage that anything that might be done in the proposed LCO or any future Measure

would have an impact on the existing arrangements.

[30] **Andrew Davies:** I would like to ask a supplementary question on that point. If this passes, a Measure is then introduced and a system set up, what would happen if someone from Wales, who would be covered by this legislation, were to die in London, for example? How would the system work in that case?

[31] **Mr Davies:** We will not be able to change the law as it applies in England. So, if someone dies in England, the law that is applicable in England will dictate what happens to the body of that person after death. The Secretary of State has the power by Order to make consequential additional provision in response to any Measures that we introduce. It then becomes an issue for England to decide what it wants to do in relation to the consent system that operates in Wales. So, it becomes an issue for England rather than for us. We have to accept the limitations of the settlement. There is only so much that we can do by way of making law applicable outside our borders.

[32] **Andrew Davies:** There are, for example, a considerable number of students studying at universities outside Wales.

[33] **Mr Davies:** That is right, but in the absence of a change to the law as it applies in England, which we cannot control, we can only extend our provision to the border.

[34] **Eleanor Burnham:** Therefore, perhaps it is up to us, if we agree with this, to press our suit and see whether we can progress this in England so that it can fall in with our wishes should this legislation be successful.

[35] **Edwina Hart:** There is considerable interest in what we are doing in Wales across the United Kingdom. If we are successful in having legislative competence in this area and we move to a Measure, people will be interested to see what difference that makes across the piece. However, those are judgments for individual political parties and it is for them to decide how they want their politicians to pursue these matters across the border.

[36] **Nick Ramsay:** I would like to ask a supplementary question on that point, because I was under the impression that, if you are a Welsh resident but you die across the border, in London for example, the law would still apply in terms of the presumed consent. However, you have just said that that would not be the case.

[37] I sat on the Health, Wellbeing and Local Government Committee when the original report was published three years ago and I seem to remember that, if you are on holiday in Spain, for example, and you die there, then you are subject to Spanish law. However, from what you have said, it seems that if someone who was visiting Wales were to die here, they would not be subject to the presumed consent system.

[38] **Mr Davies:** It would depend on how the presumed consent system is constructed, because, under a future Measure, we will have to identify those who have died in Wales who were resident in Wales. So, it is not going to be the case that anyone who dies in Wales will suddenly fall within the system.

[39] **Nick Ramsay:** That is quite different to how other countries operate a presumed consent system.

[40] **Mr Davies:** I do not know the details of the Spanish system. I would imagine that Spain or any country in Europe that operates such a system and is subject to the European Convention on Human Rights will have to construct a system that is compliant with the convention. There are convention issues around the example of a British person who dies in

Spain and then action is taken to remove organs under Spanish law. That would raise convention issues about whether or not that was appropriate.

[41] **Nick Ramsay:** Would there be a consultation with the next of kin about what would happen?

[42] **Mr Davies:** Yes, but simply because that is the way it operates in Spain, it does not mean that that is the way it has to operate here or that the same system would be sensible for us in Wales.

[43] **Rosemary Butler:** These are items that we need to consider further down the line. The current situation is that if people die while on holiday, their organs are not harvested; they are brought home.

[44] **Nick Ramsay:** No, I do not think that that is the case, Chair.

[45] **Rosemary Butler:** We can check on that; perhaps the clerk can give us the information.

[46] **Nick Ramsay:** You are subject to the law of the country that you live and die in.

[47] **Rosemary Butler:** That is an interesting one, because I was not aware of that.

[48] **Nick Ramsay:** Sorry, I have strayed from the point.

[49] **Rosemary Butler:** You have slightly, but never mind.

[50] **Nick Ramsay:** What is the likely impact of different organ transplantation arrangements for Wales and England on patients? Would the existence of two different systems for organ donation create potential for confusion among patients and families and an unacceptable administrative burden on the health care system in Wales?

[51] **Edwina Hart:** No, I do not think that it would put too much of an administrative burden on the health system in Wales, and I do not think that it will cause any problems across the border.

[52] **Dr Jones:** We respect entirely the organ donation register, and we would seek to strengthen that. The proposal also does not make any difference to the way in which organs are allocated to recipients. This proposed legislation should strengthen the all-UK arrangements.

[53] **Val Lloyd:** What discussions have you had with your UK counterparts in relation to your proposals regarding consent for transplantation arrangements?

[54] **Edwina Hart:** They are aware of the issues, because we have the legislative competence Order procedure to go through, in which we have dealing with the Wales Office. I have had no difficulties in terms of anything that I have required from the Department of Health. When I met Andrew Lansley, I took the opportunity to indicate my direction of travel to him on this. As far as I am aware, the Department of Health has been co-operative on all matters.

[55] **Val Lloyd:** Thank you, that is helpful. Minister, we have already referred to the Health, Wellbeing and Local Government Committee report of 2008, in which it was stated that there was a danger that moves to legislate in Wales ahead of the rest of the UK could be a distraction from more productive improvements and that they could alienate public support

for organ donation if not handled properly. What is your response to that comment?

[56] **Edwina Hart:** I do not think that it causes confusion among the public, because surveys show that the public is very keen to see people's organs go for transplant purposes. Moving people from 'being keen' to completing an organ donation form is a totally different matter. As I indicated earlier, we have been quite successful in our press and publicity campaigns. We also think that people out there understand the need for that, because they are increasingly seeing people from within their circle of family and friends requiring transplantation, and they recognise that that is the best option for many individuals. I also think that we have already undertaken a high level of consultation—there was the initial consultation, then there was the committee's extensive evidence taking before it produced its report, followed by the second consultation to discuss issues, and Lord Elis-Thomas also very kindly hosted an event with the faith community to discuss the wider issues. So, I think that there is a good understanding out there, and I do not think that it will cause any confusion. If we are successful with the proposed legislative competence Order, when we come to the proposed Measure stage, we will have to look very carefully into how we run publicity and public engagement campaigns to see what more we need to do. The LCO is the start of the process rather than its end, and in terms of developing the future Measure, some of the questions that have already come from committee colleagues indicate the wide range of issues that we will have to engage with the public on. There will be an opportunity to do that if and when the proposed LCO goes through.

12.50 p.m.

[57] **Dr Jones:** It could well be a distraction if it was all that we were doing, but we are actually placing a great deal of energy into a lot of other means of increasing the donation rates. We are very proud of the achievements that we are seeing. Members may be interested to know that during 2009-10, there were 41 organ donors in Wales. In the first six months since April 2010 there have been 35, which suggests quite a rapid rate of increase. However, that still represents an overall rate of organ donation of just 13 per million, which is really low in European comparative terms. So, more needs to be done. It could be a distraction if that were all we are doing, but that is certainly not the case.

[58] **Edwina Hart:** I think that it is fair to say that when the committee reported, it did look at the wider issues of what you need to do to encourage organ donation. It was also looking at the system, and we have made improvements in the system.

[59] **Val Lloyd:** So, on the basis of what you have just said, and on the basis of the consultation exercise, you think that there is sufficient public support for separate powers for Wales on organ donation.

[60] **Edwina Hart:** Yes.

[61] **Val Lloyd:** Were participants in these consultation exercises asked specifically whether Wales should have a different system to England?

[62] **Edwina Hart:** I think that they were aware that we would be legislating for a different system. In an ideal world, it would be nice if the UK were to legislate for such a system. I think that we recognise that we felt that we needed to go it alone because we felt that, having done such a lot of work in persuading the public to donate organs and so on, this was the way to take it forward. Of course, some people do not agree with this system and they probably never will, but I think that the majority of the consultation responses did support having this organ donation system in Wales. The support for a soft opt-out system was quite high in terms of the consultation responses. Over 500 out of around 600 specifically said that we should do it.

[63] **Rosemary Butler:** I wish to pursue that slightly. A report that was produced on the outcomes of the Welsh Government's public debate during 2008 and 2009 noted that

[64] 'The views expressed in the public meetings and written contributions about organ donation revealed a significant lack of public knowledge about organ donation'.

[65] This is slightly different from what you were saying just now. Does this suggest that legislation for presumed consent in Wales would be inappropriate, given the lack of public awareness of the issues?

[66] **Edwina Hart:** Which report did that come from?

[67] **Rosemary Butler:** It was the report produced in 2008-09. I assume that it is the report from the Health, Wellbeing and Local Government Committee.

[68] **Edwina Hart:** Chris?

[69] **Dr Jones:** A lack of public awareness may well have been reflected in the fact that where surveys show 90 per cent support for organ donation in principle, only less than 30 per cent actually bother to register using the current systems. We do recognise that there is a need to raise public awareness to encourage conversations about organ donation as a healthy, normal part of the process of death, and one that can actually bring comfort to families. We think that introducing this sort of change will actually raise public awareness considerably of the issues. It will address the problems that may have been identified.

[70] **Rosemary Butler:** So, you will be doing a public awareness campaign before it comes in.

[71] **Dr Jones:** There will be a need for a prolonged public awareness campaign, probably over two years, to ensure that people are aware of the choices available to them.

[72] **Nick Ramsay:** Having listened to what you just said about encouraging people to register, in England—or in the UK—I think that there has been a suggestion that giving to charities, for instance, could be done through cash machines. Have there been any discussions in that respect? People use cash machines all of the time. Perhaps you could have something there asking, 'Do you wish to opt into a system?' I know that it is not directly linked to presumed consent, but you were indulging me, Chair—

[73] **Rosemary Butler:** As usual.

[74] **Nick Ramsay:** It is just something that I thought of earlier that might be investigated. Perhaps the Minister for health could look into that.

[75] **Dr Jones:** Again, we are proud of the fact that more Welsh patients are registered in the current system. Progressively, I think that 40,000 extra Welsh patients have registered over the last year, but there still remains a persistent disparity between the registered organ donors and the need for transplants. That is the problem. In Wales, we have nearly 300 people awaiting transplants at present. We undertook only 160 transplants last year, and 37 people died on the transplant waiting list last year. So, there is a gap that needs to be filled.

[76] **Edwina Hart:** All suggestions such as that are useful. It is always useful, as part of any arrangement, to maximise people's opportunity to tick the appropriate box. I agree with that.

[77] **Andrew Davies:** What difference will the proposed Order make? What outcomes are you looking to achieve through it?

[78] **Edwina Hart:** The outcome that we are looking for is an increase in the number of organs for donation, and more people receiving organ transplants. We recognise that it will benefit some Welsh patients, but it will benefit patients throughout the United Kingdom. I hope that, if this practice comes in in Wales, others will seek to do the same elsewhere, in order to increase the number of organs that are available for transplant. Some of the most harrowing experiences that I have had have been meeting patients who are waiting for transplants. They ask what more Government can do. It is interesting that, since we started to debate this issue, a large number of patients have said, 'It is wonderful that you are considering doing this. It is giving hope to me and my family'. That is the reason why we are doing it. We are not doing it to be different; we are doing it for the right reason, which is to increase the number of organs that are available.

[79] **Dr Jones:** I will comment on how this might increase organ donation rates, if I may. We would expect the change to raise public awareness and enable a cultural change, so that, for society in Wales, the default position would be that you are an organ donor. At present, because only 30 per cent of people are registered and 70 per cent are not, when we approach the families, the default position, namely that you are out, is reflected, and around 40 per cent of those families say 'no'. With presumed consent, we would hope, given the survey results that indicate that perhaps 90 per cent of people would be in, that that would be the default position. We would expect that families, who would still have a say in the matter, would tend to defer to that default position. So, there would be those two things: the increase in the number of people who are, essentially, organ donors; and the cultural change regarding the default position, which will increase the rate of availability of organs.

[80] **Andrew Davies:** What is the estimate of the increase in the supply of organs, based on experience elsewhere in the world?

[81] **Dr Jones:** My understanding is that recent experience has shown that, for every 1 million people on the organ donation register, there are seven more donors per year. Each donor provides two to three organs, and so there would be an extra 15 to 20 organs per 1 million people. In Wales, there are nearly 1 million people on the organ donation register. We would hope to increase that number by maybe 2 million, if 90 per cent buy-in. So, that might make available an extra 30 to 40 organs per year.

[82] **Andrew Davies:** Is the evidence that you have about the soft opt-out based on experience?

[83] **Dr Jones:** What I just said was based on the experience of NHS Blood and Transplant, and the current operation of the UK organ donation register.

[84] **Andrew Davies:** There has been discussion about consultation. What consultation have you undertaken with significant stakeholders?

[85] **Edwina Hart:** We have undertaken extensive consultation throughout the process. There are two lots of consultation, as well as the committee's report, and we have held public meetings. So, we have consulted widely. However, that will not be the end of the consultation process. If we are successful with the proposed LCO, we will consult further on the format and shape of the proposed Measure, and we will be getting various groups together to discuss the issues. I took a similar approach when I had responsibility for the Mental Health (Wales) Measure 2010; there was extensive consultation with the sectors that were involved. We will continue to do that into the future, because the only way of gaining an acceptance and an understanding of the change is by doing that. I do not think that the process can be rushed.

The medical director suggested that it would take two years, which is, in fact, a very small timescale bearing in mind what we want to achieve in the long run.

[86] **Andrew Davies:** I will move on to look at some of the legal aspects, if I may, and thank you for the comment that you made on that in your opening remarks. You mentioned, Minister, that you had had discussions with the Secretary of State for Health, Andrew Lansley. Presumably, the Wales Office would have been informed of those, although, clearly, the Secretary of State has problems with memory loss at the moment. What was the response of the Department of Health at the time? Did it raise any issues regarding the powers of the Assembly, for example, that, in the Attorney-General's judgment, this exceeded what is possible in Schedule 5 to the Government of Wales Act 2006?

1.00 p.m.

[87] **Edwina Hart:** When I indicated that I had spoken to Andrew Lansley, it was when he was down here on another visit. I made a passing reference to the proposed legislative competence Order, but I did not have a detailed discussion with him, because this is a devolved matter and we are perfectly lawful in how we intend to go ahead with it. I am not aware that the Department of Health raised any concerns whatsoever when the sign-off occurred within the UK Government.

[88] **Mr Davies:** That is right, and during the process of discussing the LCO proposal with the Department of Health and the Wales Office, no concerns were raised directly about whether or not it was possible to have a matter inserted into Schedule 5 about consent to organ donation. That concern emerged quite late, not that long before the proposed LCO was published.

[89] **Andrew Davies:** Minister, the legal advice that you have had from the legal services department is clear: you have the powers.

[90] **Edwina Hart:** Yes, I have the powers through this procedure and I will have the powers if there is a successful 'yes' vote in the referendum.

[91] **Mr Davies:** Well, it is really the Queen in Council who has the powers. What we are drafting here is an Order in Council, made by the Queen in Council, which will be approved by this Assembly and both Houses of Parliament. Nevertheless, that Order in Council is limited by a specific power. So, we can only insert matters into Schedule 5 if they relates to one or more of the fields listed in Schedule 5. So, we are inserting this into the field of health and health services and our view is that it relates to that field. I think that the concern is that the fields are viewed as being quite narrowly defined so that they are hermetically-sealed units that cannot cross over into other things. That just cannot work; what we are doing in Schedule 5 in describing the competence of the Assembly is complex, and it is not possible to demarcate a field such as health and health services and say that nothing that might touch on something else can be included within that field. A good example of that is the provision about redress, which is already to be found in the health and health services field, and which, essentially, allows the Assembly, in certain circumstances, to adjust the ordinary civil law about negligence.

[92] General civil law—the law of tort, law of defamation and law of contract and how they apply—is not devolved in general, but if you describe something such as health and health services very broadly, it will inevitably touch on those wider things, and you cannot then assume that those things are not part of the structure. So, these crossover points are already built into the structure of Schedule 5, and, where there is such a crossover, if it is intended that that topic is to be left out of the Assembly's competence, then you need to have a specific exception that does that. There is an example of that with regard to coroners in the

matter that we are inserting, in order to clarify the position in relation to their functions, otherwise we would be touching on what they are doing as well. There are a number of examples across Schedule 5 and, indeed, Schedule 7 of that sort of thing.

[93] **Andrew Davies:** I was going to raise Schedule 7. Would a successful referendum make a difference?

[94] **Mr Davies:** It is the same point again. We take the view that we could make provision about presumed consent under Schedule 7, because, again, there are topics that are very broadly described. For example, there is the broad headline of health and health services, and underneath that headline are prevention, treatment and alleviation of disease, illness, injury, disability, control of disease, and so on. There is no doubt in my mind that the topic of transplantation is essentially about the treatment of illness, disease, injury and disability. If you look at the exceptions that are applied to that topic in Schedule 7, you will see the exception for xenotransplantation, human embryology and so on, and that gives—

[95] **Nick Ramsay:** Xenotransplantation involves species to species transplantation, does it not?

[96] **Mr Davies:** That is right. That gives a powerful indication of the breadth of those topics in Schedule 7.

[97] **Nick Ramsay:** That was my question.

[98] **Andrew Davies:** Presumably it was the Attorney-General's advice to the UK Government in terms of a response in the e-mail that you received, Minister. What exactly was the objection or the questioning of the powers?

[99] **Mr Davies:** We have not seen anything questioning the addition of this matter to Schedule 5. All that we have seen is that the issue that has been raised for the Welsh Affairs Committee and the House of Lords Constitution Committee to address. I am not aware of any final, detailed legal argument about the position of this proposed LCO and whether it is a proper exercise of the power.

[100] **Rosemary Butler:** Eleanor, did you have a question on the same point?

[101] **Eleanor Burnham:** Yes, I was going to ask—you might feel that it is inappropriate to comment—whether this is not a good reason for the Assembly to have the further powers proposed in the forthcoming referendum; we could clarify this legal fog that descends upon us when we are talking about such matters, which are important to us, but perhaps not so important to other parts of the UK, which could not care a jot what we do.

[102] **Edwina Hart:** The only person who can comment on that is me, as a politician. I look forward to our having additional powers after a referendum, but, as I have indicated, we can go ahead now, and we would be in a position to go ahead after a successful referendum as well.

[103] **Rosemary Butler:** Let us deal with what we have in front of us, Eleanor. Nick, did you want to come back in here?

[104] **Nick Ramsay:** I quite agree with Eleanor that it would be good to clarify the fog, and a referendum is sorely needed. We need to be clear that, at the moment, you can only propose an LCO in relation to something that would be within the remit of the Assembly Government. In other words, whether you use an LCO, or whether you have the powers, the issue that the Attorney-General was raising would apply anyway, if it stands up.

[105] **Mr Davies:** We can only include matters—or rather, the Queen in Council can only include matters—in Schedule 5 that relate to one or more of the fields. That is the legal test, not whether the Welsh Ministers have a particular power to do something. The test is to look at the field—‘health and health services’—and decide whether the matter relates to that or not. That is the question that the court will be addressing.

[106] **Rosemary Butler:** Are you happy with that, Nick?

[107] **Nick Ramsay:** Yes.

[108] **Rosemary Butler:** Val, you are next.

[109] **Val Lloyd:** The proposed Order would provide the Assembly with the competence to introduce legislation concerning

[110] ‘consent or other authorisation for certain specified activities for the purpose of transplantation’.

[111] I do not understand what is meant by ‘other authorisation’. Could you clarify, please?

[112] **Mr Davies:** I chose that phrase because ‘consent’ alone might give the impression that we were referring only to positive consent. In a system of presumed consent, there may not actually have been a conscious consent or written consent, or any other kind of consent. ‘Other authorisation’ allows us to authorise the use of organs through the provision in the Measure itself. It is about getting rid of the fiction around the term ‘presumed consent’ by saying that it is either ‘consent’ or ‘other authorisation’ by the systems that would be created in the Measure.

[113] **Val Lloyd:** That is very clear. I will now turn to another topic. The proposed Order is confined to powers relating to

[114] ‘the storage and use of the body of a deceased adult, and not the body of a deceased child’.

[115] **Edwina Hart:** The legislative competence refers only to adults—that is, persons aged 18 or over.

[116] **Val Lloyd:** The reference in matter 9.3 of the proposed Order relating to the purposes of transplantation to a human body implies that there would be no obstacle to legislating in relation to organ transplantation to a child. Is that your intention?

[117] **Mr Davies:** Yes.

[118] **Val Lloyd:** Thank you. I think that is quite clear.

[119] **Rosemary Butler:** Before we move on, I wish to clarify something. What did the Attorney-General say about human rights? Which article is this said to contravene, and why?

[120] **Mr Davies:** I do not think that he said anything in particular about human rights. What the Secretary of State has done is identify an issue for the Welsh Affairs Committee and the House of Lords Constitutional Committee to address in their consideration of the Order. It is not in dispute that what we are doing here engages territory involving human rights. There are many other things that the Assembly does by Measure and executive decisions of Ministers that engage human rights. There is no inherent problem with that. However,

whatever we do has to comply with the European convention.

[121] **Rosemary Butler:** So, he has not said anything specific.

[122] **Mr Davies:** Not that I am aware, no.

[123] **Andrew Davies:** Just following up on the question that Val asked about the definition of whom this applies to—obviously, adults over 18—young people over 16 can currently sign consent forms, so was any consideration given to including young people between the ages of 16 and 18? If not, why have you stuck to the age at 18?

1.10 p.m.

[124] **Edwina Hart:** We stuck at 18 because this is the cleanest way of dealing with the fact that you are adult at the age of 18.

[125] **Dr Jones:** The matter of a 17-year-old giving consent for something is different from presuming consent.

[126] **Rosemary Butler:** Can you clarify why you are excluding children?

[127] **Edwina Hart:** You can exempt yourself from presumed consent; you can decide not be part and parcel of it. Therefore, you would make the decision as an adult, and that is the rationale behind our approach.

[128] **Mr Davies:** The policy concern was not to overcomplicate what we were doing. If you tried to apply the presumed consent system to children, there would be complicated processes to deal with.

[129] **Edwina Hart:** However, not with adults.

[130] **Mr Davies:** So, the idea is that the existing system would continue to be in place for children and young people, and that the new system would only be for adults.

[131] **Rosemary Butler:** If you are successful in your campaign to explain what this is all about, given that young people are very up-front, and keen on green issues in particular, if 14 and 15-year-olds want to participate, will there be an exemption for them, assuming the parents agree, given that they are under 16?

[132] **Edwina Hart:** They could do what they can currently do, namely indicate that they would be prepared to consent for their organs to be utilised.

[133] **Dr Jones:** The proposal does not alter the UK basis for the organ donation register.

[134] **Rosemary Butler:** So, it would be covered under that?

[135] **Dr Jones:** Yes.

[136] **Nick Ramsay:** The proposed Order includes a fixed exception, which states that the legislative competence conferred does not extend to circumstances where the body of a deceased person is required for the purposes of functions of a coroner. Can you explain the rationale behind this exception?

[137] **Mr Davies:** Under the existing law, if a medical professional who wishes to remove organs from a body is clear that there is appropriate consent for that to happen, but he or she

knows or has reason to believe that there are circumstances around the death of that person that would engage the functions of the coroner, nothing can be done in relation to that body unless the coroner consents. That is part of the existing law. The exceptions make it clear that there is no intention here to unpick the general role of coroners in similar circumstances. So, it would allow the Assembly by Measure to make the same kind of provision that currently applies in relation to the existing system under a system of presumed consent.

[138] **Nick Ramsay:** My next question, which you have touched on, is: can you explain what practical implications this exception will have in terms of the scope of the laws that the National Assembly can or cannot pass?

[139] **Mr Davies:** I do not think so, because it does not touch on any policy that we want to change. It is only about preserving the proper role of coroners.

[140] **Nick Ramsay:** Section 1(11) of the Human Tissue Act 2004 gives the Secretary of State the power to vary, omit or add to the activities listed in Schedule 1 to that Act, which sets out the regulated activities that cannot be undertaken without appropriate consent, which currently include transplantation. However, the explanatory memorandum states that no functions of a Minister of the Crown have been identified as being engaged by this proposed LCO. In light of the powers available to the Secretary of State under the Human Tissue Act 2004, can you clarify whether or not legislation made under this proposed Order could alter the functions of a Minister of the Crown?

[141] **Edwina Hart:** That is definitely a lawyer's question. [*Laughter.*]

[142] **Nick Ramsay:** I felt like a lawyer asking it.

[143] **Mr Davies:** There is that potential, because the Secretary of State has this function. This function is an ancillary function to the operation of the general system. The general system is that there is law on the face of the Human Tissues Act 2004, which tells you how the consent regime works. As you mentioned, the Secretary of State has this ancillary function to adjust purposes for which body parts can be used under that consent regime. We do not know at this point whether the provisions, in the exact form that we are going to enact them, will lead to a modification of the Secretary of State function or whether any Secretary of State functions are removed. We have not reached the point where we can be certain about that. We can make that assessment only after we have produced a draft. So, once we have our draft, we will assess whether or not there is modification. If there is modification of a Secretary of State function, then there would need to be Secretary of State consent to that provision, if the provision is made by way of a Measure. The situation is slightly different if the provision is made by a Bill under Part 4 following a 'yes' vote. The circumstances under which we need Secretary of State consent to modify functions are slightly different there. So, if what we are doing in a Bill is—

[144] **Nick Ramsay:** So, this is one area that would be affected by a 'yes' vote.

[145] **Mr Davies:** Potentially, but we do not know yet, because we have not drafted a Measure.

[146] **Nick Ramsay:** Sorry, I was putting the cart before the horse.

[147] I have one more question on eligibility and cross-border issues, which were mentioned earlier. The explanatory memorandum states that work is already under way to develop a mechanism to determine those to whom the Measure would apply. Can you provide further information on any work that has been undertaken in relation to this to ensure that the breadth of the proposed Order is wide enough?

[148] **Edwina Hart:** We are currently scrutinising the legislative competence Order here and the issues that you have raised are issues for the eventual Measure. We are in the very early stages of discussing with various parties what the content of a Measure would be. As I have indicated previously to the committee, there will be a full consultation before we move to the final draft of any proposed Measure for consideration by the National Assembly for Wales.

[149] **Eleanor Burnham:** The explanatory memorandum states that the persons to whom such legislation applies will need to be clearly identified in the legislation. Why are these applicable persons not specified in the proposed Order?

[150] **Mr Davies:** As the Minister has said, there is no need to do so. The work that would need to be done in order to identify correctly the categories has not been finished. So, it would not be sensible at this point to pin ourselves down to a particular formulation if we find, on examination, that that formulation does not work. A better way is to identify the broad topic, with the limitations that we have, and leave the issue of the application to particular people to the Measure. So, we will establish clarity through the Measure, but I do not think that we need to have all of that detail in the Order.

[151] **Nick Ramsay:** I suppose that what Eleanor and I have been trying to get at is whether you are confident at the moment that the framing of the LCO is wide enough to allow for any decisions or amendments that might be taken at the Measure stage.

[152] **Mr Davies:** Yes, it is.

[153] **Edwina Hart:** That is definitely the case.

[154] **Nick Ramsay:** That is what we wanted to ascertain.

[155] **Rosemary Butler:** We had other questions to ask, but you have already covered them, Minister. Do Members wish to raise any other points?

[156] **Nick Ramsay:** I know that the Minister has been unwell and I would like to thank her for coming here today to answer questions. It is good to see that you and your officials are passionate about this subject and I appreciate the way that you have answered questions. However, that is probably what the Chair was going to say to you.

[157] **Rosemary Butler:** We would not expect any less from this Minister. However, I would like to thank you very much for coming here today, particularly as you have not been well. I would also like to thank your officials for the very open way in which they have answered our questions. A copy of the draft transcript will be sent to you by the clerk before it is finalised and published.

1.19 p.m.

Cynnig Trefniadol Procedural Motion

[158] **Rosemary Butler:** We will be considering the evidence and the key issues at the next meeting, which is in a week's time. The week after that, we will be considering the draft report, with a view to agreeing it in committee. I seek the committee's agreement to hold the next two sessions in private. I move that

the committee resolves to exclude the public from the next two meetings in accordance with

Standing Order No. 10.37(vi).

[159] I see that Members are happy to do that.

*Derbyniwyd y cynnig.
Motion agreed.*

[160] We will now take a 10-minute break, after which, we will deal with Stage 2 of the Proposed Domestic Fire Safety (Wales) Measure.

*Gohiriwyd y cyfarfod rhwng 1.19 p.m. a 1.36 p.m.
The meeting adjourned between 1.19 p.m. and 1.36 p.m.*

Mesur Arfaethedig Diogelwch Tân Domestig (Cymru)—Cyfnod 2: Ystyried Gwelliannau
Proposed Domestic Fire Safety (Wales) Measure—Stage 2: Consideration of Amendments

[161] **Rosemary Butler:** Welcome to the second part of today's meeting. We will be undertaking Stage 2 proceedings on the Proposed Domestic Fire Safety (Wales) Measure. I welcome to the meeting Ann Jones, who is the Member in charge of the proposed Measure, along with Keith Bush, the director of legal services, Jane Davidson, the Minister for Environment, Sustainability and Housing, and Robin Lewis, a Welsh Assembly Government lawyer from the housing and planning team.

[162] 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 the amendments for debate. The marshalled list is the list of all amendments tabled, marshalled in the order in which the relevant sections appear in the proposed Measure. Schedules will be considered with the sections that introduce them, so, for today's meeting, the order in which we will be considering amendments is sections 1 to 2, new Schedules, sections 3 to 7, new section, and long title. You will see from the groupings list that the amendments have been grouped to facilitate debate, but the order in which they are called and moved for decision is dictated by the marshalled list. Members will need to follow both papers. Please do not ask me for an explanation as to why we do it this way; it is just the way that we do it. It is my intention that all votes are recorded, so the names for, against and abstaining will be recorded in the minutes. Any other amendment in the group will be called at the appropriate time during the proceedings in accordance with the marshalled list.

[163] For the record, only committee members can move amendments. For the purpose of today's proceedings, and in line with the Business Committee convention, I will move amendments for Ann Jones. Andrew Davies is substituting for her as a member of the committee.

[164] Members will be aware that the only way to debate a section of a proposed Measure is to have tabled an amendment to it. Any sections that have not had amendments tabled to them are deemed to already have been agreed, as are any sections where tabled amendments are not agreed to. I will announce which sections have been agreed to at the end of the meeting. For any sections that are not disposed of today, there will be a further opportunity to table amendments. In order to be considered at next week's meeting, amendments will need to be tabled by 5 p.m. today. You all look suitably dimmed.

**Grŵp 1: Dyletswydd i Ddarparu Systemau Llethu Tân Awtomatig
(Gwelliannau 1, 2 a 3)
Group 1: Duty to Provide Automatic Fire Suppression Systems
(Amendments 1, 2 and 3)**

[165] **Rosemary Butler:** We now move to consideration of the amendments. The lead amendment in the group is amendment 1. Ann, would you like amendment 1 to be moved?

[166] **Ann Jones:** Yes, Chair.

[167] **Rosemary Butler:** I move amendment 1 in the name of Ann Jones and call upon Ann Jones to speak to the amendment and to the others in the group.

[168] **Ann Jones:** I will speak to all amendments in the group—1, 2, and 3. These relate to section 1 of the proposed Measure, which is the section that lays down the basic requirements for new residences to be provided with an automatic fire suppression or sprinkler system. They are aimed at making some aspects of that requirement clearer and more effective. Amendments 1 and 2, when taken together, make changes to section 1(1) and are primarily concerned with buildings that contain a number of new residences, such as a block of flats.

1.40 p.m.

[169] However, the changes will apply to all new residences. At present, the proposed Measure requires an automatic fire suppression system to be provided at a time when the building work to construct a new residence or convert an existing building to a residence is completed. However, there could be some uncertainty as to the point at which it can be said that the work is complete, particularly in the case of a large block of flats. With that in mind, we have looked at whether the test of the work being completed should apply to the individual flat or to the building as a whole and at what the position would be if a new residence was occupied, but the whole of the building had not been completed. The effect of amendments 1 and 2 is to ensure that, when any individual new residence is occupied, the requirement for an automatic fire suppression system arises at that stage, even if the residence could be said not to be fully completed at that time. If, on the other hand, a new residence is physically completed, it must be provided with an automatic fire suppression system, even if it is not occupied immediately.

[170] Briefly, amendment 3 removes a slight ambiguity from section 1(2)(b), making it absolutely clear that the requirement to provide an automatic fire suppression system applies not only to the conversion of an existing, non-residential building to a single residence, but when the conversion of a single building creates a number of residences. I hope that that is quite clear, and I ask the committee to support those amendments.

[171] **Rosemary Butler:** Do any Members wish to speak? I see that no-one does. Minister, do you wish to comment?

[172] **The Minister for Environment, Sustainability and Housing (Jane Davidson):** I am grateful for the co-operation of Ann and her legal adviser, Keith Bush, in developing further the proposed Measure in response to the issues raised in the committee's Stage 1 report. Although the objective of the proposed Measure may appear relatively straightforward, the need to ensure its coherence with existing building legislation has resulted, and continues to result, in extensive discussion. These and the other amendments now proposed by Ann, which I, from the Government perspective, urge the committee to support, represent significant progress. Ann has accepted the need for some further work with a view to bringing further amendments forward at Stage 3. I am happy to continue working

with Ann to achieve a Measure that meets both her and the Assembly Government's requirements. As Ann has said in her introduction to these particular amendments, we support them as necessary to deal with situations in which a number of residences are being created and occupied before all the work is complete, and to cover a situation where a building is converted into more than one residence.

[173] **Rosemary Butler:** Ann, do you want to say anything else?

[174] **Ann Jones:** No. I am happy with the Minister's observations.

[175] **Rosemary Butler:** I assume that you wish to move to a vote.

[176] **Ann Jones:** I do.

[177] **Rosemary Butler:** The question is that amendment 1 be agreed to. I call for a vote.

*Gwelliant 1: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 1: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 1.
Amendment 1 agreed.*

[178] **Rosemary Butler:** We now move to dispose of amendments 2 and 3 in accordance with the marshalled list. Ann, do you wish amendment 2 to be moved?

[179] **Ann Jones:** Yes.

[180] **Rosemary Butler:** I move amendment 2 in the name of Ann Jones. The question is that amendment 2 be agreed to. I call for a vote.

*Gwelliant 2: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 2: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 2.
Amendment 2 agreed.*

[181] **Rosemary Butler:** We now move to dispose of amendment 3. Ann, do you wish amendment 3 to be moved?

[182] **Ann Jones:** Yes.

[183] **Rosemary Butler:** I move amendment 3 in the name of Ann Jones. The question is that amendment 3 be agreed to. I call for a vote.

*Gwelliant 3: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 3: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 3.
Amendment 3 agreed.*

**Grŵp 2: Gorfodi (Gwelliannau 4, 24 a 25)
Group 2: Enforcement (Amendments 4, 24 and 25)**

[184] **Rosemary Butler:** The lead amendment is amendment 4. Ann, do you wish amendment 4 to be moved in your name?

[185] **Ann Jones:** Yes, please.

[186] **Rosemary Butler:** I move amendment 4 in the name of Ann Jones and call upon Ann to speak to the amendment and the others in the group.

[187] **Ann Jones:** The proposed Measure as introduced dealt with the machinery for enforcing its provisions by applying a number of the provisions of the Building Act 1984, which is the Act under which the building regulations are enforced, to the requirements of the proposed Measure. However, during this process, I have listened to arguments put forward both by the Minister and the Government, and others such as the National House-Building Council, as well as to the recommendations of this committee. I agree that the present approach is perhaps not the best one. It does not provide a comprehensive code for enforcing the proposed Measure, and it creates doubt as to how the rules that apply to enforcing building regulations should be adapted to enforcing the special requirement of this proposed Measure. As I undertook when I asked the Assembly to endorse the general principles of the proposed Measure, I am now proposing these amendments in order to address what I think is a weakness.

[188] They do two things. First, they directly set out the arrangements for enforcing the proposed Measure on the face of the proposed Measure. Those arrangements are still closely modelled on the provisions in the Building Act 1984 for enforcing the building regulations. I believe that this is necessary in order to make it as easy as possible for the arrangements for enforcing this proposed Measure to be combined with those for enforcing the building regulations, so as to avoid wasteful duplication. However, the provisions for enforcing this Measure, which are to be set out in new Schedule 1, eliminate elements of the enforcement provisions in the 1984 Act that were irrelevant or inappropriate to the requirements of this proposed Measure.

[189] Secondly, new Schedule 2 makes separate provision for those situations in which the enforcement of building regulations is not in the hands of local authorities. Paragraph 1 deals with cases in which supervision is in the hands of approved inspectors, and paragraph 2 deals

with the public bodies notice procedure. In either case, as long as those alternative arrangements for ensuring compliance with building regulations apply, the effect of new Schedule 2 is that those alternative arrangements will also apply in relation to ensuring compliance with the proposed Measure.

[190] Members of the committee will be aware that it was only on 12 April 2010 that the Assembly became able to legislate to make this proposed Measure. I have almost been in a race against time to bring the proposed Measure forward before the dissolution of this Assembly. That means that there is still a lot of work to refine and strengthen the proposed Measure, which I would obviously have liked to have completed before introduction, but, given the short timescale, I agreed that we would take amendments at a later stage. There have been detailed and constructive discussions with the Minister and her officials—I am grateful for that—about matters such as the enforcement arrangements. These are ongoing, as the Minister mentioned. Although I believe that these amendments represent major improvements to the proposed Measure, and now provide at least a workable base for enforcement, there is still further work to be done to make the basis even stronger. I expect to be bringing forward further amendments in light of those ongoing discussions with the Government and its lawyers at Stage 3, so as to further strengthen the effectiveness of the proposed Measure. I ask the committee to support these amendments.

[191] **Rosemary Butler:** Do any Members wish to comment? I see that no-one does. Minister, do you wish to comment?

[192] **Jane Davidson:** The Government supports amendments 4, 24 and 25, which are intended to ensure that the two methods of providing building control services are recognised in the proposed Measure—that is, the local authority and the private sector approved inspectors. This brings the enforcement functions of the local authority under the proposed Measure into closer alignment with those available under the Building Act 1984, sets out that it is a local authority function to enforce the proposed Measure in the event of non-compliance and makes clear the circumstances in which enforcement action may not be taken, where an approved inspector is acting. I urge the committee to support the amendments, and we continue in dialogue to ensure that all aspects of both section 2 on enforcement, Schedule 1 on enforcement and Schedule 2 on building work supervised other than by local authorities are appropriately amended at Stage 3.

[193] **Rosemary Butler:** Do you wish to add anything, Ann?

[194] **Ann Jones:** No.

[195] **Rosemary Butler:** I assume that you wish to move to a vote on amendment 4.

[196] **Ann Jones:** Yes, please.

[197] **Rosemary Butler:** The question is that amendment 4 be agreed to. I call for a vote.

Gwelliant 4: O blaid 5, Ymatal 0, Yn erbyn 0.

Amendment 4: For 5, Abstain 0, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:

The following Members voted for:

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 4.
Amendment 4 agreed.*

[198] **Rosemary Butler:** We now move to dispose of amendment 24. Ann, do you wish amendment 24 to be moved?

[199] **Ann Jones:** Yes.

[200] **Rosemary Butler:** I move amendment 24 in the name of Ann Jones. The question is that amendment 24 be agreed to. I call for a vote.

*Gwelliant 24: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 24: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 24.
Amendment 24 agreed.*

[201] **Rosemary Butler:** We now move to dispose of amendment 25. Ann, do you wish amendment 25 to be moved?

[202] **Ann Jones:** Yes.

[203] **Rosemary Butler:** I move amendment 25 in the name of Ann Jones. The question is that amendment 25 be agreed to. I call for a vote.

*Gwelliant 25: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 25: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 25.
Amendment 25 agreed.*

**Grŵp 3: Darparu Gwybodaeth (Gwelliannau 5, 6, 26 a 7)
Group 3: Provision of Information (Amendments 5, 6, 26 and 7)**

[204] **Rosemary Butler:** Ann, would you like me to move amendment 5?

[205] **Ann Jones:** Yes.

[206] **Rosemary Butler:** I move amendment 5 in the name of Ann Jones and call upon Ann

Jones to speak to the amendment and the others in the group.

1.50 p.m.

[207] **Ann Jones:** Section 3 of the proposed Measure deals with the provision of information to those local authorities that will be responsible for enforcing it, so that they can assess whether the proposed building work will, when completed, meet the requirements of section 1. These amendments make a number of improvements to section 3. Amendment 5 ensures that the regulations made by Ministers can include a requirement that, when the information is submitted for consideration by a local authority, it is accompanied by a fee that is intended to cover the cost of examining the information. Amendment 6 amends section 3(2) of the proposed Measure in order to make it clear that the regulations that Ministers will make that prescribe the information to be provided can lay down requirements as to not only the substance of the information to be provided but the form it can take. For example, regulations might require that the information takes the form of a certificate from a suitably qualified person showing that the system complies with a specified technical standard.

[208] Amendment 7 provides a mechanism for challenging a decision by a local authority that the information provided is inadequate, and amendment 26 ensures that the time limits relating to those decisions and challenges to them align with those that apply in relation to decisions relating to building regulations. I ask the committee to support the amendments.

[209] **Rosemary Butler:** Does any Member wish to speak in relation to those amendments? I see not. Minister, would you like to say anything?

[210] **Jane Davidson:** I urge the committee to support the amendments, which are intended to provide fees in relation to applications under the proposed Measure; to allow the form and content of the applications to be specified; to provide flexibility; and to better relate the periods for notification of incomplete submissions to those for equivalent notification in the building regulations. There are some areas that require further amendment at Stage 3. For example, section 3 does not appear to require the local authority to notify a person that the information provided in accordance with sub-section 2 is satisfactory; that needs further clarification to provide confidence to the applicants to commence building work.

[211] **Rosemary Butler:** Ann, do you want to add anything?

[212] **Ann Jones:** No, thank you. I am happy to work with the Minister on that.

[213] **Rosemary Butler:** Do you wish to proceed to a vote on amendment 5?

[214] **Ann Jones:** Yes, please.

[215] **Rosemary Butler:** The question is that amendment 5 be agreed to. I call for a vote.

*Gwelliant 5: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 5: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 5.
Amendment 5 agreed.*

[216] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendments 6, 26 and 7. Ann, would you like amendment 6 in your name to be moved?

[217] **Ann Jones:** Yes, please.

[218] **Rosemary Butler:** I move amendment 6 in the name of Ann Jones. The question is that amendment 6 be agreed to. I call for a vote.

*Gwelliant 6: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 6: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 6.
Amendment 6 agreed.*

[219] **Rosemary Butler:** We shall now dispose of amendment 26. Ann, would you like amendment 26 in your name to be moved?

[220] **Ann Jones:** Yes, please.

[221] **Rosemary Butler:** I move amendment 26 in the name of Ann Jones. The question is that amendment 26 be agreed to. I call for a vote.

*Gwelliant 26: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 26: For 5, Abstain 0, Against 0*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 26.
Amendment 26 agreed.*

[222] **Rosemary Butler:** We shall now dispose of amendment 7. Ann, would you like amendment 7 in your name to be moved?

[223] **Ann Jones:** Yes, please.

[224] **Rosemary Butler:** I move amendment 7 in the name of Ann Jones. The question is that amendment 7 be agreed to. I call for a vote.

Gwelliant 7: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 7: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
 Davies, Andrew
 Franks, Chris
 Lloyd, Val
 Ramsay, Nick

Derbyniwyd gwelliant 7.
Amendment 7 agreed.

Grŵp 4: Dehongli (Gwelliannau 8, 11, 12, 9, 10, 13, 14, 15, 16, 17, 18 a 19)
Group 4: Interpretation (Amendments 8, 11, 12, 9, 10, 13, 14, 15, 16, 17, 18 and 19)

[225] **Rosemary Butler:** The lead amendment in this group is amendment 8. Ann, would you like amendment 8 in your name to be moved?

[226] **Ann Jones:** Yes, please.

[227] **Rosemary Butler:** I move amendment 8 in the name of Ann Jones. I call on Ann Jones to speak to the amendment and the other amendments in the group.

[228] **Ann Jones:** All of the amendments in this group relate to the definition of terms used in the proposed Measure. Amendments 8 to 16 are consequential to the changes made by amendments 24 and 25, which place the enforcement arrangements that are modelled on those in the Building Act 1984 on the face of the proposed Measure. They define the new terms that are introduced into the proposed Measure by those Schedules in a way that matches the definitions used in the 1984 Act. That has the added benefit of ensuring—through amendment 13—that the proposed Measure contains a definition of ‘building work’ that is consistent with that in the building regulations.

[229] Amendments 17, 18 and 19 relate to the definition of ‘residence’. Amendment 17 ensures that one class of residence, a care home, is defined in a way that matches the definition in the legislation under which such homes are regulated, namely the Care Standards Act 2000. Amendments 18 and 19 clarify the powers of Ministers to amend the definition of ‘residence’ by Order, with the approval of the Assembly, and make it clear that the power is limited to adding a class of residence or amending the description of an existing class, and that it does not extend to removing a class of residence. They also make it clear that such an Order can add only those classes of residence that are included under ‘residential premises’ in the Government of Wales Act 2006, and which are therefore within the legislative competence of the Assembly. Therefore, I ask you to support the amendments.

[230] **Rosemary Butler:** Does anyone wish to speak on any of those amendments?

[231] **Jane Davidson:** The Government supports the amendments.

[232] **Rosemary Butler:** You do not need to reply to that debate, Ann.

[233] **Ann Jones:** No—thank you.

[234] **Rosemary Butler:** Do you wish to proceed to a vote on amendment 8?

[235] **Ann Jones:** Yes, please.

[236] **Rosemary Butler:** The question is that amendment 8 be agreed to. I call for a vote.

*Gwelliant 8: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 8: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 8.
Amendment 8 agreed.*

[237] **Rosemary Butler:** In accordance with the marshalled list, we shall now move to dispose of amendments 11, 12, 9, 10, 13, 14, 15, 16, 17, 18 and 19. Ann, do you wish amendment 11 in your name to be moved?

[238] **Ann Jones:** Yes, please.

[239] **Rosemary Butler:** I move amendment 11 in the name of Ann Jones. The question is that amendment 11 be agreed to. I call for a vote.

*Gwelliant 11: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 11: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 11.
Amendment 11 agreed.*

[240] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 12. Ann, would you like amendment 12 in your name to be moved?

[241] **Ann Jones:** Yes, please.

[242] **Rosemary Butler:** I move amendment 12 in the name of Ann Jones. The question is that amendment 12 be agreed to. I call for a vote.

*Gwelliant 12: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 12: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew

Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 12.
Amendment 12 agreed.*

[243] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 9. Ann, would you like amendment 9 in your name to be moved?

[244] **Ann Jones:** Yes, please.

[245] **Rosemary Butler:** I move amendment 9 in the name of Ann Jones. The question is that amendment 9 be agreed to. I call for a vote.

Gwelliant 9: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 9: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 9.
Amendment 9 agreed.*

[246] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 10. Ann, would you like amendment 10 in your name to be moved?

[247] **Ann Jones:** Yes, please.

[248] **Rosemary Butler:** I move amendment 10 in the name of Ann Jones. The question is that amendment 10 be agreed to. I call for a vote.

Gwelliant 10: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 10: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 10.
Amendment 10 agreed.*

[249] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 13. Ann, would you like amendment 13 in your name to be moved?

[250] **Ann Jones:** Yes, please.

[251] **Rosemary Butler:** I move amendment 13 in the name of Ann Jones. The question is

that amendment 13 be agreed to. I call for a vote.

Gwelliant 13: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 13: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 13.
Amendment 13 agreed.*

[252] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 14. Ann, would you like amendment 14 in your name to be moved?

[253] **Ann Jones:** Yes, please.

[254] **Rosemary Butler:** I move amendment 14 in the name of Ann Jones. The question is that amendment 14 be agreed to. I call for a vote.

Gwelliant 14: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 14: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 14.
Amendment 14 agreed.*

[255] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 15. Ann, would you like amendment 15 in your name to be moved?

[256] **Ann Jones:** Yes, please.

[257] **Rosemary Butler:** I move amendment 15 in the name of Ann Jones. The question is that amendment 15 be agreed to. I call for a vote.

Gwelliant 15: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 15: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 15.
Amendment 15 agreed.*

[258] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 16. Ann, would you like amendment 16 in your name to be moved?

[259] **Ann Jones:** Yes, please.

[260] **Rosemary Butler:** I move amendment 16 in the name of Ann Jones. The question is that amendment 16 be agreed to. I call for a vote.

Gwelliant 16: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 16: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 16.
Amendment 16 agreed.*

[261] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 17. Ann, would you like amendment 17 in your name to be moved?

[262] **Ann Jones:** Yes, please.

[263] **Rosemary Butler:** I move amendment 17 in the name of Ann Jones. The question is that amendment 17 be agreed to. I call for a vote.

Gwelliant 17: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 17: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 17.
Amendment 17 agreed.*

[264] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 18. Ann, would you like amendment 18 in your name to be moved?

[265] **Ann Jones:** Yes, please.

[266] **Rosemary Butler:** I move amendment 18 in the name of Ann Jones. The question is that amendment 18 be agreed to. I call for a vote.

Gwelliant 18: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 18: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 18.
Amendment 18 agreed.*

[267] **Rosemary Butler:** In accordance with the marshalled list, we now move to dispose of amendment 19. Ann, would you like amendment 19 in your name to be moved?

[268] **Ann Jones:** Yes, please.

[269] **Rosemary Butler:** I move amendment 19 in the name of Ann Jones. The question is that amendment 19 be agreed to. I call for a vote.

Gwelliant 19: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 19: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 19.
Amendment 19 agreed.*

**Grŵp 5: Rheoliadau a Gorchmynion sy'n Gysylltiedig â'r Darpariaethau ar Sail Beilot
(Gwelliant 28)**

Group 5: Regulations and Orders Relating to Provisions on a Pilot Basis (Amendment 28)

[270] **Rosemary Butler:** The only amendment in this group is amendment 28. I invite Nick Ramsay to move amendment 28 and to speak to that amendment.

[271] **Nick Ramsay:** I move amendment 28 in my name.

[272] The reason for this amendment is that it ensures that the provisions may be applied on a pilot-scheme basis. The existing content of section 6(1)(b), together with the power to commence the application of the proposed Measure for parts of Wales only, would probably permit pilot schemes in any case. However, this amendment would not only put this beyond doubt, but provide an opportunity to debate why pilot schemes may be a good idea.

[273] **Rosemary Butler:** Does any Member wish to speak on that? I see that no-one does. Minister, would you like to add anything?

[274] **Jane Davidson:** The Government will resist this amendment. In the interests of consistency when the proposed Measure moves forward into regulations, we think that it

should be applied universally. If the intent was to make provision for pilot scheme regulations, it would be prudent to set out the power in a separate section, as section 6 broadly provides for the procedure by which regulations are made. So, there is a legislative opposition due to the fact that this was not fully taken forward, as well as a policy opposition whereby the Government will oppose this in the interest of ensuring that there is absolute clarity about the delivery of the proposed Measure.

[275] **Ann Jones:** I also oppose the amendment on the grounds that we discussed fully the effects of sprinkler systems in new residences at the LCO stage and during our discussions on the proposed Measure. I have yet to be convinced that a pilot scheme is the best way forward. The evidence provided by any pilot scheme in Wales would be negligible in comparison with decades of evidence provided by systems installed in the United States of America, Vancouver and Studley Green in Wiltshire. On 6 January this year, the sprinkler system installed in a house in Studley Green was activated during a bedroom fire; the family was unhurt and there was only slight damage to the property. That is testament to the fact that sprinkler systems work, and I therefore see no benefit in having a pilot scheme.

2.00 p.m.

[276] **Rosemary Butler:** I call Nick to reply to the debate.

[277] **Nick Ramsay:** As I said before, I think that pilot schemes could be a good way of testing out the automatic fire suppression system on a small scale before a programme is rolled out. I hear what the Minister has said, but I think that there is probably some scope for limited pilot schemes to be carried out anyway. The purpose of this amendment was really to ensure that the sort of equipment being used was seen to be working as intended and to improve the proposed Measure.

[278] **Rosemary Butler:** Do you wish to proceed to a vote on amendment 28?

[279] **Nick Ramsay:** Yes.

[280] **Rosemary Butler:** The question is that amendment 28 to be agreed to. I call for a vote.

Gwelliant 28: O blaid 1, Ymatal 0, Yn erbyn 4.

Amendment 28: For 1, Abstain 0, Against 4.

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

Ramsay, Nick

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val

Gwrthodwyd gwelliant 28.

Amendment 28 not agreed.

Grŵp 6: Rheoliadau a Gorchmynion (Gwelliannau 20 a 27)
Group 6: Regulations and Orders (Amendments 20 and 27)

[281] **Rosemary Butler:** The lead amendment in this group is amendment 20. Ann, would you like amendment 20 in your name to be moved?

[282] **Ann Jones:** Yes, please, Chair.

[283] **Rosemary Butler:** I move amendment 20 in the name of Ann Jones, and I call on Ann to speak to amendment 20 and the other amendment in the group.

[284] **Ann Jones:** Amendment 20 refers to section 6(1)(d), which requires Welsh Ministers to consult on regulations that prescribe technical requirements under section 1 or which prescribe the form and content of information to be provided to local authorities under section 3. Amendment 5 has now introduced to section 3 the power to prescribe the fee to accompany that information. Amendment 20 ensures that Ministers must also consult before exercising that power. I ask the committee to support this amendment. I also ask the committee not to support amendment 27 in the name of Nick Ramsay. Its effect would be that, every time the regulations prescribing the technical standards for automatic fire suppression systems had to be amended, a vote would be required in Plenary and there would be a complete rerun of the proposed Measure procedures. This would be an onerous requirement, particularly where very minor changes were needed. In view of the technical nature of the subject matter of the regulations, I do not believe that requiring Assembly Members to vote on these matters would be reasonable. Ministers will already be under an express duty consult on any changes to technical regulations. Therefore, I ask Members to support amendment 20 and to vote against amendment 27.

[285] **Rosemary Butler:** I call Nick Ramsay to speak to amendment 27 in his name.

[286] **Nick Ramsay:** I understand what Ann has been saying on this area. However, I believe that this amendment, which makes regulations under section 1(4)(c) subject to the affirmative procedure, would enhance the proposed Measure. It means that the regulations made for the creation of fire system requirements under that section would be subject to greater scrutiny and that Ministers would undergo appropriate consultation before regulations and consequent requirements were published.

[287] **Rosemary Butler:** Do any other Members wish to speak to these amendments? I see that no-one does. Minister, do you wish to make any comment?

[288] **Jane Davidson:** We urge the committee to accept amendment 20 in the name of Ann Jones, because it requires that the fee payable to the local authority introduced by amendment 5 may be set in regulations made by Welsh Ministers only after the Welsh Ministers have conducted such consultation as they consider appropriate. We are very happy to support that amendment. Like Ann Jones, we would resist amendment 27. A great deal of the voting that the committee has undertaken today has been in relation to consistency and bringing together the proposals under the proposed Measure and current arrangements under building regulations. Any proposed regulations are likely to be the subject of consultation, during which industry technical experts would have the opportunity to express their views. The negative procedure would be consistent with the procedure applied to building regulations made under the Building Act 1984. So, in preserving that consistency, we would continue to propose that the negative procedure is the appropriate procedure in this case. Therefore, we urge the committee to resist amendment 27.

[289] **Rosemary Butler:** Ann, do you wish to reply to the debate?

[290] **Ann Jones:** No.

[291] **Rosemary Butler:** Do you wish to proceed to a vote on amendment 20?

[292] **Ann Jones:** Yes, please.

[293] **Rosemary Butler:** The question is that amendment 20 be agreed to. I call for a vote.

*Gwelliant 20: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 20: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 20.
Amendment 20 agreed.*

[294] **Rosemary Butler:** We now come to dispose of amendment 27. I call on Nick Ramsay to move amendment 27.

[295] **Nick Ramsay:** I move amendment 27.

[296] **Rosemary Butler:** Do you wish to proceed to a vote on amendment 27?

[297] **Nick Ramsay:** Yes, please.

[298] **Rosemary Butler:** The question is that amendment 27 be agreed to. I call for a vote.

*Gwelliant 27: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 27: For 2, Abstain 0, Against 3.*

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

Burnham, Eleanor
Ramsay, Nick

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

Davies, Andrew
Franks, Chris
Lloyd, Val

*Gwrthodwyd gwelliant 27.
Amendment 27 not agreed.*

**Grŵp 7: Teitl Byr a Chychwyn (Gwelliannau 21 a 22)
Group 7: Short Title and Commencement (Amendments 21 and 22)**

[299] **Rosemary Butler:** The lead amendment in this group is amendment 21 in the name of Ann Jones. Ann Jones, would you like amendment 21 in your name to be moved?

[300] **Ann Jones:** Yes, please.

[301] **Rosemary Butler:** I move amendment 21 and call on Ann Jones to speak to it and the other amendment in the group.

[302] **Ann Jones:** Amendments 21 and 22 make it clear that the parts of sections 1 and 3 of the proposed Measure that would come into force immediately on Royal Approval are limited to those that will enable the necessary regulations to be made in preparation for bringing the proposed Measure as a whole into force. Therefore, I ask the committee to support these amendments.

[303] **Rosemary Butler:** I see that no other Member wishes to speak to these amendments.

Minister, do you wish to say anything?

[304] **Jane Davidson:** The Government supports these amendments for the reasons that Ann has outlined.

[305] **Rosemary Butler:** Ann, you obviously do not wish to reply. Do you wish to proceed to a vote on amendment 21?

[306] **Ann Jones:** Yes, please.

[307] **Rosemary Butler:** The question is that amendment 21 be agreed to. I call for a vote.

*Gwelliant 21: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 21: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 21.
Amendment 21 agreed.*

[308] **Rosemary Butler:** We now move to dispose of amendment 22. Would you like amendment 22 in your name to be moved?

[309] **Ann Jones:** Yes, please.

[310] **Rosemary Butler:** I move amendment 22. The question is that amendment 22 be agreed to. I call for a vote.

*Gwelliant 22: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 22: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 22.
Amendment 22 agreed.*

Grŵp 8: Dilysiad a Dyroddi Dogfennau (Gwelliant 23)
Group 8: Authentication and Service of Documents (Amendment 23)

[311] **Rosemary Butler:** Amendment 23 is in a group on its own. Ann Jones, do you wish amendment 23 in your name to be moved?

[312] **Ann Jones:** Yes, please.

[313] **Rosemary Butler:** I move amendment 23 in the name of Ann Jones. I call on Ann Jones to speak to this amendment.

[314] **Ann Jones:** This is a technical amendment. The need for it is largely a consequence of setting out detailed enforcement provisions on the face of the proposed Measure. Many of those provisions involve the service of statutory notices of different kinds, making it essential that there are rules as to the means of service of those notices and so on. The approach taken by the amendment is to apply the same rules to the service of notices under this proposed Measure as the Building Act 1984 applies to the service of notices made under that Act. I hope that the committee can support that, please.

[315] **Rosemary Butler:** I see that no Members wish to comment on that amendment. Minister, do you wish to speak to amendment 23?

[316] **Jane Davidson:** We are very happy to support this amendment because, once again, it is about consistency and ensuring that we have the proper alignment between the proposed Measure and the provisions of the Building Act 1984.

[317] **Rosemary Butler:** Ann, do you wish to reply?

[318] **Ann Jones:** No, thank you, Chair.

[319] **Rosemary Butler:** Do you wish to proceed to a vote on amendment 23?

[320] **Ann Jones:** Yes, please.

[321] **Rosemary Butler:** The question is that amendment 20 be agreed to. I call for a vote.

*Gwelliant 23: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 23: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Andrew
Franks, Chris
Lloyd, Val
Ramsay, Nick

*Derbyniwyd gwelliant 23.
Amendment 23 agreed.*

[322] **Rosemary Butler:** For the record, all sections of and Schedules to the proposed Measure have been deemed to be agreed by the committee. Under Standing Order No. 23.40, if a proposed Measure is amended at Stage 2 so as to insert a section or Schedule or substantially alter any existing provision, the committee considering Stage 2 proceedings may request the Member in charge to prepare a revised explanatory memorandum. I consider that the amendments agreed by this committee have substantially altered some existing provisions. As such, do Members agree that the Member in charge should prepare a revised explanatory memorandum? I see that all Members agree.

[323] In accordance with Standing Order No. 23.42, Stage 3 begins tomorrow, 21 January. The deadline for tabling amendments will be notified to Members in due course. It will also be published by the Business Committee.

[324] I advise Members that the next meeting of the committee will be held on 27 January at 12.30 p.m., when the committee will consider the written evidence and the key issues on the Proposed National Assembly for Wales (Legislative Competence) (Health and Health Services) Order 2011. Thank you. I formally declare the meeting closed.

Daeth y cyfarfod i ben am 2.10 p.m.
The meeting ended at 2.10 p.m.