



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

**Pwyllgor Deddfwriaeth Rhif 3
Legislation Committee No. 3**

**Dydd Iau, 21 Hydref 2010
Thursday, 21 October 2010**

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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 (yn dirprwyo ar ran Veronica German) Welsh Liberal Democrats (substitute for Veronica German)
Christine Chapman	Llafur Labour
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Helen Mary Jones	Plaid Cymru The Party of Wales
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others in attendance

Kate Berry	Cymdeithas Ysgrifenyddion Cyngor a Chyfreithwyr Association of Council Secretaries and Solicitors
Tim Buckle	Ymgynghorydd Perfformiad, Cymdeithas Llywodraeth Leol Cymru Performance Adviser, Welsh Local Government Association
Jo Farrar	Cadeirydd SOLACE a Phrif Weithredwr Cyngor Bwrdeistref Sirol Pen-y-bont ar Ogwr Chair of SOLACE and Chief Executive of Bridgend County Borough Council
Daniel Hurford	Pennaeth Gwella a Rheoli Polisi, Cymdeithas Llywodraeth Leol Cymru Head of Policy Improvement and Governance, Welsh Local Government Association
Steve Thomas	Prif Weithredwr, Cymdeithas Llywodraeth Leol Cymru Chief Executive, Welsh Local Government Association

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

Ruth Hatton	Dirprwy Glerc Deputy Clerk
Carys Jones	Clerc Clerk
Bethan Roberts	Cynghorydd Cyfreithiol Legal Adviser
Alys Thomas	Gwasanaeth Ymchwil yr Aelodau Members' Research Service

Dechreuodd y cyfarfod am 1.01 p.m.
The meeting began at 1.01 p.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **David Lloyd:** Croeso i bawb i **David Lloyd:** Welcome to you all to this

gyfarfod diweddaraf Pwyllgor Deddfwriaeth Rhif 3 Cynulliad Cenedlaethol Cymru. Yr ydym wedi cael ymddiheuriadau am absenoldeb gan Veronica German, a bydd Eleanor Burnham yn cymryd ei lle. Croeso, felly, i Eleanor Burnham. Yr ydym hefyd wedi cael ymddiheuriadau am absenoldeb gan Joyce Watson.

meeting of Legislation Committee No. 3 in the National Assembly for Wales. We have received apologies for absence from Veronica German, and Eleanor Burnham will be taking her place. Welcome, therefore, to Eleanor Burnham. We have also received apologies for absence from Joyce Watson.

[2] Os bydd y larwm tân yn canu, dylai Aelodau adael yr ystafell drwy'r allanfeydd tân penodol a dilyn cyfarwyddiadau'r tywyswyr a'r staff. Nid ydym yn disgwyl ymarfer tân y prynhawn yma, nac yn disgwyl tân ychwaith. Dylai pawb ddiffodd eu ffonau symudol, galwyr a 'mwyar duon', gan eu bod yn amharu ar yr offer darlledu.

If the fire alarm should sound, Members should leave the room via the marked fire exits and follow the instructions of ushers and staff. We are not expecting a fire drill, or indeed a fire, this afternoon. All mobile phones, pagers and BlackBerrys should be switched off, as they interfere with the broadcasting equipment.

[3] Fel y gwyddoch, mae Cynulliad Cenedlaethol Cymru yn gweithredu'n ddwyieithog. Mae clustffonau ar gael i glywed y cyfieithiad ar y pryd a gellir hefyd addasu'r sain arnynt i bobl sy'n drwm eu clyw. Ni ddylid cyffwrdd â'r botymau ar y meicroffonau, gan y gall hynny amharu ar y system, a dylid sicrhau bod y golau coch ymlaen cyn siarad. Mae'r cyfieithiad ar y pryd ar gael ar sianel 1 a'r darllediad gair am air i glywed y sain yn well ar sianel 0.

As you know, the National Assembly for Wales operates bilingually. Headphones are available to hear the simultaneous translation, and to adjust the volume for those who are hard of hearing. Do not touch the buttons on the microphones as that can interfere with the system, and please ensure that the red light is on before speaking. The interpretation feed is on channel 1 and the verbatim broadcast for the amplification of audio is on channel 0.

1.02 p.m.

Y Mesur Arfaethedig ynghylch Llywodraeth Leol (Cymru): Sesiwn Dystiolaeth 4 The Proposed Local Government (Wales) Measure: Evidence Session 4

[4] **David Lloyd:** Fel y gwyddoch, swyddogaeth y pwyllgor hwn yw ystyried a chyflwyno adroddiad ar egwyddorion cyffredinol y Mesur Arfaethedig ynghylch Llywodraeth Leol (Cymru), a gyflwynwyd ar 12 Gorffennaf gan y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol, Carl Sargeant. Rhaid i'r pwyllgor hwn gwblhau ei waith a gosod adroddiad gerbron y Cynulliad erbyn 17 Rhagfyr 2010.

David Lloyd: As you know, the role of the committee is to consider and report on the general principles of the Proposed Local Government (Wales) Measure, introduced on 12 July by the Minister for Social Justice and Local Government, Carl Sargeant. This committee must conclude its work and lay a report before the Assembly by no later than 17 December 2010.

[5] Hon yw'r bedwaredd sesiwn dystiolaeth mewn cysylltiad â'r Mesur arfaethedig hwn. Daeth ein hymgyngoriad i ben ddydd Gwener, 1 Hydref, a gellir gweld yr ymatebion ar wefan y pwyllgor. Diben cyfarfod heddiw yw cymryd rhagor o dystiolaeth lafar mewn perthynas â'r Mesur arfaethedig. I'r perwyl hwnnw, croesawaf Steve Thomas, prif weithredwr Cymdeithas

This is the fourth evidence session in connection with this proposed Measure. Our consultation closed on Friday, 1 October, and the responses can be viewed on the committee's website. The purpose of today's meeting is to take further oral evidence in connection with the proposed Measure. To that end, I welcome Steve Thomas, chief executive of the Welsh Local Government

Llywodraeth Leol Cymru, Daniel Hurford, y pennaeth gwella a rheoli polisi, a Tim Buckle, yr ymgynghorydd perfformiad a llywodraethu. Croesawaf hefyd Jo Farrar, cadeirydd SOLACE, a Kate Berry, cadeirydd Cymdeithas Ysgrifenyddion Cyngor a Chyfreithwyr. Croeso ichi i gyd.

Association, Daniel Hurford, head of policy improvement and governance, and Tim Buckle, performance and governance adviser. I also welcome Jo Farrar, chair of SOLACE, and Kate Berry, chair of the Association of Council Secretaries and Solicitors. Welcome to you all.

[6] Yr ydym wedi cael tystiolaeth ysgrifenedig gennych ac, yn naturiol, mae'r Aelodau wedi darllen y papurau yn drwyadl o'r dechrau hyd y diwedd. Felly, yn unol â'r drefn arferol, symudwn yn syth at y cwestiynau. A minnau'n Gadeirydd, y drefn yw i mi ofyn y cwestiwn cyntaf. Gofynnaf ychydig gwestiynau cyffredinol i ddechrau. Mae gennym res gweddol lawn o gwestiynau, felly gofynnaf i'm cyd-Aelodau fod yn weddol fyr gyda'r cwestiynau, gan obeithio y gall yr atebion fod yn gryno ac i'r pwynt.

We have received your written evidence and, naturally, Members have had an opportunity to read the papers thoroughly from start to finish. Therefore, in line with our usual procedure, we will move straight to the questions. As I am Chair, the usual arrangement is for me to start the questioning. I have a few general questions to begin with. We have many questions to ask, and so I ask my fellow Members to be succinct in their questions in the hope that the answers will also be succinct and to the point.

[7] Mae'r cwestiwn cyntaf, felly, i bob un ohonoch. A ydych yn cefnogi prif egwyddorion ac amcanion y ddeddfwriaeth hon ar lywodraeth leol? A hoffech chi ddechrau, Steve?

The first question is to you all. Do you support the main principles and objectives of the legislation on local government? Do you wish to kick off, Steve?

[8] **Mr Thomas:** Thank you for the invitation, Chair, and for your introduction. You will not be surprised to hear that we view the proposed Measure as something of a curate's egg: it is good in parts. So, there are parts of the proposed Measure that we warmly welcome, and there are other parts that we warmly oppose. We see that this proposed Measure is committed to extending local democracy across Wales, but the principles do not always align with the proposals. So, we have some real issues with some parts of the proposed Measure.

[9] **David Lloyd:** We will drill down to the detail of that later. Jo, would you like to come in?

[10] **Ms Farrar:** I support the Welsh Local Government Association's comments. SOLACE Wales is supportive of the broad aims of the proposed Measure. We support the promoting and strengthening of local democracy and also support the community leadership role of councillors and elected members. However, we are worried that several of the proposals in the proposed Measure will not help us to achieve these aims, and that they might introduce a greater degree of prescription, which will restrict local decision making. We are also worried about the resource implications of several of the provisions.

[11] **Ms Berry:** I am probably in the same position as my two colleagues. From our evidence, you will see that the access group has clearly indicated that it supports the general thrust of the proposed Measure. We have approached our evidence from a more formal and technical direction and our concerns relate to some of the specific issues that are considered in our evidence. We have been involved with Assembly officials to ensure that some of our proposals are included. So, we are generally supportive.

[12] **David Lloyd:** Diolch am eich sylwadau cychwynol. Symudwn ymlaen yn awr i ddechrau ystyried rhai o'r manylion.

David Lloyd: Thank you for your opening remarks. We will now move on to start considering some of the detail. Witnesses

Dywedodd rhai tystion y dylai'r have stated that provisions in the proposed darpariaethau o fewn y Mesur arfaethedig fod Measure need to be proportionate and not yn gymesur ac nid yn llawdrwm. A allwch heavy handed. Can you explain your chi esbonio rhai o'ch pryderon ynglŷn â hyn? concerns on this?

[13] **Mr Thomas:** I will kick-off on that, Chair. The world partly changed yesterday with regard to the financial climate that we are in. We have massive service pressures in local government and we are also seeing a very different approach to local government in England, with the abolition of things like the Audit Commission, the regional development agencies and the non-hypothecation of funding. To get through the next period, we need to focus our attention on what we do best, and what the public wants us to do, which is to provide services.

[14] There are things in the proposed Measure that, to me, seem entirely frivolous. I never thought that I would see the day where the Welsh Assembly Government would attempt to specify the time at which we should hold committee meetings. What has that got to do with you? There are a range of things that are down to local democratic choice, and I do not think that the Assembly has any locus in that whatsoever. Another example is the introduction of a statutory head of democratic services. Why? I do not understand some of the things that are in this proposed Measure; I do not know where they have come from.

[15] I welcome some of the provisions with regard to community leadership, but I think that we have to get real as well. The next period is about dealing with the challenges ahead.

[16] **Mr Hurford:** To build on Steve's comments, on the proportionate aspect of the proposed Measure, as colleagues have said, we support the general direction and principle around local democracy; however, we would argue that some parts of the proposed Measure are already being undertaken by authorities and councils, especially those parts around member development, scrutiny and work with community and town councils. So, there is a general concern about the level of prescription and detail around activities that are already ongoing. There is an issue with regard to prescription and new duties being applied because, on the back of that, comes regulation. There is emerging concern across local government around the level of regulation and bureaucracy as a result of the Local Government (Wales) Measure 2009 and the Wales programme for improvement. There is always an issue around the proportionality of inspection and regulation, but with additional new burdens and requirements on authorities comes regulatory burdens as well.

[17] **David Lloyd:** Jo, a ydych am ddod i mewn? Peidiwch â theimlo rheidrwydd i ateb Do not feel obliged to respond to a question cwestiwn os nad oes gennych rywbeth i'w if you do not have anything to add. We are ychwanegu. Nid oes disgwyl i bawb ateb pob not expecting each of you to answer every cwestiwn. question.

[18] **Ms Farrar:** I was going to support what has been said. I am sure that we will get onto these later in evidence, but the things that really concern us are things like the statutory head of democratic services, the surveys and the timing of meetings. Those are the things that we felt were the most out of proportion.

1.10 p.m.

[19] **Ms Berry:** I have a slightly different take on that, and it comes down to the balance of prescription and permission in the proposed Measure. The concern that we have reflected in our evidence is that some of the drafting is unclear, particularly the inclusion of a number of clauses that indicate that the Minister will give guidance to which local authorities will have to have regard. It is something that needs to be clarified, because it affects the balance of what is being proposed.

[20] **David Lloyd:** Chris, a oes gennych **David Lloyd:** Chris, do you have a supplementary question?

[21] **Christine Chapman:** I do not think that the timing question is coming up specifically later on, so I wanted to ask about this now. We all know what is behind this part of the proposed Measure—there is a feeling that many people who might want to become elected members could be put off by inappropriate timing. I was a councillor myself, and I know how difficult it is when you are working full-time, or you have family, and so on. Would you agree with this if it was much stronger and said that the timings of meetings could be off-putting to potential members? Do you agree with the sentiment behind it if not the actual wording?

[22] **Helen Mary Jones:** If I may add to that, Chair, I would ask whether you think that it is acceptable that this systematic discrimination that excludes women and younger people with families from local government leadership roles should continue.

[23] **David Lloyd:** That was a question for you, Steve.

[24] **Mr Thomas:** I disagree that there is systematic discrimination.

[25] **Helen Mary Jones:** It is a question to anyone who takes that position.

[26] **Mr Thomas:** I fundamentally disagree that there is systematic discrimination. There is a gentleman sat across the room with whom I used to work at Caerphilly—Ian Medlicott—and we set our committee processes to try to suit as many people as we could. We never went out of our way to discriminate against anyone. Most of those processes are still in place. The idea that a Minister should have the power to set the times for local authority committee meetings is a level of micro-management that is abhorrent to the system. I just do not understand it.

[27] **Ms Berry:** Perhaps I could suggest an alternative way forward. I would obviously agree that there is an issue with the numbers of people who are able to enter local government, for all of those reasons that might constrain them. However, setting those sorts of timings from the centre might not be the most appropriate solution. It might be more appropriate to provide additional support to certain members—for example, women with children. We have, to a certain extent, done that through the members' allowances scheme, where we have taken a much more structured approach to providing care allowances, both for people with children and other caring responsibilities. That is a more positive way of addressing that than trying to set a centralised approach to meeting times. From talking to my colleagues, different localities and different councils have different needs, and what may be appropriate in a city may not be appropriate in a rural area. That is the issue that we would feel concerned about.

[28] **Helen Mary Jones:** That is completely reasonable and I know that Steve Thomas is right when he says that some local authorities have taken quite far-reaching steps and have seen changes as a result, but an awful lot have not. My problem with what Ms Berry is proposing is that existing councillors are the people who make those decisions and therefore, by default, the timings of meetings are suitable for them or they would not be able to carry on coming to the meetings. I can accept Steve's point about micro-management, but let us be clear about this, Chris is talking about the time when she was a local authority member and we have been trying to address this by letting local authorities sort it out by themselves for 20 years, to my knowledge, and possibly longer. The question for us, Chair, is whether we think that the Government is right to try to step in to promote best practice, or whether we can carry on letting authorities exclude people, be it intentional or otherwise. I hope that none of you would say that people are not excluded.

[29] **Mr Thomas:** The problem is that I am not sure what the best practice is. As Kate says, there is a vast distinction between Blaenau Gwent and Anglesey in terms of the councils that we have out there and people's ability to get into the council chambers. There is also a vast difference in people's personal circumstances. I am not certain how you can accommodate that. That is probably best left to local decision making, with the support that Kate is talking about, rather than being centrally prescribed from Cardiff. I just do not see how a Minister can add value to that.

[30] **David Lloyd:** We need to move on. Eleanor is next.

[31] **Eleanor Burnham:** Bydd Rhan 1 o'r Mesur arfaethedig yn rhoi dyletswydd ar awdurdodau lleol i gynnal arolwg o gynghorwyr ac ymgeiswyr aflwyddiannus er mwyn darparu gwybodaeth sy'n ymwneud ag amrywiaeth ymgeiswyr a chynrychiolwyr mewn llywodraeth leol. Beth yw eich barn am y darpariaethau hyn?

Eleanor Burnham: Part 1 of the proposed Measure will place a duty on local authorities to conduct a survey of councillors and unsuccessful candidates with a view to providing information relating to the diversity of candidates and representatives in local government. What are your views on these provisions?

[32] **Ms Farrar:** We are worried about the value of a survey of existing councillors and unsuccessful candidates because its audience will be limited. So, you could not tell from that kind of survey why people have chosen not to stand or what the barriers are. SOLACE Wales is supportive of real engagement with citizens and we are promoting work about understanding citizens' needs and how they respond to local government. We would prefer to take that forward in a wider way than through a limited survey. We also question the value of surveys if they are carried out on their own without a wider programme.

[33] **Mr Hurford:** Our main concern on this again is the duty placed on authorities to do it individually, and that at a time when electoral services officers will be snowed under with the electoral process. This already goes on through the WLGA. We hold a census of councillors after the elections, and the Improvement and Development Agency does pick up a survey of candidates across England and Wales. We are meeting representatives of the IDA next week to discuss the 2012 elections in Wales and to look at what we can do on the promotion of candidates and some analysis of why people stand and why they do not stand. Part of our concern about this is that it will only pick up candidates who have decided to stand. It will not find those people who have come up against barriers. Crucially, in the political party set-up, you will only be able to find selected candidates, and there may well have been a number of other people who were unsuccessful.

[34] **Eleanor Burnham:** Yn eich barn chi, ai cynnal arolwg fel hwn yw'r ffordd orau o gyflawni'r nod hwn? Beth yw eich barn am gostau posibl yr ymarfer hwn?

Eleanor Burnham: Do you think that conducting a survey in this way is the best way of achieving this aim? What are your views on the potential costs of this exercise?

[35] **Mr Thomas:** The implied question in your question is whether we should undertake 22 surveys, and the answer is 'no'. You are encouraging us to work together on a range of things; why not this? We undertake a national survey, and we could expand that. The quality of the data that comes from that is generally pretty good. It is not where it should be yet, but it could be if we put more investment into it. In broad terms, the cost of doing it is difficult to pin down. Like many of the proposals in here, the cost is underestimated, but I could not give you an accurate cost for doing this. However, as I said, there is a better and cheaper way of doing it and that is nationally.

[36] **David Lloyd:** Symudwn ymlaen at y **David Lloyd:** We will move on to the next

cwestiynau nesaf dan law Christine questions from Christine Chapman.
Chapman.

[37] **Christine Chapman:** SOLACE's submission expresses,

[38] 'some serious concerns about the additional costs, practicality and legality of the proposal for remote attendance at meetings'.

[39] Can you comment further in respect of this? What evidence do you have that this will require significant investment?

[40] **Ms Farrar:** I will start because I was responsible for our submission. We have significant concerns. We would again ask what outcome it is trying to achieve. We support the outcome of helping people to attend meetings and participate in council life. As officers, we are supportive of that. We cannot see how this would work in practical terms. If people are finding it difficult to get to a meeting, how would you help them to have remote access? There may be a number of reasons why they could not attend. Do you set up that facility for 43 members in the example of Bridgend in case one cannot make a meeting? We find that we have very good attendance at most council meetings. So, we are worried about the cost and with the practicality and, as Steve said at the beginning, at a time of reducing resources, this might not be the best way to achieve the outcome that we want which, as you said earlier, is helping people to attend meetings.

[41] **Ms Berry:** This was a very important part of our submission. ACSeS has three particular points that we would ask you to take into account. The first is the drafting of the proposed Measure, which, we submit, is unclear. It is not clear from how it is drafted whether this would be a discretionary power given to authorities or whether it would be an obligation. There is a cover-all clause in the legislation that gives power to the Minister to issue guidance. So, there is some concern about that. We would like that clarified within the proposed Measure.

1.20 p.m.

[42] So far as evidence for costs is concerned, we have provided you with some specific examples in our evidence. I am from Cardiff, and the cost for webcasting our council meetings is £20,000 per annum. If webcasting were provided for all of our meetings, the cost would be substantial, and that does not account for the IT provision to allow for interaction from members who are not present for the meeting. Most importantly, we have a number of significant constitutional issues that would need to be addressed in the legislation if you were to make this an obligation. They are to do with provisions that we have to comply with. For example, how would we monitor and police dealing with exempt information where you have somebody who is attending remotely? How would you be able to test that somebody at a remote point, when the meeting goes into exempt session, is not allowing somebody else to view the proceedings? That is an important point.

[43] The other issue concerns the problems of IT generally and the implications and impact should the IT system go down during a very important debate, such as a budget debate, so that members who thought they were part of a meeting could not, for whatever reason, access that meeting and could not therefore vote. What would be the implications of that for a budget, particularly if it was at a crucial time? So, there are several constitutional issues, which, if you were to go forward with this, we would ask and expect the proposed Measure to take account of and make provision for. They are of such significance that we think that, as it is drafted, the process is neither viable nor operational.

[44] **Helen Mary Jones:** From a practical point of view, these things are routinely done

elsewhere. I know of a Norwegian Minister who ran her whole department from her constituency in the north of the country using remote systems without, as far as I can see, anything serious going on. That is very different, of course, to putting in the technology for 40 members in every local authority, so I can see your point. I would be interested in hearing a bit more about some of the issues with regard to legality. The practical questions are ones that can be overcome; the issues of what you do if things go down in the middle of a debate in which a person expects to be able to vote remotely can be addressed with standing orders that have been framed with the technology in mind. Are there other legal issues, in relation to SOLACE's evidence, for example, of which we ought to be aware and which the Government should consider? Those are the things that you cannot overcome by sorting out the technology.

[45] **Ms Berry:** There are the issues that I have already raised, and the other is to do with declarations of interest. Local government operates within a code, and there are requirements for members to declare their interests, and in certain circumstances they have to vacate a meeting. It is normally within the remit of the proper officer and the chair to establish that. However, if you are in situations where you are taking significant decisions, at an executive or at a planning committee level, and they may be legally challenged, how would you be able to demonstrate that somebody was or was not present at a meeting? I am not suggesting that these issues are insuperable; what I am saying is that, at the moment, the proposed Measure is drafted in such a way that it does not address that. Therefore, there is a significant gap that needs to be considered before you move forward.

[46] It may have been done in Norway, but I know of no other legislative process that operates in this way, and I suspect that that is partly to do with the fact that these are rather difficult situations to deal with.

[47] **David Lloyd:** Steve or Tim, do you want to add anything?

[48] **Mr Thomas:** I think that we have covered remote access.

[49] **Eleanor Burnham:** I found myself in a similar situation. I was elsewhere during a committee meeting, and there was some deviousness, and somebody made an official complaint about my using this resource. Do you know of any circumstances in which we should make greater use of remote facilities for certain aspects of proceedings, notwithstanding what you said about voting, being present and not being present, and so on?

[50] **Ms Berry:** An area where it could be developed is scrutiny committees, not just for members but to facilitate evidence being given by experts. That may be a very useful area to explore. As they are non-decision-making committees, some of the legal issues that I have raised may not be so problematic. It also might be a useful area in which to pilot this, because ACSeS considers this to be a pretty fundamental change to how local authorities conduct their business and to bring it in across the board without having at least piloted it in a particular area may be difficult.

[51] **Mr Thomas:** We are looking at some of these issues in the efficiency and innovation board and in the public services ICT group that I run. However, we are not thinking initially of applying it to statutory committees—we are looking at regional boards and the interface between north and south Wales. We should look at that first before we apply it within a formal legal process.

[52] **Christine Chapman:** Your submissions also expressed reservations about councillors having to provide an annual report. The evidence of the Association of Council Secretaries and Solicitors suggested that the proposed Measure or guidance should stipulate that the reports should not be used for party political purposes at public expense. Are you

content that this would be enough of a safeguard?

[53] **Mr Thomas:** There is an interesting contradiction here, because it appears that authorities in England have now been told not to publish council newspapers. We have to join some of these things up. Our great worry in terms of annual reports—let us be very candid about it—is whether it will always be the members writing it or other people. It almost seems to be a job creation scheme for political assistants, and we have to be very careful about how we play that. The other point, which the monitoring officers have made, is the danger of a party political dimension. We have had huge problems with that on occasions with council newspapers, and it could be more pronounced in an annual report. I am not certain that, if we have councillors producing lots of documentation and pushing it out there, there is a ready demand for it. People are very forthright when they want to come forward to their councillors—they do not need an annual report from them.

[54] **David Lloyd:** The public may well be champing at the bit, waiting for these little snippets from their councillors.

[55] **Mr Thomas:** No doubt. *[Laughter.]*

[56] **Mr Hurford:** Many councillors produce newsletters in any case. One of the concerns around this is why councillors should be the only level of representative that has a duty to do this. There is also a lack of clarity in the proposed Measure, because the duty is on the authority to make arrangements rather than there being on a duty on the councillor to produce annual reports. There is a lack of clarity about what would be included in these reports. If it is just a case of stating which committees were attended and which questions were asked, it would not provide a full picture of what the councillor was doing in their role—it would not cover constituency business and dealing with outside bodies, and so on. There is a risk with regard to the political dimension. What happens if there is a dispute and a claim made by a councillor in his or her annual report is challenged by another person? Who would preside over that and police it?

[57] **Mr Berry:** To add another dimension, mention has been made of politicians making a lot of use of newsletters, but the way to go is through the use of blogs and Twitter. There has been quite a high-profile example in Cardiff recently of the use of Twitter. Our submission is about the way that the proposed Measure is drafted, and being very careful about the wording. Elected members using this documentation are also bound by the national code, so there is an issue about how you enforce or police the annual report and who takes responsibility for it—is it the member or officers within the council? Therefore, if this proposal is taken forward, we would ask for a great deal more clarity in the proposed Measure about precisely what is being suggested.

[58] **Eleanor Burnham:** We should just remind ourselves that MPs are the only individuals who are allowed, by law, to send out annual reports. That always amuses me, because we as Assembly Members are not allowed to do that. We certainly have our local one.

1.30 p.m.

[59] **Helen Mary Jones:** Those have been stopped now.

[60] **Eleanor Burnham:** Have they? I am sure that I remember having one last year. I beg your pardon. I take your point about blogging, but there is the unusual situation of it being difficult to police or monitor what is said in tweets, and we know that there is no recourse to law. There have been examples of people being quite salacious on some of these social networks, and it is quite difficult to know how one proceeds.

[61] **David Lloyd:** Jo, did you want to say anything on this issue?

[62] **Ms Farrar:** I would agree with that.

[63] **Helen Mary Jones:** I want to explore some of the issues that we have already touched on in relation to the position of the head of democratic services. I am interested in that partly because of the work that the Health, Wellbeing and Local Government Committee did on scrutiny, which I am sure that you will remember. While I do not think that anyone would doubt that some authorities have made major strides in making this happen, there are others where it was clear to us from the evidence that the executive had a complete stranglehold on members' capacity to scrutinise. Much good work has been done to show what can be achieved by effective scrutiny and to try to stop some executive board members from being so bloody terrified of it, but there are places where it is just not happening and things are just not moving along. You are unhappy—certainly the WLGA is unhappy—with the provision for a compulsory head of democratic services. Can you tell us why you think that it is unnecessary? The Government is seeking to achieve a separate source of advice and support for members, just as, when we scrutinise, we have our research service and so on, albeit that it is on a different scale. I am hoping that you would all think that that is a good thing, although I am not necessarily being sanguine about that. What else could we do—it is worth bearing in mind that that are other posts such as the director of social services that you have to have—if you do not want the Government to impose a compulsory head of democratic services? How else could we achieve that kind of consistency?

[64] **Mr Buckle:** There are a number of issues in this regard. First of all, as we have said, we are not necessarily recognising that there is a problem with a lack of support for scrutiny. A quick look across at authorities to see what support is available shows that in every authority that we have referred to in the response has someone designated to provide support for scrutiny.

[65] **Helen Mary Jones:** I will stop you there, if I may, because unless things have changed dramatically since the committee's work last year, that person is often doing that as a very tiny part of their work, and they are often also working in the chief executive's department. If that is not setting a gamekeeper to support the poachers, I do not know what is.

[66] **Mr Buckle:** On where they are positioned, I do not have facts to give on that. However, we can see that the vast majority of authorities have someone who is called the scrutiny officer, many of them have teams and more than one officer, and many of them have scrutiny managers or equivalents as well. So, with regard to support, as we have said in the submission, every authority has someone designated to do that work, and many have more than just one person designated to do that work.

[67] The other point on that is that it is not just about the support that is available; as you have mentioned, it is about where it is positioned. Part of the concern is that there seems to be an assumption that the support should lie in democratic services because the two roles are similar, but there is a range of departments in the authority where the posts could be situated. We understand that some authorities have deliberately taken decisions to move the officers out of democratic services, believing that positioning them in policy and performance teams will give them a higher status and make their support more effective.

[68] In addition, the Centre for Public Scrutiny—I am not sure whether the committee has seen this yet—has shared its response to the proposed Measure with us. As the body that promotes scrutiny, it has commented on this and has said that the provision suggests a conflation of democratic services and scrutiny that it does not feel to be accurate. It says that, by giving the head of democratic services a responsibility to support the scrutiny process,

provision does not take into account the fact that in most authorities the responsibility for, and knowledge of, committee administration and overview and scrutiny will not be vested in the same person. So, it has raised concerns about that as well. It then goes on to say that it is concerned that creating a head of democratic services post, with responsibility for scrutiny, may consequently have knock-on impacts that will include unnecessary structural change and a less effective scrutiny function. Those views with regard to the impact are one of the first points that we would raise.

[69] The next point about the post being at chief officer level is raised in the explanatory memorandum. It and the regulatory impact assessment say that this will involve re-designating the chief officer post. Bear with me on this technical aspect, but it also says that the postholder will have responsibility only to advise scrutiny committees on service delivery and decisions on how services are delivered, so our understanding is that they could not advise the executive on such issues—

[70] **Helen Mary Jones:** Yes, that is the whole point.

[71] **Mr Buckle:** So in that context, there would need to be a new chief officer post. The resource implications of that would have a knock-on effect, and we would wish to raise concerns about that as well. As we said in our submission, on a point of principle, we do not see the need for a designated post of this nature. We do not see why this would need to be a statutory post when it could be performed by a number of roles in a number of functions.

[72] **Ms Farrar:** From an officer point of view and a SOLACE point of view, we are very concerned about this, because we think that the quality of scrutiny is improving. I agree about the outcome. I agree that we should have really effective scrutiny of executives and local authorities—we are really supportive of that. However, there is some good practice at the moment. Many authorities have really effective arrangements in place, so the trouble with this proposed Measure is that it imposes something different on good authorities as well. We feel that we really need to push on spreading best practice. There is a programme in the Assembly Government, to which I have seconded my scrutiny officer, to help to spread best practice across local government. We feel that we can achieve that outcome, but without the creation of that post. We would be really concerned about creating another chief officer post at a time when we are being pushed to collaborate on chief officer posts and we have shrunk our management teams considerably because they are expensive.

[73] **Mr Thomas:** To use the technical term that Helen Mary Jones used, I would accept that, until five or six years ago, scrutiny in local government was bloody awful. However, it has improved enormously in recent years. I have been subject to scrutiny committees around Wales, and the level of scrutiny is improving, as is the level of support. The committee might like the piece of information that I have here, which shows the resource individually within authorities in terms of scrutiny support. To use the example of my old authority, Caerphilly has a scrutiny and member services manager and a scrutiny and research officer. Torfaen has a head of democratic scrutiny, one lead officer, one scrutiny support officer and three democracy scrutiny officers. That represents a big resource in local government. To add a further statutory post at a time of financial constraint does not seem to me to be the best use of resources. I can pass that piece of evidence to the committee if you wish.

[74] **Helen Mary Jones:** Before we move on from that, if the WLGA can provide it, I would also be very interested to see where those officers sit. My concern, based on the work of the other committee last year, is about the independence of the support for scrutiny. It is the difficulty of having a corporate body that has moved to having executive and democratic scrutiny. If we can see where they are that might help us to decide whether we think it is necessary.

[75] **Ms Berry:** I would like to make another suggestion. Again, it comes back to the way that the proposed Measure is currently drafted. As identified, the functions are a bit woolly, to say the least. At the moment, the functions are simply, for example,

[76] ‘to provide support and advice to the authority in relation to its meetings’.

[77] With regard to what these officers would do, they would not provide advice to members on the technical functions that the committees are determining. They are certainly not going to be giving legal advice, they are not going to be giving financial advice, and they are not going to be giving advice in respect of conduct. Essentially, they would be giving constitutional advice. The submission that we make is to question the reasons for having a head of democratic services on that basis. The problem that the proposed Measure was trying to solve is precisely the issue that you raise of the alleged lack of support for scrutiny. Our submission is that you address that more straightforwardly by creating a formal statutory scrutiny officer, which—and I hesitate to say this—is the way that the English legislation has gone. However, that addresses those problems specifically and gives a status to scrutiny. It means that all local authorities would have to take that on board. That would be our preferred option.

1.40 p.m.

[78] **Helen Mary Jones:** My next question was going to be about that. I want to ask about the additional head officer and the fact that it might be problematic if that head officer does not have a sufficiently rigorous role and enough backup and support. Can you tell us more, Ms Berry, about how your organisation would see the statutory scrutiny officer’s role? More specifically, how might the legislation be drafted to ensure the independence of that officer from the executive? That is what is sought to be achieved here. I am no more convinced than you that it is the best way to go, but I am concerned about that lack—in some authorities—of scrutiny support that is independent of the advice that is given to the executive.

[79] **Ms Berry:** We have set out in our evidence the relevant part of the legislation in England, and I believe that giving an officer a clear statutory place with clear statutory functions affords them the protection of independence. They can then rely on the fact that they have a clear legal responsibility. It is similar to the current role of the three statutory officers: head of paid service, financial officer and monitoring officer. When you want to go down a route that may not be comfortable for some elected members, being able to rely on the fact that you are a statutory officer does sometimes assist. That is one solution, if that is the problem that you want to solve.

[80] **Eleanor Burnham:** There have been instances in my region of north Wales where there have been big issues around whistleblowing and so on. If someone finds a local authority wanting, have you addressed the issue of how they can be properly assisted and supported by, I presume, the scrutiny officer? Despite what you said earlier about not being able to give legal advice and so on, there are many issues around scrutiny being done properly. Without naming it, I can point to an instance in one local authority in north Wales where it has been alleged that one particular member—I see a smile over there—has been overwhelmed with letters. How can we guard against that, so that there is no misuse and so that every member outside the executive has the ability to be assisted? After all, we know the complexities of local government and members desperately need special assistance, as Helen Mary alluded to earlier.

[81] **Ms Berry:** There are existing processes for that. You mentioned whistleblowing; there is a statutory provision for standards and ethics committees within local government and, within my authority, the responsibly for whistleblowing is located within that area. The duty is on that committee to ensure that whistleblowing is protected and embedded in the

authority. You also have monitoring officers, who have absolute responsibility to ensure good governance within the organisation. If there was a member who had a difficulty, an existing statutory officer is available. I am fortunate, because I have a head of democratic services and we work together. The advice and support that is given to members is conflated between the two of us. The formal responsibility for that already lies with the monitoring officer.

[82] **Helen Mary Jones:** I can guess the answer to the first half of my next question, but I am more interested in the answer to the second half. Given that you are not keen on the idea of a compulsory head of democratic services, what are your views on the proposal to require the establishment of a democratic services committee? If, as I suspect, you do not feel that that is necessary, what alternatives to achieve the same goal, which is all about promoting better scrutiny and giving scrutiny status, could be recommended instead?

[83] **Mr Hurford:** Members' services committees and members' development working groups already exist in most authorities to look after the interests of members more broadly. A statutory committee would not necessarily provide any more assurance around that. The full council could, theoretically, provide this, but there may be concerns about the influence of the executive on that. There are existing committees that look at the interests of members more generally. Many authorities have a principal overview and scrutiny committee, or they have a co-ordinating committee in which the chairs and vice-chairs of scrutiny committees get together to look at forward-work programming and the role of scrutiny within the authority. There are existing mechanisms.

[84] **Ms Berry:** In our submission, we tried to offer an alternative, which is a requirement for the head of paid service to report to full council to give assurance of a proper use of resources. We believe that that would do the job just as simply as the creation of the bureaucratic structure of a democratic services committee. That would be our solution.

[85] **Ms Farrar:** I would support that.

[86] **William Graham:** Turning to Part 3 of the proposed Measure, what are your views on the decision to remove the alternative arrangement option, and what are the implications of this development?

[87] **Mr Thomas:** The fourth option, as it commonly became known, was a concession that emerged during our discussions on the implementation of the Local Government Act 2000. It applied in a number of authorities, but since the development of the Local Government Act 2000, we have seen the emergence of the concept of politically balanced cabinets. The fourth option adds extra dimensions; the whole point of it was to be a halfway house between the old committee system and the provisions of the Local Government Act 2000. At the time, it was seen as a stepping stone for those authorities that did not want to take the plunge. The upshot is that most authorities have taken the plunge by now, and I understand that there are now only two authorities that operate the fourth option, and one of those is not particularly happy with the process that it has in place at present. The abolition of the fourth option, particularly in light of the emergence of politically balanced cabinets, is something that we, as an association, are very relaxed about.

[88] **William Graham:** Turning to Part 5, on local authority functions, how will the provisions that allow for the delegation of executive functions to non-executive members operate in practice?

[89] **Mr Thomas:** Good question; can you tell us the answer? *[Laughter.]*

[90] **Ms Berry:** There is support for Part 5 in principle, presuming that the aim of this proposed Measure is to address some of the issues that might arise from working in

partnership, particularly in relationships with health services and local service boards. We would say that the proposed Measure deals with the issue of delegation, but it is not quite as explicit as it should be about the kinds of framework that are needed. Delegating decisions does not obviate you from the requirement to ensure that those decisions are made properly, with proper advice and all of the necessary declarations. There needs to be at least some reference in the proposed Measure to how those decisions can be made, either through guidance or additional drafting.

[91] **Eleanor Burnham:** Symudaf ymlaen at Ran 6 y Mesur arfaethedig, sy'n galluogi dau neu ragor o awdurdodau lleol i graffu ar y cyd. Ceir darpariaethau eisoes sy'n caniatáu i hynny ddigwydd ac mae llawer o awdurdodau lleol yn gweithredu felly. A oes angen deddfu yn y maes hwn?

Eleanor Burnham: I move on to Part 6 of the proposed Measure, which enables two or more local authorities to undertake joint scrutiny. Provisions already allow this to happen, with several local authorities operating in this way. Is there a need to legislate in this area?

[92] **Mr Thomas:** I do not think that there is a need to legislate, but there is a need for more joint scrutiny; that is starting to gain momentum across a number of authorities, particularly in looking at cross-boundary issues. Jo may wish to comment on this, but some of the shared-service proposals that we have had required us to go to 10 or 12 scrutiny committees, which was a tortuously long process. So, some sort of joint committee that could be undertaken across a number of authorities would be very welcome. The trouble is that this is legislating for the sake of it. There is provision to do this, and we will do it as and when required, so I do not think that you need to legislate for it.

1.50 p.m.

[93] **Ms Berry:** As evidence, we have done it, in Cardiff, for example, and we have not found any bar to our doing joint scrutiny, so we have no idea why there is a need for legislation.

[94] **Eleanor Burnham:** Mae Cymdeithas Llywodraeth Leol Cymru yn nodi y dylai darpariaethau ynghylch craffu ar bersonau dynodedig fod yn bŵer yn hytrach nag yn gyfrifoldeb neu'n ddyletswydd. A allai'r gymdeithas esbonio pam mae hynny'n wir, ac a allai'r tystion eraill gynnig sylwadau, os gwelwch yn dda?

Eleanor Burnham: The Welsh Local Government Association states that the provisions in respect of scrutinising designated persons should be a power rather than a responsibility or a duty. Could the association please explain why that should be so, and could the other witnesses also please comment?

[95] **Mr Buckle:** Many local authority committees already scrutinise other public sector bodies, partnerships and so on. If it is specified as a power, it gives them the ability to call people in and, if those people are not playing ball, gives them extra clout to persuade them in more forceful terms to give evidence. The power is entirely in keeping with the existing arrangements and developments in overseeing scrutiny. The concern about specifying it as a duty is that there will be an expectation that local authorities will be under some kind of obligation to scrutinise every public service that is being delivered in an area. Somebody might ask them later why did they not do something and, if there were service failures, they would feel somehow responsible for that for not keeping an eye on everything. If that is the interpretation that is applied, it causes significant resource implications for local authorities—if, indeed, it is a practical role for them to undertake. The power is entirely appropriate as it gives them an extra string to their bow to have the power to call people in, but a duty is more problematic and, if the proposed Measure goes ahead in that form and is interpreted in that way, it could cause problems later during its implementation.

[96] **Ms Farrar:** I would support that. SOLACE strongly believes that local authorities should be able to scrutinise other bodies. We are working with local politicians to suggest that they should be owners of the place, as it were, so that they should help the electorate to get the best public services throughout their area. We are supportive of being able to scrutinise other public services, but we agree that it should be a power and not a duty for the reasons that were set out. Local members should be allowed to decide which local concerns and issues they want to focus on, rather than getting bogged down with the myriad issues in the area. They should be able to decide the priorities for the area and scrutinise them to ensure that we are moving forward. A power would be welcome, but we do not feel the need for a duty.

[97] **Eleanor Burnham:** Wrth ddarparu **Eleanor Burnham:** Is there a risk that, by ar gyfer pŵer yn hytrach na dyletswydd, a providing for a power rather than a duty, it oes perygl y bydd nod y Mesur arfaethedig, will undermine the aim of the proposed sef atgyfnerthu democratiaeth leol, yn cael ei Measure, which is to strengthen local danseilio? democracy?

[98] **Mr Hurford:** I do not think so, because it refers to the scrutiny of designated persons. Part of the problem at the moment is that scrutiny committees have the power to scrutinise a range of public services or issues in their area, but there is not a power to scrutinise designated people. For example, you might want to scrutinise public service deliverers or public utilities companies, but they would not be compelled to give evidence in person or in writing. Having a list of designated people would set out clear parameters for the rest of the public sector and public services more broadly to realise that they have a duty to give evidence to local, democratically elected people through scrutiny. So, it would strengthen the public service scrutiny power of councils.

[99] **Helen Mary Jones:** I am trying to work out the difference of emphasis. If I understand this correctly, you are suggesting that local authorities should be able to do this if they felt it necessary but that there should not be a broad duty on them that they have to do it, regardless of whether they think that it is a priority or is relevant. That would in no way weaken the right of a scrutiny committee to insist that a local health board come before them to talk about delayed transfers of care, or whatever it may be.

[100] **Mr Hurford:** No, it is a case of proportionality, because, if local health boards were covered under the list of designated persons, they would be expected to attend if a scrutiny committee asked. Tim referred to the fact that, if there was a duty to scrutinise all public services, you would have to have a full list of those services. If an authority or a scrutiny committee did not scrutinise a utilities company, for example, and there was an issue with service provision—perhaps something to do with flooding, for example—the risk is that the scrutiny committee and the authority could, theoretically, be liable for a part of the decision-making process. So, it is all about proportionality and prioritising what is a busy time for elected members in deciding the local priorities and the key service pressures, and about scrutinising those appropriately rather than scrutinising everything that goes on in the area.

[101] **Ms Berry:** To illustrate that, in England, there are obligations on local authorities to scrutinise health provision, and there is an equivalent obligation on health authorities to inform local authorities of changes. It is difficult to have a duty to scrutinise everything without other bodies being required to tell you whether issues need to be changed. It comes back to the drafting of the proposed Measure. If you are to make it a duty, you must think about broadening it to include an obligation on the partners you are scrutinising to provide information in a timely way. For example, in England, if a health authority is proposing significant changes to health provision in an area, it has a duty to advise the relevant local authority of that to enable it to decide whether to scrutinise the health authority. That would be an issue, and it would lead to immense difficulties for local authorities, as they will not know which issues they must look at.

[102] **Christine Chapman:** The explanatory memorandum explains that the proposed Measure seeks to address the concerns that scrutiny committees are not as effective as they could be in holding the executive to account given the way in which the chairs of committees are allocated. Do you have any evidence that such factors are undermining the effectiveness of overview and scrutiny?

[103] **Mr Thomas:** From our point of view, there is no evidence that this has caused a problem. It seems to me that, in most authorities in Wales, opposition members chair scrutiny committees. That is not the case in some authorities, of which I think there are only two or three. In one sense—and you also know this in the Assembly—it comes down to a range of issues, not least the calibre of the chair, the composition of the scrutiny committee and the like. You cannot make the automatic assumption that if you put a scrutiny chair in the hands of a member of the opposition, scrutiny will be more rigorous. That is not always the case. Sometimes, when it is in the hands of someone from your own political party, it can be a damn sight more rigorous. So, there is no clear evidence to suggest that this adds to best practice. However, inevitably, the numbers suggest that local authorities are moving in this direction anyway. The idea of legislating for that could lead to somewhat imperfect legislation.

[104] **Ms Berry:** It is again a matter of drafting. Our submission is that this is an unduly complicated way of addressing the problem. When we were considering our evidence, I asked all my respective colleagues to go away and apply these clauses to their particular local authorities to see what the consequences were. As we have indicated in our evidence, there are some unintended consequences, which might act to the detriment of precisely those minority groups that the legislation was trying to assist, and so we made a suggestion for a much simpler alternative. If you want to address this particular problem, you can do so simply by using the wording in the regulations, which will place an obligation on authorities to make sure that all chairs are politically balanced, as they are doing. So, I suggest that less is more.

[105] **Christine Chapman:** I will therefore move on to another issue. Are there any risks associated with this approach, for example the loss of the expertise of experienced committee chairs, or the appointment of chairs who do not have the necessary skills?

2.00 p.m.

[106] **Mr Thomas:** There has been an example in a certain north Wales authority recently of a councillor, who was a vice-chair of a council, coming before the ombudsman because of his poor chairing of a meeting and his lack of knowledge of the constitution. It is incumbent on the authority to ensure that all members who are in a position of responsibility have the appropriate skills. That is the key thing to put in place.

[107] **William Graham:** Without being too anecdotal, you will be well aware that, in certain authorities, particularly when there was a large majority group and a small opposition—

[108] **Mr Thomas:** I cannot think which one you mean. [*Laughter.*]

[109] **William Graham:** It was just to the west of this city. One opposition member was made the chair of all scrutiny committees, which did not work very well, and I do not see anything in this legislation that would prevent that.

[110] **David Lloyd:** Daniel may have seen something. [*Laughter.*]

[111] **Mr Hurford:** On that point, Kate described it as ‘less is more’. There are unintended

consequences, because there are currently opposition chairs who would not be eligible to be scrutiny chairs if this was applied. So, you would certainly lose expertise and experience. As William pointed out, the current drafting means that certain people will be offered chairmanships, but there is nothing that says that they have to accept. So, 'less is more' is probably the best way of describing our position on this, as well.

[112] **Helen Mary Jones:** This has only just occurred to me, but what would happen if you have politically balanced cabinets or executive boards, because, theoretically, there would then be no-one in opposition?

[113] **Mr Thomas:** I think that there may be cases of that in authorities now.

[114] **Helen Mary Jones:** I was just looking again at your evidence, and you mentioned Gwynedd as one example of all groups being represented on the executive board, so there would be no-one to give the chairmanships to.

[115] **Mr Hurford:** Denbighshire is in the same situation.

[116] **Ms Berry:** They would just have politically balanced, multiparty chairs.

[117] **William Graham:** You have raised concerns that provisions to ban the use of the party whip might in practice undermine the credibility and legitimacy of scrutiny committees, by laying their decisions open to challenge and accusations of whipping. Can you explain your concerns and give us some evidence?

[118] **Mr Thomas:** You are not subject to whipping on these committees, are you?

[119] **David Lloyd:** Never.

[120] **William Graham:** I cannot imagine why you would think that. [*Laughter.*]

[121] **Mr Thomas:** I have never been subject to a party line in an Assembly committee; there has always been free-thinking debate. It is an incredibly difficult thing to do. We have concerns about it and there are issues to do with a group of people gathering together to take a line. How do you stop that?

[122] **David Lloyd:** Daniel has a way forward. [*Laughter.*]

[123] **Mr Hurford:** No, unfortunately. [*Laughter.*] The legislation proposes that the chair would be responsible for policing that situation. Our concern is that it could undermine the decision-making process if, for example, two members who happened to be in the same group weighed up the evidence independently and happened to vote in the same way. Someone could challenge that and challenge the chair. It could be perceived by a lobbyist or a member of the public as though they had been whipped. So, it could just undermine the whole process, even though those members came to the same decision independently.

[124] **Ms Berry:** There is an existing national code that places clear obligations on members to take decisions in an objective fashion. If there is evidence of a breach of that code, there is recourse to the public ombudsman who has the potential to place sanctions on members. Separately, individual authorities may also have their own protocols. For example, my authority has a specific protocol for planning, which is when these sorts of issues come up most, and there is an explicit statement that no-one on the planning committee may approach issues on the basis of being whipped. The issue, as ever, goes to evidence, but I would suggest again that an existing code deals with this and that it does not need to be in the proposed Measure.

[125] **Helen Mary Jones:** Before we move on to the community council elements of this, I want to return to one of the issues about committees, namely the question of co-option and co-opted members. Section 77 of the proposed Measure permits co-opted members on overview and scrutiny committees to vote if local authorities want them to do so. I have a thing about co-option. It is perhaps more of an issue for community councillors, as we have explored with other people, but do you have views about that provision? I do not think that anyone would question co-option for purposes of expertise, but should those members then be able to vote?

[126] **Mr Thomas:** I saw an amazing statistic the other day that suggested that over 60 per cent of the people on community councils at the moment are co-opted. I do not think that that is healthy. If we are talking about a proposed Measure that is about the promotion of local democracy and democratic participation, I find co-option to be contrary to that. The idea of co-opted people voting—I am not certain where these ideas are coming from—seems to be an anathema.

[127] **David Lloyd:** Are there any other views?

[128] **Mr Buckle:** To add to that, one of the arguments given is that for people to be involved in the process, they need to be co-opted, but, to a certain extent, that is a misunderstanding because people take part in scrutiny regularly by being expert witnesses, which means that they are not co-opted members, but they can come to give evidence, submit views, and so on. There is a range of ways of doing this and local authorities already co-opt members of the public or members of other bodies without conferring voting rights. So, there seems to be a view that co-option is the only way for some people to become fully involved, and I am not sure that that is necessarily true based on what happens in practice.

[129] **Mr Thomas:** We have assisted some Assembly committees over time. The idea of our having voting rights would be odd.

[130] **Mr Hurford:** There is a range of views out there about co-option and undermining local democracy. However, some committees in some authorities do it, so it is open to their discretion. The WLGA is concerned about the reserve power for the Minister to direct co-option, overruling local democracy. Although it is not in the explanatory memorandum, it was covered in the original policy consultation, and the reason given for it was that it was seen as necessary to ensure the co-operation of outside public bodies. That would seem to be at odds with the public scrutiny concept, in which scrutiny committees were given the power to compel witnesses, but witnesses could say, ‘Well, we’re not going to come along unless we are co-opted’. So, there is confusion about that. The power permits committees and authorities to do it, but we do not agree with the reserve power for the Minister to direct co-option.

[131] **William Graham:** You will recall that when county council education committees or the committee of the whole council existed, it was statutory for there to be eight or 10, depending on the size of the council, co-opted members with voting rights. In my experience, as soon as they voted against the majority party, they were voted off. So, co-option seems worthwhile, but I cannot see the point of the voting rights. Do you agree?

[132] **Mr Thomas:** I cannot comment on that.

[133] **David Lloyd:** The next question is yours, William, and we will move on from that point.

[134] **William Graham:** Part 6 of the proposed Measure introduces community/councillor

calls for action, enabling local councillors and their electors to ensure a response from the council's leadership on issues of local importance. How should the proposed Measure ensure that these provisions are effective? What should be included in any accompanying guidance?

[135] **Ms Berry:** I can only ask that regard is given to our evidence, because we helpfully appended draft guidance.

[136] **Mr Thomas:** Our view on this is that there is enough guidance out there and we do not need any more.

[137] **William Graham:** The Chartered Institute of Public Finance and Accountancy has commented that, as drafted, the provisions relating to audit committees in section 84 are too restrictive and suggest that such committees will only be concerned with the authority's financial affairs. Do you agree?

[138] **Ms Farrar:** SOLACE supports CIPFA's views. The Wales Audit Office guidance on audit committees is a lot wider than the prescription in the proposed Measure and suggests that audit committees should have a role in overseeing much more than the financial aspects of an authority or body.

[139] **David Lloyd:** A yw pawb yn hapus? **David Lloyd:** Is everyone content? I see that Gwelaf eich bod. Mae'r cwestiynau nesaf dan you are. The next questions are from Helen law Helen Mary Jones. Mary Jones.

2.10 p.m.

[140] **Helen Mary Jones:** On the issue of community polls, the Welsh Local Government Association has expressed concern about the need for guidance covering their scope. Can you explain what these concerns are? Perhaps the other witnesses would like to comment on this issue as well.

[141] **Mr Hurford:** It basically relates to ensuring that community polls are proportionate and used appropriately. Obviously, we support local democracy and local engagement, and this is a clear mechanism for communities to raise issues and concerns, either with the community council or with the principal authority. However, if other mechanisms have been used, through consultation, or through public meetings and councillor calls for action—which we have just discussed—and if the matter has been referred to the authority or the community council and a decision made or the evidence taken into account, we do not see that a community poll should then be triggered. It is all about exploring the parameters of when it would be appropriate for communities to have polls and for what issues.

[142] **Helen Mary Jones:** This next question relates to the provision in section 132 that would enable Ministers to give direct grants to committee councils. In their evidence, the representatives of town and community councils told us that they welcome that provision. SOLACE and the WLGA have expressed concerns about that provision—I must say that you would say that, would you not? In fairness, I would like to hear your opinion, because the point that you make about its potential to muddy the waters in terms of local transparency is an issue that I think that we ought to explore a bit further. So, can you say a bit more about why you feel that that might lead to a lack of transparency?

[143] **Mr Thomas:** Over recent years, we have seen some pretty strong relationships develop between unitary authorities and community councils, particularly with regard to community council liaison committees, and there have been some pretty robust discussions about the setting of precepts. That is absolutely key to the local democratic process, and direct grants would be a problem in that regard. From our point of view—let us again be candid—

the pot of money available at the moment is limited, and there is a danger that any direct grants will come out of that pot. I am sorry if that sounds protectionist, but I am being very protectionist at this time.

[144] The other thing that we have to say—and we would hope that the community councils take this view—is that we do not want to see more direct grants; we want to see more grants going into mainstream funding. Our view is that there is far too much hypothecation as things stand. The cost of this level of hypothecation to the Assembly Government is extreme in terms of its administration, and we want to see specific or direct grants being downplayed.

[145] The relationships in terms of precepts are about right. In your part of the world, Llanelli Town Council raises a big precept, but it justifies that, and that is the way that it should be, just as we justify our council tax. The extension of grants, as a principle, contravenes democratic accountability to the electorate, and we have to be very careful about that.

[146] **Mr Hurford:** One further point is to do with the clouding of accountability. Helen Mary Jones mentioned transparency. There is the precept, of course, but there is also the delegation of funding through negotiations with the community and town councils. If they are delivering a particular service, they would negotiate with the local authority the funding that comes down. That happens all the time. If there were a third stream through a direct grant, there would be questions about what part of the service was being funded by where, what would happen to communities that do not have either a community or a town council and where that part of the funding would go for a particular service. There are all sorts of issues to do with clarity around that.

[147] **Helen Mary Jones:** Does SOLACE have anything to add to that? Let us see if you can convince me.

[148] **Ms Farrar:** We do not support this for the reasons that Steve gave, particularly those to do with the bureaucracy associated with grant funding. As a local authority, we quite often have a £5,000 grant and a huge accounting process that goes with it. We would worry about the capacity of community councils to cope with that. We have seen issues recently with Communities First, and also with some European grants going directly to local communities that have not had the capacity to account for the money as required in the case of big grants. We would worry about that.

[149] We also think, as a local authority, that we want to help community councils to flourish. Therefore, we want to work with them. We will often have shared projects that involve collaboration across several community councils, where we match fund and where we can get much more value for money by helping people to work together, much as the Assembly tries to help local authorities to work together. So, we support the fact that community councils want to take more responsibility and to have the things that they need in their own areas, but we feel that local authorities should be able to do that with them and have those interests at heart.

[150] **Helen Mary Jones:** It will not surprise any of you to know that they do not necessarily present the same picture of the nature of your relationship. However, in fairness, committee members will recall that witnesses quoted some really good examples of unitary authorities being proactive, but they also gave other examples where that was not the case. I want to explore the question of democratic accountability with Steve Thomas. I get that, but if I understood you correctly, you are saying that community councils need to raise what they spend through the precept, and they can then look at how they can add to that through co-operative working with local authorities or the third sector and so on. If we go back far

enough, there was a time when all the money spent by borough and county councils was raised through their rates. What is the difference between you getting a block grant or specific grants directly from the Assembly Government, based to a certain extent on need—although we would not say to a sufficient extent—and not having to raise all of it from your local voters, to community councils having some direct access to the money? I take your point about local authorities wanting to co-operate—and we were very struck by the point about what happens to communities that do not have community councils—but on that point of principle, you no longer raise most of what you spend and I think that voters in Wales would have a heart attack if we asked them to return to those days.

[151] **Mr Thomas:** I feel nostalgic enough to go back to debates on the balance of funding. Perhaps I am intruding into a party political brief, but I think that the balance is wrong. At one time, we were in a situation where the revenue support grant accounted for 90 per cent of our funding, and 10 per cent was raised locally, which was appalling. When we did raise more money locally, we seemed to have a better relationship with a range of communities, not least the business community. In regular meetings with the business community, you would justify non-domestic rates and everything else. The interesting thing that community councils should be looking for is not direct grants, but delivering services. Local authorities are starting to discuss with town and community councils their ability to deliver front-line services. There is a range of things that they can do, such as the maintenance of parks and the undertaking of civic premises. I hope that I am not over-generalising, but it is a shame that the main item of expenditure for many community councils is the town clerk and not the services. In these straightened financial times, we should see what service provision community councils can undertake.

[152] **Helen Mary Jones:** I do not wish to detain us, Chair, but money is especially important now, as everyone has been saying. I take Steve Thomas's point about the fact that community councils should be looking to provide services and that the only real item of expenditure is the member of staff who organises the meetings, and you wonder why they are doing so. If a community council was running the cemeteries and doing all the maintenance of the parks and leisure facilities, is there not an argument for that community council to get the part of the money that the Assembly Government would have given to local government? Would you oppose that? For example, community councils could run the whole of leisure services—I know that that is ambitious, but some big councils, such as Llanelli Town Council, might be up for that. Do you have a problem with them getting specific grants or getting the money in principle? Say that a local authority was no longer providing any leisure services and the community councils in its area were providing all of that, would it be appropriate for the Assembly Government to give the money directly to community councils to do that, or would you still want the money to come through you?

[153] **Mr Thomas:** We have had this discussion on many occasions. If you think of the way in which we fund social care at the moment, 70 per cent of social care funding comes through the front door of a local authority, but it goes straight back out to other set provision. You could do it on the basis of a contractual service level agreement—it does not need to be bureaucratic—and you could then set down the service standards. You would then have a client-contractor role at a local level, which I think is absolutely imperative. The client could hold the contractor, the community council, to account for the services that it provides.

2.20 p.m.

[154] **Ms Farrar:** I would support that. It is important for locally elected members to oversee the services that are provided, and even if big chunks of services are being provided or commissioned elsewhere, it is really important for them to have some leverage over that to make sure that local citizens are getting the best value for money. If we got to a situation where the money went directly to another body, and it was not performing, local authorities

would need the power to be able to change those arrangements. So, for us, in relation to having the money in a simple way, as Steve said, with a service level agreement with another provider, we are used to working in that way, and we do it more and more.

[155] **Eleanor Burnham:** Why not put health into it all?

[156] **David Lloyd:** We will try to stick to the proposed local government Measure, Eleanor.

[157] **Symudwn ymlaen i adrannau 133 i 136, sy'n sôn am y cytundebau siartr enghreifftiol. Yr ydym yn gweld o'r papurau a baratowyd gan bawb eich bod yn llai na brwdfrydig ynglŷn â'r syniad hwn. A allwch esbonio eich safbwynt ar gytundebau siartr enghreifftiol?** We shall move on to sections 133 to 136, which refer to model charter agreements. We can see from the papers that you have all submitted that you are less than enthusiastic about that idea. Can you explain your position on model charter agreements?

[158] **Mr Hurford:** We work with One Voice Wales across Wales in promoting positive relations between community councils and town councils, and charters are an important part of that. However, it is important to recognise that charters are only documents that set out a framework for consultation and engagement. There are all sorts of structures and relationships that underpin that, from liaison committee meetings to meetings between the chief executive and leaders, chairs and clerks of community councils. Progress is being made towards having charters across Wales: five authorities have charters, six have drafts, and six are negotiating on them. It is important to recognise that some community councils do not want them because they see them as a form of bureaucracy and as being just documents. They would prefer to see the living, breathing partnership relationship that is ongoing. Our concern, again, is about the reserve power for the Minister to direct charters, because we do not think that that would work. If there is a fundamental breakdown of relations—and it is always about relations and personalities—between community councils and a local authority, a Minister directing people to have a written document will not necessarily improve that relationship. It is about local negotiation. Perhaps mediation might be appropriate, but not a direction to produce a charter document, because that will not necessarily improve relations on the ground.

[159] **David Lloyd:** A oes rhywun arall eisiau gwneud sylw? Gwelaf nad oes. Symudwn ymlaen. Mae papur Cymdeithas Llywodraeth Leol Cymru yn dweud nad yw'r amcangyfrifon ariannol yn y Mesur arfaethedig yn ddigon tyn. Yr ydych wedi sôn am hynny eisoes, a dyma gyfle arall i egluro pam eich bod yn credu bod y ffigurau ariannol yn y Mesur arfaethedig yn afrealistig. **David Lloyd:** Does anyone else wish to comment? I see that no-one does. We will move on. The Welsh Local Government Association's paper states that the financial estimates in the proposed Measure are not sufficiently robust. You have already spoken about that, and this is another opportunity for you to explain why you believe that the figures are unrealistic.

[160] **Mr Thomas:** It is clear that they were calculated only on one side of the fag packet—they are nowhere near. For example, earlier we looked at the cost of remote access, and in the proposed Measure it is estimated that that will cost £2,000 per local authority. That is interesting. You have heard Kate's comments on the webcast for Cardiff; you know the costs of information technology and maintaining it, and that figure is way out. If you put a statutory head of democratic services in place, that is a chief officer post and it will cost you. It will also cost you to put in place a committee chair of a statutory democratic services committee, and a special responsibility allowance is attached to that. So, there is a range of costs in the proposed Measure, and the costs involved have been massively underestimated. I am sorry that I sound like a stuck record, but this is not what the public is looking for at the moment; it

is looking for decently delivered services, and we will struggle with all of this.

[161] **David Lloyd:** A oes unrhyw sylw arall? Gwelaf nad oes. Hwn yw'r cwestiwn terfynol. A ydych yn credu bod y cydbwysedd rhwng y pwerau sydd ar wyneb y Mesur arfaethedig a'r rheini a fyddai'n dilyn mewn rheoliadau yn iawn? A fyddech yn hoffi gweld mwy ar wyneb y Mesur arfaethedig a llai mewn rheoliadau, neu'r gwrthwyneb? Bu ichi gyffwrdd â hynny ychydig yn gynharach.

David Lloyd: Are there any other comments? I see that there are none. This is the final question. Do you believe that the balance between the powers on the face of the proposed Measure and those that will follow in regulations is correct? Would you prefer to see more on the face of the proposed Measure and less in regulation, or vice versa? You touched on that point earlier.

[162] **Ms Berry:** The tenor of the evidence that we submitted is that we would prefer the proposed Measure to be more explicit, with fewer options being available to the Minister. We do not doubt the Minister's guidance, but it is always problematic when a proposed Measure has a number of clauses that simply say that local authorities must have regard to guidance in the future. It leaves it all very unclear. To echo what colleagues have said on the financial constraints that we will all be facing, we need to have a degree of certainty to be able to plan for what may be some substantial changes. We would prefer there to be much more specific legislation and not so much regulation.

[163] **Mr Hurford:** I am thinking of the classic adage, that the devil is in the detail. This is very detailed as it is; there are 172 sections and parts of it are covered in enormous detail. However, as Kate says, it notes that some areas will be dealt with in guidance. If that is the case, you do not necessarily know what you are signing up to, so we would rather have some more clarity beforehand.

[164] **David Lloyd:** Dyna ddiwedd y cwestiynau ffurfiol. Diolchaf i bob un am eu cyfraniadau, maent wedi bod yn werthfawr. Bydd y clerc yn anfon trawsgrifiad drafft o drafodaethau heddiw atoch er mwyn ichi gywiro'r manylion os bydd angen. Ni allwch ailysgrifennu hanes, ond os bydd unrhyw fanylion yn anghywir, gallwn eu cywiro. Yr wyf yn cofio o'r drafodaeth yn gynharach fod Cymdeithas Llywodraeth Leol Cymru wedi addo tystiolaeth ychwanegol ynglŷn â'r gefnogaeth i graffu mewn llywodraeth leol. Os gallwch anfon hynny atom erbyn 4 Tachwedd, bydd hynny o fudd.

David Lloyd: That concludes the formal questions. I thank everyone for their contributions, which have been valuable. The clerk will send you a draft transcript of today's proceedings so that you can correct any details if necessary. You cannot rewrite history, but if any details are incorrect, we can correct them. I remember from the discussion earlier that the Welsh Local Government Association has promised to send us additional evidence on the support for scrutiny in local government. If you can send it to us by 4 November, that would be helpful.

[165] Gofynnaf i'm cyd-Aelodau aros am funud neu ddau ar ôl y cyfarfod; peidiwch â rhedeg i ffwrdd yn syth. Bydd y cyfarfod nesaf ar ddydd Iau, 4 Tachwedd. Diolch i chi i gyd am eich presenoldeb, yn enwedig ein tystion. Diolch hefyd am y cyfieithu ar y pryd. Yr wyf yn datgan bod y cyfarfod ar ben.

I ask my fellow Members to stay for a few minutes after the meeting; please do not run away immediately. The next meeting will be on Thursday, 4 November. Thank you all for your attendance, especially our witnesses. Thank you also for the interpretation. I declare the meeting closed.

*Daeth y cyfarfod i ben am 2.27 p.m.
The meeting ended at 2.27 p.m.*

