



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

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

**Dydd Iau, 18 Tachwedd 2010  
Thursday, 18 November 2010**

**Cynnwys**  
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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**

Christine Chapman	Llafur Labour
Veronica German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
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)
Joyce Watson	Llafur Labour

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

Frank Cuthbert	Pennaeth Democratiaeth Llywodraeth Leol, Llywodraeth Cynulliad Cymru Head of Local Government Democracy, Welsh Assembly Government
Anne Koppel	Is-adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Legal Services Division, Welsh Assembly Government
Emma Locke	Is-adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Legal Services Division, Welsh Assembly Government
Stephen Phipps	Pennaeth Partneriaethau a Moeseg Llywodraeth Leol, Llywodraeth Cynulliad Cymru Head of Local Government Partnerships and Ethics, Welsh Assembly Government
Deborah Richards	Is-adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Legal Services Division, Welsh Assembly Government
Carl Sargeant	Aelod Cynulliad, Llafur (y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol) Assembly Member, Labour (the Minister for Social Justice and Local Government)

**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 1.02 p.m.  
The meeting began at 1.02 p.m.*

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

[1] **David Lloyd:** Croeso i gyfarfod diweddaraf Pwyllgor Deddfwriaeth Rhif 3 yng Nghynulliad Cenedlaethol Cymru. Nid ydym wedi derbyn unrhyw ymddiheuriadau, felly nid oes dirprwyon. Croesawaf fy nghyd-Aelodau, y Gweinidog a'i swyddogion i'r cyfarfod. Byddwn yn clywed mwy gan y Gweinidog yn nes ymlaen. Os bydd larwm tân yn canu, dylai Aelodau adael yr ystafell drwy'r allanfeydd tân penodol a dilyn cyfarwyddiadau'r tywyswyr a'r staff. Dylai pawb ddiffodd eu ffonau symudol, galwyr a 'mwyar duon' gan eu bod yn amharu ar yr offer darlledu. Bydd pawb ohonoch yn ymwybodol bod 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. Peidiwch â chyffwrdd â'r botymau ar y meicroffonau oherwydd gall hynny amharu ar y system, a sicrhewch bod golau coch yn disgleirio cyn cychwyn siarad. Mae'r cyfieithiad ar y pryd ar gael ar sianel 1 a'r darllediad gair am air ar sianel 0.

1.03 p.m.

### **Mesur Arfaethedig ynghylch Llywodraeth Leol (Cymru)—Sesiwn Dystiolaeth 6 The Proposed Local Government (Wales) Measure—Evidence Session 6**

[2] **David Lloyd:** Fel y byddwch yn ymwybodol, rôl 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 gwblhau ei waith a gosod adroddiad gerbron y Cynulliad erbyn 17 Rhagfyr fan bellaf. Hon yw'r chweched sesiwn dystiolaeth a'r olaf mewn cysylltiad â'r Mesur arfaethedig. Daeth ein hymgyngoriad i ben ddydd Gwener, 1 Hydref, ac mae'r manylion i'w gweld ar wefan y pwyllgor. Diben cyfarfod heddiw yw clywed tystiolaeth lafar bellach mewn cysylltiad â'r Mesur arfaethedig.

**David Lloyd:** Welcome to the latest meeting of Legislation Committee No. 3 in the National Assembly for Wales. We have not received any apologies, so there are no substitutions. I welcome my fellow Members, the Minister and his officials to the meeting. We will hear more from the Minister later. If the fire alarm sounds, Members should leave the room via the marked exits and follow the instructions of the ushers and staff. Everyone should switch off their mobile phones, pagers and BlackBerrys, as they can interfere with the broadcasting equipment. Everyone will be aware that the National Assembly for Wales operates bilingually. Headphones are available to hear the simultaneous translation, and the audio can also be amplified for those who are hard of hearing. Do not touch the buttons on the microphones, as that can interfere with the system, and ensure that the red light is showing before you speak. The simultaneous translation is available on channel 1 and the verbatim broadcast is on channel 0.

[3] I'r perwyl hwnnw, croesawaf Carl Sargeant, Aelod Cynulliad, y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol a'r Aelod sy'n gyfrifol am y Mesur arfaethedig, a chroeso hefyd i'w swyddogion. Yr ydych yn deall y drefn erbyn hyn, Weinidog. Ein bwriad yw symud yn syth at y cwestiynau sydd wedi'u paratoi ymlaen llaw. Mae nifer helaeth ohonynt, tua 60, felly bydd digon o sgôp i fanylu. Pwysaf ar fy nghyd-Aelodau i fod yn gryno gyda'u cwestiynau, a gobeithio y byddwch yn gryno gyda'ch atebion hefyd, Weinidog, neu byddwn yma drwy'r dydd. Wrth gwrs, ni fydd hynny'n rhwystro unrhyw drafodaeth. A minnau'n Gadeirydd, yr wyf yn cael gofyn y cwestiwn cyntaf, sy'n weddol gyffredinol.

To that end, I welcome Carl Sargeant, Assembly Member, Minister for Social Justice and Local Government and the Member in charge of the proposed Measure, and I also welcome his officials. You will be familiar with the arrangements by now, Minister. Our intention is to move straight to the questions that have been prepared. There is a substantial number, around 60, and so there will be plenty of scope to go into details. I ask my fellow Members to be concise with their questions, and I hope that you will also be concise with your answers, Minister, or else we will be here all day. Of course, that will not hamper any discussions. As the Chair, I get to ask the first question, which is a fairly general one.

[4] Er eu bod yn cefnogi prif egwyddorion y Mesur arfaethedig, mae nifer o dystion wedi nodi bod rhaid i'r darpariaethau fod yn gymesur ac wedi cwestiynu mor rhagnodol yw'r Mesur arfaethedig. Pam yr ydych chi wedi mabwysiadu dull mor rhagnodol?

Many witnesses, while supportive of the general principles of the proposed Measure, have stated that the provisions need to be proportionate and have questioned the level of prescription within the proposed Measure. Why have you adopted such a prescriptive approach?

[5] **The Minister for Social Justice and Local Government (Carl Sargeant):** Thank you for the invitation to come before the committee today. I am not convinced that we have been overly prescriptive. I think that we have been reasonable in our approach to the proposed Measure. To go back to its history and the reasons we brought it forward, the proposed Measure is based on the evidence that was provided by many studies over the past few years. Those studies include: the Councillors Commission's expert panel report 'Are We Being Served?', which highlighted a serious lack of diversity in council chambers, and that is where Part 1 of the proposed Measure comes in; the Beecham review, which was a comprehensive study of local government that showed the lack of collaborative work and of good-quality scrutiny; and also the Aberystwyth research study into the community and town councils element of local government, which highlighted the need to develop councils further. So, we have not plucked the proposed Measure out of the air. It is based on evidence from previous reports.

[6] **Veronica German:** We have heard evidence in the past few weeks that many of the provisions within the proposed Measure are already being undertaken in local government. Why does the proposed Measure introduce new duties or powers where local authorities state that they are already carrying them out?

[7] **Carl Sargeant:** As I have consistently said, this is about raising the game of local government and the public sector. There are many examples of authorities doing this already, as you highlighted, but there are also authorities that are lagging significantly behind. One example is in relation to the Chartered Institute of Public Finance and Accountancy's guidance on the development of audit committees. It was followed up by some local authorities, but three still do not have audit committees. That is good practice and it is noted in guidance, but it is still not happening. So, we are putting things into regulation because we want to raise local authorities' game. It is about having consistency across Wales, which is what should be expected. I do not think that that is unreasonable.

[8] **Veronica German:** In evidence to the Constitutional Affairs Committee, you stated that in some areas you do not intend to use the powers within the proposed Measure and that they are a fall-back position. What is the point of having those powers if you are not going to use them?

[9] **Carl Sargeant:** It is not as easy as it sounds. We created the fall-back position because of the unknowns in the development of legislation. It is not possible or practical to identify at this point all the circumstances in which these elements of legislation will be used. However, we believe that we are taking a measured approach in legislation to things that will and can develop. We gave the Constitutional Affairs Committee a full and comprehensive report about all the elements of the fall-back position powers, and I am happy to forward that report to this committee. There are several fall-back powers that we believe are proportionate to the proposed Measure and some will be needed at a later date. So, this is the opportune moment to get them into legislation.

[10] **Christine Chapman:** Minister, you explained to us previously that the provisions in sections 1 and 2 that require local authorities to conduct a survey of candidates are necessary so that you can understand the issues. However, we have received evidence from many witnesses who feel that such a survey will not provide information on the barriers to democratic participation. Can you explain how the information from the survey will be used and what the value of such a survey would be?

1.10 p.m.

[11] **Carl Sargeant:** It is not a bad place to be in terms of trying to increase the democratic involvement of the general public. As I have said on many occasions, many of our councils are made up of white, elderly males. I am not saying that that is a bad thing, but we should encourage a more diverse group of people to respond to the democratic call of councils. We do not have data currently, so we do not know where we are. We need to know where we are starting from to get to where we want to be and where we should be. Having read some of the evidence submitted to the committee, I can say that the data that we collect will be useful in progressing change, but there must be a benchmark. You must understand where you are to start moving forward. Scope submitted evidence to the committee. It is about understanding what the quantum is in order to do something. That is what you will find out through a survey.

[12] **Christine Chapman:** Before I talk about Scope, what you are saying is that it would be a starting point. Do you acknowledge that there are other findings that you could draw on to supplement that? The main concern for this committee is the fact that the survey as it stands would not pick up people who might not put themselves forward in the first place. So, it would not be a true reflection. That is the biggest issue with it.

[13] **Carl Sargeant:** It is a case of 'How long is a piece of string?' to count the people who have not put themselves forward. What we are trying to do with the survey is to count the people who have done so, whether they are successful or otherwise, and not the people who are not interested in the democratic process. That will give us a benchmark for who is in and who is out. We may be able to do something about the groups who are not in with the help of other organisations.

[14] **Helen Mary Jones:** I want to follow on from what Christine Chapman has already asked you, Minister. I completely understand what you said in response to Christine, namely that we cannot measure the number of people who do not put themselves forward. Where seats are routinely contested, the survey will show us who the parties have selected to put forward and whether or not those people have been successful. It will not show us, however,

whether other people, be they women, younger people or whatever, have put themselves forward to be selected and have not got through the selection processes. I am supportive of what you are trying to achieve with this—we probably all are. However, the two questions arising from the evidence were whether this is a sledgehammer to crack a nut, which some people have suggested, though I am not sure that I agree with that, and whether it is forensic enough. What you are suggesting will weed out any discrimination by the general public against women candidates or younger candidates, but it will not weed out where I think the discrimination lies, which is within the parties.

[15] **Carl Sargeant:** You raise an important point. They are two separate issues. We are trying to measure the democratic process within councils throughout Wales with the survey. I might take up the other issue with political parties in another guise and look into their feeding into a process of some sort. However, the survey is about the process of electing councils, and the starting point is to understand who has applied and gone through that selection process. I would not want to delve into the internal wrangling of political parties, because they are quite complex in some areas. However, it might be something else that we could ask political parties about, but I do not think that it—

[16] **Helen Mary Jones:** You would not want to put it in the proposed Measure.

[17] **Carl Sargeant:** I understand what you are saying, but I do not think that it should be encompassed within the proposed Measure.

[18] **Christine Chapman:** Some witnesses have expressed concerns about the financial burden of this survey. What are your comments on that?

[19] **Carl Sargeant:** We do not see this as an onerous task for local authorities. We have already discussed with the Finance Committee how we would establish the survey by creating a standard bilingual form from the centre and distributing it to local authorities. We would just expect local authorities to post the forms and have someone collate the information returned on a pre-designed spreadsheet, which we will create. I do not believe that the finances will be overly burdensome for any local authority, and I would defend that view.

[20] **Christine Chapman:** You have already mentioned Scope Cymru, Minister. In its evidence, it said that the provisions could be strengthened if duties were placed on local authorities to act on the results of the survey. Have you considered that?

[21] **Carl Sargeant:** Yes. We already have good involvement with Scope Cymru, and we have regular meetings—certainly Frank meets it regularly and I have met it. We are open to having discussions with organisations and receiving suggestions from them. However, we will first have to understand what the survey delivers before we consider the implications of it. It is a starting point, but let us understand what the quantum is before we move on to the next level. We are trying to create an environment of understanding.

[22] **Christine Chapman:** Looking at the timescale, when will the duties be commenced? Will they commence in time for the next local government elections, in 2012?

[23] **Carl Sargeant:** That depends on the commencement of the Order. Our intention is for them to commence by the next local elections, in 2012, but that depends on whether the proposed Measure is passed, and in what form, with commencement of the duties to follow.

[24] **William Graham:** Turning to section 4, on remote attendance, can you confirm that the provisions relating to remote attendance at council meetings provide local authorities with discretionary power rather than impose a requirement to make arrangements for remote attendance?

[25] **Carl Sargeant:** Remote attendance has exercised many people, has it not? We should be considering this as an opportune moment to give people throughout Wales, whoever they are and wherever they are, access to council chambers, to get involved in council meetings by computer. The legal position regarding the governance of this matter is that, as far as we are aware, it can be dealt with through local authorities' standing orders. That is the best place for remote attendance and the orders to be established. I do not know whether colleagues want to comment on the finer details.

[26] **Mr Cuthbert:** My impression is that most of the evidence that has been presented on this issue has failed to look closely at the wording of the provision, which has been carefully drafted so as not to be overly burdensome on local authorities. We are saying that remote attendance should be allowed, but that the standing orders can say in which circumstances it can be allowed. We do not think that a local authority could say that there are no circumstances in which it would be allowed, but there may be situations where it is difficult for a local authority to allow it for all types of meetings. It would be for the standing orders to deal with that.

[27] **William Graham:** Turning to annual reports, some witnesses have commented that the provisions relating to annual reports are unclear. Can you confirm whether this section imposes a duty on councillors to produce an annual report or whether a duty would simply be placed on local authorities to make arrangements for annual reports?

[28] **Carl Sargeant:** Again, it is about sharing good practice. The duty would be on the local authority; there would be a duty for it to create space for annual reports to be published. It would then be up to the councillors to do so, if they so wish. So, the duty would be placed on the local authority to provide an opportunity to do so.

[29] **William Graham:** So, the idea is that the detail will be in the guidance.

[30] **Carl Sargeant:** The detail will be in the guidance that is issued and updated by us.

[31] **Joyce Watson:** Moving on to section 6 and the timing of council meetings, we have received interesting comments from witnesses who have said that it is unduly prescriptive for the Welsh Assembly Government or the Minister to issue guidance to local authorities about when they should hold their meetings. I would like you to address that point first, namely whether you think it is unduly prescriptive. Secondly, in what circumstances do you see yourself using that power?

1.20 p.m.

[32] **Carl Sargeant:** I disagree with the comments that this is overly burdensome. It is time to take some action in terms of legislation. We have seen far too many reports that say that we wish to create a better environment for councillors and potential councillors to attend council meetings, and we have had endless reports saying that women with families and business people are underrepresented. There has been opportunity for change for a long time, but we have seen little of that. It is therefore time for legislation to enable authorities to consider this.

[33] With regard to the guidance, the fact that there will be legislation will make councils reconsider their times for meetings. We are not telling councils that they should have a meeting on Tuesday at 3 p.m. or 2.30 p.m.; we are saying that they should have due regard to this and consider providing opportunities to others rather than conforming with what is considered to be the norm.



[34] As for if and when I would use the powers, that is something I will take more soundings on by seeking the advice of stakeholders as part of this process.

[35] **Veronica German:** I will move on to discuss section 7, on training and development. Can you clarify what is meant by 'reasonable' training and development provision?

[36] **Carl Sargeant:** I may ask for technical back-up in terms of the definition of 'reasonable'. However, in my view, 'reasonable' is, to a large extent, what the Welsh Local Government Association and local authorities already share in their practices. They developed 'A Wales Charter For Member Support & Development', and that is what I would consider to be reasonable. There are still deficiencies in the support or application of that process, so I think that we are saying that, if it is there, it should be used for member training and development. That seems to be the standard. It is about having consistency in 'reasonable' provision across 22 local authorities.

[37] **David Lloyd:** Joyce, I understand that you have a swift supplementary question on this point.

[38] **Joyce Watson:** It will be very swift. I know from a former life that training and development was not offered in equal measure. Some had the opportunity to avail themselves of certain types of training and development that was clearly denied to others, who could not avail themselves of reasonable training and development even if they wanted to. I have two questions, which are quite specific. First, do you recognise what I am saying about the inconsistencies that can happen? Secondly, would you consider looking at that element before you come to a final decision on training and development and the equality of access to it?

[39] **Carl Sargeant:** Of course. To some extent, the proposed Measure goes some way towards addressing that. Through their annual personal development review, it is possible for members to identify a need for further training. This goes back to the previous question about timing and accessibility, but it is also about knowing what is available. That is why the support and development charter for members, which is supported by the WLGA, needs to be consistently applied across authorities. That is why we are driving up training. Some are already very good at it, but some are not so good, and we are just trying to lift their game.

[40] **Veronica German:** Can you explain why the executive leader is excluded from these provisions?

[41] **Carl Sargeant:** This was a bit of a judgment call. It goes back to the question of who judges the judge, in effect, in terms of the leader of a council. It is not beyond the realms of possibility to have that inclusion in terms of member development, but we are talking about the leaders of councils, and I would expect that—

[42] **Veronica German:** Do you not think that they might need even more training? A new leader of a council might be in dire need of training.

[43] **Carl Sargeant:** I accept that point completely. The leader is not excluded from training programmes; it is not a big deal to include the leader in that, capacity wise, but I would be surprised if the leaders of authorities were in need of the same kind of training as the backbenchers coming into an authority.

[44] **Veronica German:** That is where the appropriateness of the training comes in, though, is it not? Different people need different training.

[45] **Carl Sargeant:** Yes. It is not a big issue to include the leaders, but it can be addressed.

[46] **Veronica German:** The WLGA commented on the provision about personal development interviews, because the explanatory memorandum refers to performance appraisals, which are different, are they not? Which is it that we are talking about here? Who is being the judge who will sit before the leader?

[47] **Carl Sargeant:** This is a technical issue that we have discovered is wrong. [*Laughter.*] We will seek to amend the explanatory memorandum at the appropriate time. It is the wording in the proposed Measure that is correct.

[48] **Helen Mary Jones:** Briefly, I want to build on the point that Joyce Watson raised. This is about placing a responsibility on the local authority to make this training available, is it not? My concern about this and about some of the other provisions is the extent to which they recognise the political realities. These are not things that you will be able to compel councillors to do, and I wanted to get your comments on that generally, Minister. It is appropriate to drive up the standard to the level of the best-performing authorities, as you are trying to do, and I am sure that no-one would want us not to do that. However, this is also about local democratic choices and, to be brutal, if people have chosen to elect a councillor who is ill-fitted to the job and then he refuses to get any training, the people need to sack him at the next election. If they choose not to do that, these provisions cannot deal with that, can they?

[49] **Carl Sargeant:** I fully accept that. What we are trying to achieve—and hopefully, through the proposed Measure, we will—is an environment of good-quality training for all, and one in which we increase participation rates by increasing the opportunities, by looking at the timing and seeing things from the point of view of those applying to be a councillor. I totally agree that you can take a horse to water, but you cannot make it drink. On annual reports and so on, the fact of the matter is that if councillors are receiving training or have been on training courses, they may be a part of a reporting structure requiring a simple, one-line ‘Councillor X attended planning training’. Then, if the electorate decides to ask the member why he or she did not attend planning training, that is a matter for the electorate. It is about the democratic process, but we are trying to create a structure that increases the training opportunities for potential and existing councillors. I understand your question, but that is a hard nut to crack.

[50] **William Graham:** Are you not in danger of making some pretty important value judgments here? I have known councillors who could not read or write. They were extremely effective councillors and had no problem being re-elected, but they had those disabilities, for various reasons. So, this worries me a little, this public display of a councillor’s training record.

[51] **Carl Sargeant:** In support of that, I would be the first to say that there are some very good councillors who have varying degrees of skill and different skillsets. However, there are levels of personal development required in local government. We are talking about some serious public money and serious decisions have to be made, particularly now that there are reductions in budgets. I want to give all councillors the opportunity to have a full involvement in, and knowledge of, that process. It is about giving them the opportunity for training. As Helen quite rightly said, there will be some people who will just not want it. I will not force them to undertake it, but the electorate will understand that that training is available and can see whether the process has been gone through. If there are people out there who cannot read or write but are councillors, that is all very well, and perhaps we also need to look at the support that we can give them. However, I do not see that as precluding people from taking part in a serious democratic process.

[52] **Helen Mary Jones:** I will move on now, Minister, to look at scrutiny provision. You

and I have had some informal discussions about this, resulting from some of the evidence that we have taken, and you will be aware that there is some scepticism out there about the provision to have a compulsory head of democratic services. I think that you already know that my view is that we certainly need to do something about this, because some of these questions reflect the evidence that we have had. I am a bit sceptical about some of that evidence, if I may put it that way. We have received, and we cannot ignore, strong evidence from local authorities that the provisions for democratic services in section 8 and 9 could have a negative effect on the existing scrutiny activities of local authorities that are doing it well. I need to put this to you. Would it be more appropriate to allow a continuation of the current good practice in those authorities that are doing well, and issue guidance that would allow for flexibility?

[53] **Carl Sargeant:** That is an interesting question. I have also read some of the evidence that was provided, and I found it interesting. My response would be completely the opposite of their expectation. If we are providing specific scrutiny support for members, surely that would drive better scrutiny, better government, and better councils, as opposed to the argument that was presented to the committee in evidence. I completely disagree with the idea of this having a negative effect on scrutiny. It is clearly beneficial to have designated people supporting backbench members of a council.

[54] **Helen Mary Jones:** I tend to agree, at the moment. Moving specifically to the position of the head of democratic services, some witnesses have questioned the need for the level of prescription about that post, saying that it could dilute existing scrutiny support. Why do you feel it necessary to detail in legislation the functions and location of the post within the council structure? Again, I am building this on the evidence that we have had, and which I think we need an answer to, rather than my necessarily being convinced by that evidence.

[55] **Carl Sargeant:** The issue is about correctly identifying the duty of an officer of a council, so that there are no grey areas around the position of the head of democratic services, the chief executive, or the monitoring officers. This is not new. Monitoring officers were introduced, and they were not liked, but we got used to them. It is a process of transition and change and of bringing something new to a democratic organisation that people already have control over, and such a process can be difficult to manage. What we are trying to establish here is good-quality scrutiny, with someone identified to deliver that process for the support of backbenchers and the executive—the whole of the council. I do not see what all the fuss is about, to be honest with you.

[56] **Helen Mary Jones:** I am not entirely sure that I do either, but I still have to put a few more specific points to you, based on the evidence that we have received. It has been suggested to us that there is a danger that creating this post could lead to confusion regarding the relationship between this position and that of existing chief officers. How do you respond to that? I am not quite clear what they are getting at.

[57] **Carl Sargeant:** Nor me, because it flies in the face of the previous question, really. First they say that we are too prescriptive, and then that there could be confusion about who does what. I do not think that there is any confusion, but perhaps there is just an element of opposition to the principle of this. I stand by our position: the proposed Measure will create a better environment for good scrutiny, which I support.

[58] **Helen Mary Jones:** It may be a case of executive-member turkeys being reluctant to vote for Christmas—not that I am putting words in your mouth, Minister; I would not dream of that.

[59] One of the other concerns that has been raised about this, and which probably does need addressing, is the cost of the post being at such a senior level. There are estimates in the

explanatory memorandum, but are you confident that they justly reflect the cost?

[60] **Carl Sargeant:** Yes, I am. I do not expect many, if any, new jobs to be created within councils. What we are doing is just redefining someone's job specification, so that they are defined as head of democratic services, with a duty as stipulated. I do not see it being a new person, so the costs, we believe, are accurate, and we are not starting from a baseline. Some councils already have good advice for backbenchers. All that we are doing is creating a level playing field, so that there is a designated person within an authority to carry out this duty, which is clearly a different role from that of chief executive.

[61] **Helen Mary Jones:** Are you therefore content, Minister, that the functions listed in section 9 are sufficiently clear about the role of the head of democratic services in relation to non-scrutiny committees?

[62] **Carl Sargeant:** I am, although these functions can be added to at any point under regulations, if needs be. They are quite comprehensive, but I believe that I am right in saying that we could add to them. Is that right, Emma?

[63] **Ms Locke:** Yes, there is a regulation-making power under section 9(1)(i), which would allow us to add to them.

[64] **Helen Mary Jones:** Finally, some witnesses have suggested to us that it might be more appropriate for you to look at the provisions in England that provide for a statutory scrutiny officer. Did you look at those provisions? If I am right, you have gone for somebody more senior. Could you explain to us, for the record, why you felt the need to go for somebody at a more senior level? According to my understanding of the provision for England, it is not clear at what level the scrutiny officer has to be.

[65] **Carl Sargeant:** I would suggest that the person who offered the evidence in the first place had not looked at the position in Wales. We already have those officers in place. They are not in place in all English local authorities. We are identifying a person at a higher level who is responsible for the council delivering this service. There would be no change if we just followed what is being proposed in England. England is just catching up, actually.

[66] **Joyce Watson:** Moving on to more dissent, but this time surrounding the democratic services committee, and wanting clarification on that, people have said that it is not cost-effective, that it is not the right time, that it will force restructuring when local authorities are under increasing pressure to reduce costs, and that there will be a blurring of roles by creating a head of democratic services. Why is it necessary to detail the functions of the democratic services committee within the proposed Measure, in sections 11 to 19? Do you not think, as has been argued, that authorities could decide their own standing orders?

[67] **Carl Sargeant:** Judging from your question, I take it that the evidence provided by others was not in favour of democratic services committees. However, I would say that we believe that this is the right option. We require local authorities to create new committees, and so it is reasonable for us to provide guidelines on what those new committees are expected to achieve. On the local authority element of this, it would be down to the committee to decide how it discharges those functions. As long as we believe that the committee is operating within the guidelines, it is up to the council to decide how to operate things locally.

[68] **Joyce Watson:** It has also been suggested that requiring the head of paid service to report to full council on the issues currently proposed for consideration by the democratic services committee could achieve the same objectives. What are your views?

[69] **Carl Sargeant:** The head of democratic services is completely independent from the

chief exec. That is my view, and it would also be my expectation. Otherwise, there would be little point in doing this. I would not want not see any blurring. That is why we are keen to ensure that the guidance that we issue on the independence of the officer is clear to the whole council, including the chief executive.

[70] **Joyce Watson:** The new power under section 10(1) allows the Welsh Ministers to make regulations regarding standing orders relating to the staff of the head of democratic services. Section 10(1)(b) will allow Ministers to make other modifications to the authority's standing orders. Could you explain to us how you intend to use those powers?

1.40 p.m.

[71] **Carl Sargeant:** I think that it comes down to the drafting and interpretation of it. Emma is dealing with that. We are basically talking about the standing orders and the management of staff, but it has been interpreted as being much broader than that. Am I right in saying that, Emma?

[72] **Ms Locke:** Yes, you are.

[73] **Carl Sargeant:** We will perhaps consider redrafting that in a way that is clearer to everybody. Is that right, Emma?

[74] **Ms Locke:** Yes, it is. Section 10(1)(b) was meant to read 'to make other modifications of the authority's standing orders' in relation to the management of staff. The use of the word 'other' was felt to be sufficient to convey that. However, on reflection, it probably needs further clarification.

[75] **Veronica German:** Moving on to Part 2, on family absence, a number of witnesses have commented that they are already required to make provision for family absence. Why, therefore, is it necessary to legislate for that within the proposed Measure?

[76] **Carl Sargeant:** The operation of authorities has varied across the board. We are trying to introduce some standardisation. They may have to make special arrangements when a councillor has a new child, in terms of their executive arrangements, for example. Therefore, we wish to make this a statutory requirement, and for each council to understand what they should be doing. The process should be standardised.

[77] **Veronica German:** What about the fact that they are saying that they already subject to a legal requirement under section 85 of the Local Government Act 1972? I am not sure what that legal requirement is.

[78] **Carl Sargeant:** Frank, do you want to provide the detail around that element?

[79] **Mr Cuthbert:** That deals with the length of time that a councillor can be absent without vacating their post, which is the six-month rule, as it is generally known. In a way, that has negative connotations—that a councillor is not turning up, for whatever reason—whereas we feel that the family absence provisions give it positive connotations, by stressing that it is a right. If you have a child through whatever means, you are entitled to time off, if you wish it.

[80] **Veronica German:** We have had some evidence about executive members in particular. There are two aspects to this: the rule limiting the size of the executive and special responsibility allowances. That is, if you had a stand-in while a person was absent, would this affect that provision? Presumably, the person who is absent still receives their SRA, if that is their job. It is different because it is not like a normal job. Therefore, would you expand on

that and explain those issues?

[81] **Carl Sargeant:** I would expect local authorities to comply with the law in all aspects of the equality duties around maternity or paternity leave, or otherwise. The issue around SRAs will be a matter for the independent remuneration panel, as regards the amount of salaries that will be available to authorities, which is prescriptive now. Through the proposed Measure, the panel will deal with how many special responsibility allowances should be paid and who should receive them. That will be a matter for the independent panel.

[82] **Veronica German:** What about the number of members on the executive?

[83] **Carl Sargeant:** I believe that it will be 10. Is that right, Frank?

[84] **Mr Cuthbert:** Yes. If a local authority has the maximum permitted number of people on the executive, it could not appoint an additional member if one member of the executive were off on family absence. I do not think that it would be advisable to dismiss a member from the executive because of family absence, because that could mean cutting their pay in half and I can imagine legal action following that. The authority could appoint a deputy executive member, who would probably not have the legal functions of an executive member but could, nevertheless, cover their portfolio and perhaps make recommendations to the leader, who could authorise their decisions and so on.

[85] **Veronica German:** Therefore, in effect, it is not the same as in a regular job where, if someone takes maternity or paternity leave, they are replaced, and if the replacement is stepping up, they may be given a temporary allowance for doing that. You are almost saying that if an authority decides to have one less than the 10 as its norm, it would be keeping one in abeyance just in case someone needs to have a family absence. It just seems a bit messy. I understand what you are saying, but it seems as if you are not really giving people an opportunity because they might say, 'If I do that, it is not really fair on the other person who will have to do my work, but will not get the allowance for it', and it may restrict that person's ability to take that provision.

[86] **Carl Sargeant:** I understand what you are saying about that process; that is the conflict between the democratic process and the running of an institution. The same thing happens here, if a Minister were to be off for a period of time. In the past, other Ministers have taken over the role and functions of an absent Minister's portfolio and others have made the decisions, such as the First Minister. Therefore, it happens. Those are the complexities of the democratic process working within an equality programme, which we are trying to ensure through some of the legislation that we are bringing in around family absences.

[87] **Helen Mary Jones:** I do accept that. However, I do not think that we have been in a position here where we have had a Minister go off on maternity leave for a period of some 12 months; we have had people being ill and being off for considerable lengths of time. My concern about this—to pick up on what Veronica has just said—is that, one of the things that you are trying to do with this legislation is to create a cultural change in local authorities that makes it more possible for a wider group of people to take part. In this case, it is usually women who need to take family absence for more than a couple of weeks, which might be maternity or adoption leave, or it might also be to care for a sick or elderly relative. I completely see that you do not want local authorities to be able to have more than a certain number of people on the executive board. I think that we would all accept that. However, the risk with this, if it stays as it is, is that it will go against the culture that you are trying to create; it will say to the leader, 'Don't appoint that woman because she is likely to have a baby'. We know that people think like that. We also know that it is unlawful for them to think like that, but we know that they do think so, and that they act accordingly. We know that this proposed Measure is trying to change that. I am worried about what we do here and whether

we have the proper provision for a member of the Cabinet to go on maternity leave, if she needed to do so, and be replaced and have her job covered. In any organisation, if the job is not covered, you cannot do it. If you are working in an organisation where you are allowed to take public responsibility leave, but your employer will not put someone else to cover in your class when you go off as a teacher to be a juror, you do not do it because of the cultural pressure. I urge you to give that a bit more thought. We do not want unintended consequences undermining what you are doing with some of the rest of it. The provision in isolation is fine, but it does not seem to fit with some of the other cultural change that you are trying to drive, which we know some local authorities are uncomfortable with.

[88] **Carl Sargeant:** I will offer my thoughts on that. Thank you for your comments. I will certainly consider it further in detail. I think that you acknowledge what we are trying to achieve, but that appears to be an added complication, which we will try to work around in terms of the detail. Perhaps we could send you a note on that, Chair.

[89] **Christine Chapman:** This might help. I wonder whether you could look at examples in other countries, perhaps, and in other democracies. At the back of my mind, I can think of some countries that have even talked about job sharing. I know that this is not specific to this, but there may be some examples that you might like to look at.

[90] **Carl Sargeant:** We would be happy to explore that. I can see that there is possibly some legislative fix here in terms of the numbers of executive members allowed, but it is about keeping control over that. We just need to be aware of that process, but I will look at that.

[91] **David Lloyd:** I wish to clarify whether the regulation-making powers in sections 30(f) and 30(g) will address the concerns regarding these existing rules. Are you happy with them?

[92] **Carl Sargeant:** Yes. Frank?

1.50 p.m.

[93] **Mr Cuthbert:** I am pretty sure that they would not entitle us to allow an authority to appoint an additional member of the executive in excess of the limit. However, they would certainly enable us, together with the supporting guidance under section 31, to outline ways in which members might be substituted for and what sort of legal arrangements could be made about the decision-making functions, such as those that the Minister has described. It is also worth saying that the IRP will be able to look at this sort of situation and make recommendations about additional allowances that could be granted to a substitute.

[94] **David Lloyd:** We have obviously taken evidence from the IRP.

[95] **Carl Sargeant:** That is significant. To pick up on Helen Mary's point, we have had a situation in the Assembly where we have had absence in the Cabinet, which was not due to maternity leave, and that the portfolio was distributed among other Ministers. So, we have already had that happen in the Assembly.

[96] We will put a little bit more thought into that; I do not think that this is insurmountable. I understand what you are saying, but we will think about its implications, even if it is just around the guidance on the proposal.

[97] **Helen Mary Jones:** One practical suggestion might be that local authorities, if they wanted to provide some sort of cover, would have to apply to the independent remuneration board. So, if they wanted to appoint someone to cover maternity leave or absence due to

caring responsibilities and to pay them the full executive board rate for a fixed limited period of time, they would have to make it an independent appointment. So, you could not be handing out jobs for the boys and girls as a result of that.

[98] **William Graham:** On the available governance arrangements, it is your opinion that the alternative arrangements option has not worked well. However, we have received evidence to suggest that more flexibility is required to allow such arrangements to be determined locally. What is your view on that?

[99] **Carl Sargeant:** There are only three councils operating the alternative arrangements, and two of them appear to be turning away from that process towards a completely different option. Flexibility is already available to executive structures, and I think that Wrexham is an example in north Wales of an executive structure that is politically balanced. So, there is flexibility around the system. So, I would probably disagree with the evidence that you were offered.

[100] **William Graham:** Can you confirm that the local authorities that are currently operating alternative arrangements will not be required to move to an executive arrangement before the local government elections in 2012?

[101] **Carl Sargeant:** There are a few factors to take into account on that, William. One of them is that when this proposed Measure is enacted, it is not my intention to force any council to do anything with regard to that process. I think that I know which authority you are talking about and, again, I will not prejudge that, because I would be asked to make a decision on the process. However, as a technical point, if I was to wish the enactment of this proposed Measure to start post the May 2012 elections, it would have to apply six months before—I think that I am right on that—which would be in this term, as opposed to next term. Is that correct?

[102] **Ms Koppel:** The provisions about timing are in Schedule 1 and they do depend on when the provisions come into force. These sections come into force two months after Royal Approval, so it does depend when that is. However, if you were to assume that it was, say, 1 April next year, then the provisions in Schedule 1 will start to kick in shortly after that. So, if an authority was changing to a leader-and-cabinet model, then the change would be effected by June 2012, if all the steps were carried through. If the authority was changing to a mayor-and-cabinet model, then it would be later—either later that year or the beginning of the next year.

[103] **William Graham:** That is what the evidence presented to us suggested anyway.

[104] **Christine Chapman:** The provisions will enable two or more local authorities to undertake joint scrutiny. You previously told us that the provisions in section 57, which relate to joint overview and scrutiny committees, are about

[105] ‘tidying up so that there are no legal loopholes’.

[106] The WLGA has questioned whether this is necessary and told us that, because committees can already undertake joint scrutiny as and when required,

[107] ‘this is legislating for the sake of it’.

[108] Why, therefore, is it necessary to legislate in this way?

[109] **Carl Sargeant:** That is partly correct in that committees can do that, and a voluntary code already operates in some areas where there is joint scrutiny. I am committed to giving



the same powers to joint scrutiny boards as apply to a single scrutiny board in statute as opposed to the situation now.

[110] **Christine Chapman:** I will move on to ask you some questions about scrutinising designated persons. Why have you decided to introduce a requirement for scrutiny committees to scrutinise designated persons in section 58, rather than making it an enabling power?

[111] **Carl Sargeant:** It is because there is no change. They already have the power to make and report recommendations to authorities. This is about ensuring that scrutiny serves the community better by looking outward as opposed to its being internal.

[112] **Christine Chapman:** How will you ensure that the list of designated persons is sufficiently expansive?

[113] **Carl Sargeant:** I do not want to commit to any detail about that yet. We need to take soundings from stakeholders about who, what and where on that process.

[114] **Christine Chapman:** We received some evidence from the police, fire and rescue services and national parks. Can you clarify whether those authorities are likely to be included, because they were concerned with potential conflicts if local authority members were on these boards? Do you see any problems there?

[115] **Carl Sargeant:** We want to take further soundings in a broader context on the people who would be included in this. On the overlap and potential conflicts, we would try to deal with that process through the guidance that we would issue to local authorities. I do not want to close the door on the opportunity to scrutinise others on a specific list on which we have not consulted yet.

[116] **Veronica German:** Before I ask my question, I want to go back to the difference between the power and the duty, because I was not clear on what you said. The evidence that we received said that, if it is a duty, it puts pressure on the scrutiny committees to have everybody in, and if they have not and something goes wrong, it is almost as if it is their fault for not having those people before them, whereas if they have the power and are encouraged to have designated persons before them—do you see the distinction?

[117] **Carl Sargeant:** I understand what you are saying. It may be a play on words if I say that they already have the power to do that, in terms of ordering designated persons to make reports or recommendations to authorities.

[118] **Veronica German:** Do they have the power to make those people come before them? I do not think that they do.

[119] **Mr Cuthbert:** At the moment, they have the power to investigate external issues, but they do not have the power to require people to give evidence or information to them. The proposed Measure would reverse that situation.

[120] **Veronica German:** Yes, it would give them the power, but the proposed Measure says ‘duty’, as if they must do that. Where do they stop?

[121] **Mr Cuthbert:** That will primarily be covered in guidance. We would not anticipate that a local authority would have a duty to scrutinise the whole public service in an area every year.

[122] **Veronica German:** That was the issue. We understand ‘power’, but it says ‘duty’, so

I wanted to raise that.

[123] I will now move on to the views of the public. Many local authorities say that they already use innovative approaches to engage with the public. So, why is it necessary to put this on a statutory footing as a requirement for scrutiny committees? I think that I know what you will say, but should this not be a part of what they do? If they do not do it, is it not for the ballot box? Is there not a risk that, when they have already got these innovative ways of doing things, this might actually limit their methods?

2.00 p.m.

[124] **Carl Sargeant:** You are quite right that there are some councils that have innovative methods of engagement; there are some that do not. This will mean that the ones that are really good may need to change only a little bit. Some may need to change a little bit more than others. This is just about making it clear that the public's input is valued. Again, it is about standardisation and raising the bar for local authorities in terms of scrutiny, access and development. I think that they tick all the right boxes.

[125] **Veronica German:** That section provides that local authorities must have regard to guidance. In what circumstances would you issue guidance on that sort of practice? Do you envisage providing a lot of guidance?

[126] **Carl Sargeant:** The Assembly Government is never short of guidance for local authorities, I can tell you. [*Laughter.*] We will be issuing appropriate guidance for that process, but, again, that will be based on discussions with local authorities. I do not want to overburden local authorities. We should share the good practice of the ones that are doing it well. That is not rocket science. We will be talking to authorities in order to establish what guidance to issue and how to do that.

[127] **Veronica German:** Also, one size does not fit all. Something that works for a rural community would not be a model for a city centre community.

[128] **Carl Sargeant:** Absolutely, and that will be a consideration in the guidance that is issued.

[129] **Helen Mary Jones:** My question relates to sections 65 to 74 on appointing persons to chair committees. I think that it would be reasonable to say that we have had quite mixed evidence about this. It is also interesting that the WLGA was unable to provide an agreed position. However, one local authority said:

[130] 'The Council's administration group has concerns that if chairs are to be appointed in a way that reflects the overall political balance of the Council, then this would create a risk of politicising the scrutiny process. Clearly the opposition group would take a contrary view and there would therefore be no consensus on this issue.'

[131] So, there is the general principle of whether it should be done, and I would like your comments on that, but we have also heard evidence that the provisions in sections 65 to 74 are overly complex. Can you explain why it is necessary for us to have provisions that some are describing as prescriptive but which some of us may feel are just clear?

[132] **Carl Sargeant:** I think that it is a fact that all political parties have perhaps been guilty of allocating chairs to the same party. I do not think that that is appropriate. It does not create good scrutiny. We have a good model here in the Assembly in terms of how we operate procedures for political balance with regard to committee Chairs. They may think that it is over complex because it is a mathematical equation. Mathematical equations are sometimes

complex, but it is about being fair. It is not beyond the treasury department of each local authority to ensure that these numbers are dealt with correctly. I think that I am right in saying that it is based around the d'Hondt system. We operate it here, and it works very effectively. This takes the politics out of good scrutiny, and I do not think that that is a bad position to be in.

[133] **Joyce Watson:** I think that that is right, Minister. I also think that it takes the politics out by avoiding the situation of the leadership handing out goodies, because these are paid positions. With regard to the handing out of scrutiny chair positions to those not in the ruling group, we have heard evidence that the situation is fair as it stands because it is the whole council that votes on the people who become chairs. Do you recognise, Minister, that, very often, there is a large ruling group that has such a high percentage of the vote that the political group choosing is exactly the same as the whole council choosing, because the numbers are so high?

[134] **Carl Sargeant:** The process that you alluded to still goes on. We are trying to encourage fairness so that it is a simple mathematical equation to determine how many chairs should be allocated to each group. It is as simple as that. It takes away the intimation that the leading group could secure votes through committee membership by having the paid chairs of committees.

[135] **Helen Mary Jones:** The concern that has been expressed to us, which some members of this committee felt was more valid than the overall concern was that, because of the nature of the provisions, they could have a negative impact on the allocation of committee chairs to smaller groups. That is a genuine concern, particularly if you are looking at having skilled individuals to lead the scrutiny process. How would you respond to that concern and can anything be done to address it?

[136] **Carl Sargeant:** That is a technical question. I think that it is section 73 that allows local authorities to waive that position. Would anyone else like to pick up this question?

[137] **Mr Cuthbert:** There is provision under section 73 that would enable local authorities to waive these proposals, providing that there was cross-party support for doing so and as long as the outcome of that process was no less favourable to the opposition than would have been the case by imposing the formula. That does not necessarily answer the question that you raised, because you might not get all-party support to waive the provisions. The only thing that I would say—I will not name any names—is that there are examples when, sometimes, a dominant party gives a scrutiny chair not to the main opposition party, but to the representative of a smaller group where, perhaps, they find that more acceptable.

[138] **Helen Mary Jones:** However, that would be possible if the authority agreed. We could take the case of Caroline Lucas as an example, as she is the only member of the Green Party to be elected to the Westminster Parliament. If that person could command support across the council, as a gifted individual, even though he or she would not have got the chair automatically, if the local authority agreed, the opposition and the governing party would be able to say that they put their faith in that individual.

[139] **Carl Sargeant:** Yes.

[140] **Helen Mary Jones:** That is reassuring.

[141] It has also been suggested that the provisions could be simplified by either replicating the provisions in the Local Authority (Alternative Arrangements) (Wales) Regulations 2007, which require local authorities to allocate the chairs of committees according to the political balance of the authority, so far as is practicable, or by providing that committees chose their

own chairs. What are your views on those suggestions?

[142] **Carl Sargeant:** Once again, we are following the proposals of the Assembly committee—nothing more than that. We took those proposals and incorporated them into the proposed Measure. I am not asking for anything beyond that.

[143] **Helen Mary Jones:** If committees pick their own chairs and the ruling group was dominant on the committee, it would not address the issue, would it?

[144] **Carl Sargeant:** No.

[145] **Helen Mary Jones:** I did not think so.

[146] **Joyce Watson:** I will move on to discuss co-option. It has been suggested to us that the provisions in relation to co-option are not appropriate for legislation. How would you respond to this? This question relates particularly to sections 75 to 79.

[147] **Carl Sargeant:** We are talking about an enabling position here—that is, enabling voting co-option. This is not possible at the moment, but it is for local authorities to decide whether they want to make use of it. We are not saying that they must; we are saying that it is an option that will be open to authorities in order to enhance and improve scrutiny if they feel that that is what they need to do.

[148] **Joyce Watson:** I will now move on to discuss section 81 and the prohibition of whipped votes. Concerns have been raised that the provisions in section 81 on the prohibition of whipped votes will be difficult to implement and that they are not appropriate. Are you still of the view that these should be included in the proposed Measure?

2.10 p.m.

[149] **Carl Sargeant:** I am. I do not believe that whipping on scrutiny gives good value in terms of good scrutiny, and that is something that I support within the proposed Measure. I am not sure that I accept that this is a difficult process—it is not too difficult, just as the Chair of this committee does, to ask whether committee members have any declarations of interest to make. Whipping could be included in that process. That is about as simple as it gets.

[150] **Joyce Watson:** So, do you agree with the Centre for Public Scrutiny's comments that declaring at a meeting that a whip has been imposed might be part of the answer?

[151] **Ms Koppel:** That is already provided for in section 81. Standing orders must provide that at each meeting of an overview and scrutiny committee, each member of the committee must declare any prohibited party whip. So, provision has already been made for the declaration of whipping.

[152] **David Lloyd:** Helen, do you want to delve into the deeper philosophy of this?

[153] **Helen Mary Jones:** Not the deep philosophy, but the practical implementation of it. One of the concerns that has been put to us—which we have shared to a certain extent in discussion—is that if you prohibit the whip, you drive it underground. We know the realities of these things, because they are often dealt with by what they call 'the usual channels' up at Westminster—quiet words in the corridor or a tap on the shoulder to suggest, 'If you don't do that, you will never get the Chair of that scrutiny committee'. I can see what is trying to be achieved with this, but party groups will always have views about things. Would it not be better for that to be where it happens to be open? If I have understood you correctly, the provision states that the whip is prohibited, but that if someone has been whipped, they have

to say so. Well, do you see that flying pig up there? *[Laughter.]* It is not going to happen. It is not that I do not support what you say, Minister, but we should consider trying to create a culture where that does not happen, and a good, strong head of democratic services can help backbenchers to resist that kind of pressure. However, where it is happening, would it not be better for the public to know and therefore be able to make a judgement, rather than push things underground? I am conflicted about this—I do not know my own view.

[154] **Carl Sargeant:** I share your thoughts about how we change the culture of this process. As a former chief whip, you have asked me an interesting question. What I am trying to create is an ethos whereby this is not driven underground, but I accept the principle that it could. I am trying to create an environment where it becomes the norm for scrutiny not to be whipped, because that makes for good scrutiny. If we take the proposed Measure as a package, there is an opportunity through new member training to have a different form of council to what we have been used to in the past. There have been some very good councillors, but we sometimes have to move in terms of processes. My aim is to create a package of which whipping is just a part, and not the be-all and end-all. We are trying to create a culture where it is recognised within institutions that good governance and excellent scrutiny gives good public services. That is what we are trying to create, and this is just about recording that process. I share your concerns about the difficulty of it, but if we can set a timeline for what we expect and where we expect to be, I hope that we can build a consensus across councils that this is the norm, and not expected to be anything else?

[155] **William Graham:** I recognise your sincerity, but how do you propose that the majority group implements the decisions of a council?

[156] **Carl Sargeant:** This is about scrutiny.

[157] **William Graham:** Scrutiny can recommend lots of things that interfere with policy.

[158] **Carl Sargeant:** I believe that the policy element of service delivery is completely different to scrutiny. I accept that there are concerns around the scrutiny elements of it, but if it is wrong, it is wrong. Whether it is the leading group or otherwise, if it has concerns about scrutiny, they should be raised. It is not good for business for there to be bad or weak scrutiny.

[159] **William Graham:** I think that you are missing the point. With regard to the implementation of council policy, scrutiny will sometimes make a direct recommendation that goes against council policy—possibly for good reason. Are you saying that that should be supported and that the majority group should not get what it wants?

[160] **Carl Sargeant:** The scrutiny element is politically balanced, is it not?

[161] **William Graham:** So, you are saying that the scrutiny committee has the last word.

[162] **Carl Sargeant:** No.

[163] **Mr Cuthbert:** We are not proposing to alter the status of scrutiny within the council. Scrutiny could not frustrate the ability of the executive and the council to carry out their functions, other than through the power that it already has to ask them to think again. So, that would not change. It is simply an attempt to remove the process of whipping from the scrutiny committee.

[164] **Carl Sargeant:** In practical terms, I would expect the leading group, in principle, to support the leading group. So, you would not be whipped at all; you would agree with the principles before the scrutiny process. Does that make sense?

[165] **William Graham:** It makes sense. It does not necessarily reflect reality, but it does make sense. [*Laughter.*]

[166] **Carl Sargeant:** There is a light at the end of the tunnel, William.

[167] **Veronica German:** Moving on to audit, some witnesses have suggested that the provisions relating to audit committees are too prescriptive. Some have expressed concern about the composition that has been laid down, surprisingly not because they think that there are not enough local authority members, but too many. The proposed Measure states that two thirds of the members should be local authority members, whereas some authorities have more lay members than elected members on such committees. So, I would like your comments on that. Secondly, I think that the benefits are clear, but what are your views regarding the benefits of requiring local authorities to establish such audit committees?

[168] **Carl Sargeant:** Your question takes us back to the beginning and some of the responses that we gave then. Welsh Ministers have consistently supported the guidance of the Chartered Institute of Public Finance and Accountancy on the creation of audit committees—there are three authorities that still do not have an audit committee—and in relation to audit committees providing good governance, helping to improve strategic planning, facilitating scrutiny and so on. I have seen the evidence that was submitted by the Wales Audit Office and CIPFA, and I am a little surprised by the detail of it. I think that some of the detail has perhaps been misunderstood, because we have had discussions with both organisations about the creation of audit committees. We need to have further talks with the Wales Audit Office and CIPFA about the specifics of the problem.

[169] **Veronica German:** They think that the functions are too narrow.

[170] **Carl Sargeant:** Yes. We are not opposed to what they are saying; we want to strengthen that. I think that it is a drafting issue and a misunderstanding regarding what they are saying, what we are saying and how the two align. I am open to further discussions with both organisations to see how we can overcome that problem, because I just want to broaden the process to get it right. It is an important function, and if we have got that aspect wrong or have misinterpreted that, we can amend the provisions accordingly.

[171] **Veronica German:** Does that go for the make-up as well as the functions?

[172] **Carl Sargeant:** We will have a full and frank discussion with them.

[173] **William Graham:** Turning to community councils, how have you arrived at the thresholds contained in the proposed Measure for calling a community meeting and a community poll?

[174] **Carl Sargeant:** Your colleagues and I have expressed different views in the Chamber on the thresholds for elected mayors, police and crime commissioners, community polls and so on. We believe that the existing legislation has set the threshold too low. The new thresholds will now be in line with those that were introduced for establishing a community council, so we are just making the two consistent.

2.20 p.m.

[175] **William Graham:** The WLGA has called for guidance on community polls to ensure that they are relevant and legitimate. What consideration have you been able to give to that?

[176] **Carl Sargeant:** It makes a change for someone to be calling for guidance as opposed

to saying that we have given them too much.

[177] **William Graham:** True.

[178] **Helen Mary Jones:** It is because it is guidance that applies to someone else and not to them.

[179] **Carl Sargeant:** The steps are clearly set out in the provisions. There are safeguards in the higher thresholds for convening a community meeting for staging a community poll. I do not think that we need guidance, but it is something that I would consider. If the WLGA is saying that we need more guidance, then we need more guidance.

[180] **William Graham:** That is the evidence that we received.

[181] **Carl Sargeant:** I am not entirely convinced that we do need it.

[182] **William Graham:** Why is there no provision for community councils to appeal to Welsh Ministers if they do not agree with the principal authority's monitoring officer on the content of a poll question?

[183] **Carl Sargeant:** I do not think that it is necessary. Where does all of this stop? We have to have a responsible person to make a decision. I would consider the monitoring officer to be that person at this level of appeal.

[184] **William Graham:** Again, you will have seen the evidence.

[185] **Carl Sargeant:** Yes, I have read it.

[186] **Christine Chapman:** Section 124 enables Welsh Ministers, by regulation, to provide for the appointment of a community youth representative who is to be treated, for prescribed purposes, as a member of the council. We have had concerns raised by the Association of Council Secretaries and Solicitors that this provision may conflict with section 79 of the Local Government Act 1972, which provides that a person must be over 18 to be a member of a local authority. Can you confirm what the word 'treated' means for the purposes of section 124? In what circumstances would a youth representative be treated as a member of a community council?

[187] **Carl Sargeant:** I think that this is a purely technical issue. We do not consider that there is a conflict with section 79 of the 1972 Act. However, I think that Steve will be able to give you more detail about the terminology. To clarify, what we are trying to do is engage young people with the local council. Again, it is a technical issue, which may have been misinterpreted.

[188] **Mr Phipps:** As you have said, the power is for Ministers to prescribe that a youth representative could be treated as a member of the council. That is not the same as saying that they are a member. We envisage that it could be used, for example, to extend certain statutory rights, privileges or obligations to youth representatives. One possible example is to allow the payment of expenses or an allowance where appropriate. I suspect that Ministers would look to use that power only where there was a weight of opinion from community councils generally that there was a need to do that in a practical sense.

[189] **Christine Chapman:** Moving on to the views of community areas and electoral arrangements, why have you chosen to proceed with the approach in chapter 5 of Part 7, rather than requiring the boundary commission to undertake boundary reviews and reviews of electoral arrangements by default?

[190] **Carl Sargeant:** Councils are best placed to do this. I believe that they know their areas best, and I think that we have seen recent examples of the boundary commission making recommendations on council reviews that have been challenging for communities. So, I believe that councils are best placed to do that. However, I also believe that, if councils want the commission to do that work, it can arrange that, but it must pay for it. I am not paying twice for it; I am not paying local authorities and the boundary commission to do the same job. I mentioned to the Finance Committee that this was a bit of a loophole, because the duty to do this is on the authority, but it could pass it on to the commission, which meant that it did not have to do it. So, I closed the loophole, and I expect the relevant authority to complete the reviews. If it should wish the commission to carry out that duty for it, it can pay for that.

[191] **Joyce Watson:** Moving swiftly on, we are going to talk about the power of wellbeing. It is probably a good time to talk about it. [*Laughter.*] Now that we are feeling good about ourselves, can you clarify how this provision differs from the existing power? We have heard arguments that there is a lack of clarity about how such powers could be used, and the extent to which they differ from the existing powers under section 137 of the Local Government Act 1972.

[192] **Carl Sargeant:** Again, I will ask colleagues to comment on the specifics of the detail around the Local Government Act. Section 137 allows a council to incur expenditure in the interest of or that will bring benefits to the inhabitants of that local authority area. However, that can only be used if there no specific powers that already apply to the function that the council is to undertake. It is quite complex, but Emma might be able to give us some more detail on that.

[193] **Ms Locke:** As the Minister touched upon, section 137 of the Act is different to the wellbeing power in three ways. One concerns the council's objectives; by its very nature, the wellbeing power is broader because it involves the promotion or improvement of the economic, social or environmental wellbeing of the area and its inhabitants. There is a raft of case law that sets the limitations or otherwise flowing from that. The second difference is that section 137 in the 1972 Act carries a financial limit, which does not apply to the wellbeing power. Thirdly, the powers have different starting points: section 137 cannot be used if there are other powers in existence, whereas, with the wellbeing power, you would look to that first. There are limitations if there are other powers that would prohibit what you are trying to achieve in reliance on the wellbeing power; however, the two powers start at different ends. Those are the three distinguishing factors. The best example of the difference between the two powers is the fact that the main thrust of section 137 of the 1972 Act now applies only to eligible parish councils in England and community councils in Wales; for all unitary authorities, it has been replaced by the wellbeing power, which is obviously where we would get to if these provisions came into force.

[194] **Carl Sargeant:** I am glad that Emma came along. [*Laughter.*]

[195] **David Lloyd:** Are you happy, Joyce?

[196] **Joyce Watson:** Yes.

[197] **Veronica German:** Moving on to grants for community councils, some witnesses have expressed concern regarding the intended purpose of the provisions in section 132 that enable Ministers to give grants to local authorities. How do you intend to use those powers? For instance, are they for service delivery, or to assist community councils in carrying out their functions? How do you see this working?

[198] **Carl Sargeant:** The current state of affairs is that we are not in a position to make



grants to community councils. As Professor Woods mentioned in his evidence, we are moving into very different economic times, and we do not know what the future may bring in terms of who will make what provision, and where, as regards service delivery—whether local authorities are best-placed to do it, or community and town councils. At the moment, there is no route whereby we can pay for services. It would be useful for the committee to note that this power mirrors a similar grant-making power relating to principal councils in section 31 of the Local Government Act 2003. This is a similar grant-making function that would enable us to pay direct to community councils should that be necessary.

[199] **Veronica German:** Following on from that, the WLGA is concerned that, if you give grants to community councils, it clouds transparency, as it calls it, over funding for specific services. It may be that unitary authorities should be delivering a particular service, and then it would be as if the money was being paid twice for that. I think that that is what the WLGA was saying. So, it is talking about double taxation. Have you given any consideration to this?

2.30 p.m.

[200] We have had this big thing about charters between unitary authorities and community councils, and that they can pass on some of their functions to those community councils. It is almost as if you are saying, ‘Leave those to one side; we will go straight in’. I think that that is the issue that it is concerned about.

[201] **Carl Sargeant:** It is the representative body of local authorities. Surely, the pot of money that we have is a single pot of money. If a local authority has moved a function, such as grass-cutting in a local community, for example, because it thinks that that is the best thing to do, and given it to community councils across the borough—

[202] **David Lloyd:** To the grass-roots level.

[203] **Carl Sargeant:** Yes; to grass-roots level.

[204] **Helen Mary Jones:** Do you have to, Chair? [*Laughter.*]

[205] **Carl Sargeant:** Thank you for that, Chair. Obviously, the local authority should not expect payment within the revenue support grant for that. It would therefore be necessary to pay town and community councils for that function.

[206] **Veronica German:** Therefore, you are saying that you do not think that they are going to be sufficiently good at passing on the money. The idea at present is that they come to some kind of agreement between the community council and the unitary authority, and it may be a matter of them saying, ‘We will pass this on to you; therefore, we will pay you to do this function’, but you are saying, ‘If you take it away from them completely, then—

[207] **Carl Sargeant:** I do not want to get into the role of funding town and community councils.

[208] **Veronica German:** That is how it is looking.

[209] **Carl Sargeant:** This could enable us, if we should find it necessary in the future, to grant-fund town and community councils.

[210] **Mr Phipps:** I think that the WLGA is muddling issues here, frankly. There is a grant-making power on the one hand and the issues around the delegation of services and double taxation are something quite different. If they are looking at local arrangements for the delegation of services, they should be addressing the double taxation issue within those

arrangements. The Minister has said that he has no intention of funding those sorts of services using this power.

[211] **Helen Mary Jones:** Would it also be true to say that it is about regularising and making the things that do happen simpler? I can think of community councils that have had to set up voluntary organisations: for example, the council wants to build a community hall, there is a 100 per cent grant available from the Welsh Government, but it cannot, as a community council, make that application. Therefore, it has to set up something, which often seems to be a faintly quasi-fictitious alleged voluntary organisation, to make the application, whereas it would seem to me that it would be perfectly proper for a locally directly elected democratic body to be able to bid for that. Therefore, there is that kind of anomaly at present where, effectively, community councils have approached us for specific grant funding, but it has had to go through a third party.

[212] **Carl Sargeant:** We must remember that there is an array of community and town councils that vary in their size as well as their capacity. If you look at some of the larger ones—Barry Town Council is of a significant size—you will see that they operate different functions. The Aberystwyth study was very clear about how we should raise the game for town and community councils. We are creating a professional environment for them to work in. I think that this structure of grant funding is a process that may or may not be needed in terms of that process, which should alleviate the WLGA's concerns, but I can see that there is a little bit of self-interest in terms of thinking, 'If you are giving it to them, you are not giving it to us', which is unfortunate because I think that we should have our eye on the ball that regardless of who does it, it is ultimately a matter of public service delivery.

[213] **William Graham:** On model charter agreements, the committee has received mixed evidence regarding the need for such charters between local authorities and community councils, and that they are sometimes reluctant to work together. Some witnesses have told us that forcing co-operation in this way would not result in genuine collaboration and partnership. Why would you wish to take these powers, and in what circumstances would you envisage using them?

[214] **Carl Sargeant:** They are absolutely right. A forced relationship will never work in that respect, and we have experienced that with local authorities. When I refer to collaboration, if one does not want to do it, it will just make a bad job of it. What we are trying to do—and it is actually working very well—is that, where we have the partnership council, which includes One Voice, the representative body for town and community councils, we are looking to develop charters between local authorities and community town councils. Already, the charter compact has been signed off and considered by local authorities. Again, some partners are more willing than others. Some just need a little push along the way. This is something that can only lead to a better and more seamless delivery of public services.

[215] **David Lloyd:** Mae'r cwestiynau olaf **David Lloyd:** The final questions will be asked by Helen Mary Jones.  
yng ngofal Helen Mary Jones.

[216] **Helen Mary Jones:** This section relates to payments and pensions for members. It arises out of concerns that members of the independent remuneration panel raised with us when they came to see us. This is a matter of clarification, and a chance to address those concerns on the record.

[217] The existing regulations that guide the work of the independent remuneration panel are detailed, but these regulations will disappear with the proposed Measure. Representatives from the panel were unclear in evidence to the committee whether they would have powers under the proposed Measure, for example, to set the percentage of elected members to whom

a special responsibility allowance may be paid. Can you confirm whether the powers under the proposed Measure will be as wide as—or wider than—those that the panel has currently under regulations, and could you tell us why there is not more detail on the face of the proposed Measure as to how the panel will operate in practice? When the proposed Measure comes into force, it will get rid of the current regulations governing the panel, and I think that the panel was concerned about what will happen in the gap before new regulations are in place, if this situation will be dealt with through regulations rather than on the face of the proposed Measure.

[218] **Carl Sargeant:** Again, this is about the detail within the proposed Measure, and something that we picked up from the evidence submitted by the IRP. We are keen to open up dialogue on the details. We did not do this intentionally. These are just some of the issues that were flagged up, issues where we recognise that there are some omissions and where we need to make some amendments in terms of the detail. We are happy to do so.

[219] **Helen Mary Jones:** So, the intention would be, for example, for the panel to continue to be able to set maximum percentages of special responsibility allowance and so on.

[220] **Carl Sargeant:** Yes, I believe so. We will go back and clarify those details. I do not see this as a weakening of the IRP's position. The intention is to maintain what panel members have, at least, or improve support for them.

[221] **Helen Mary Jones:** Panel members also told us that they would welcome having the discretion to set aggregate levels of allowances payable by local authorities, so that each authority could vary the allowance for different members according to their responsibilities. They were thinking of cases where someone has a much bigger portfolio than someone else. Education might be much bigger than something else, for example. They were wondering whether authorities ought to have the discretion to say that chairing one scrutiny committee might be much more onerous and demanding than chairing another. I must say that I am somewhat ambivalent on this. Could you address this during further discussions with panel members?

[222] **Carl Sargeant:** I have considered the aggregation element of this. I do not support that principle. The problem with the relationship between politics and salaries is that it creates a huge issue, internally and externally. I am trying to create an environment where members are given an allowance for doing the duty of a councillor, which takes the political element away. We do not want people accusing each other over who is getting something, and who is not. I am trying to standardise that process to make it fair internally and externally, so that the general public can see, in a very transparent way, the reasoning behind the IRP's decisions and the way forward, rather than complicating the issue. I would also refer to an issue that Joyce raised earlier, regarding leaders of authorities giving disproportionate amounts to individual council members, which could perhaps incur other favours.

[223] **Helen Mary Jones:** So, your view is that it is better to have a rate for the job.

[224] **Carl Sargeant:** Yes.

[225] **David Lloyd:** Bydd y Gweinidog yn falch o glywed mai dyna ddiwedd y cwestiynau swyddogol. Weinidog, soniasoch am y llythyr yn ymwneud â phwerau a anfonasoch at y Pwyllgor Materion Cyfansoddiadol. Efallai byddai o gymorth i'r pwyllgor hwn weld copi o'r llythyr hwnnw hefyd. Pe byddai modd ichi anfon copi atom **David Lloyd:** The Minister will be pleased to hear that that brings us to the end of the official questions. Minister, you mentioned the letter regarding powers that you sent to the Constitutional Affairs Committee. It might be helpful for this committee also to see a copy of that letter. If you could send a copy to us by Thursday, that would be very

erbyn dydd Iau, byddai hynny o gymorth useful. Do you have any concluding remarks  
mawr. A oes gennych unrhyw sylwadau i'w to make?  
gwneud i gloi?

[226] **Carl Sargeant:** I would just like to thank you, Chair, and the Members. The proposed Measure is about scrutiny, and you certainly scrutinised well today, with a lengthy list of questions. I appreciate that, because it helps us to form a better Measure for the future. My intention is to create a much more professional local government environment, where we bring authorities that are performing less well up to a level where the public can expect good-quality services. I hope that that is encompassed in the proposed Measure, and we will continue to endeavour to achieve that through the appropriate legislative processes. Thank you for your help.

2.40 p.m.

[227] **David Lloyd:** Diolch yn fawr, Weinidog, am eich cyfraniad ac i'r swyddogion am eu cyfraniad y prynhawn yma. Bydd y clerch yn anfon trawsgrifiad drafft o drafodaethau'r prynhawn yma atoch i weld a oes angen eu cywiro. Efallai y bydd rhyw fân wallau—nid ydym wedi darganfod unrhyw wallau yn y misoedd yr ydym wedi bod wrthi, ond efallai y bydd rhywbeth yn digwydd un diwrnod. Mae croeso i chi gywiro unrhyw fân wallau.

**David Lloyd:** Thank you, Minister, for your contribution and to the officials for their contribution this afternoon. The clerk will send a draft transcript of this afternoon's proceedings to you for correction. There may be some minor errors—we have not discovered any errors in the months that we have been undertaking this work, but something might happen one of these days. You are welcome to correct any minor errors.

[228] Gyda'r sylwadau hynny, yr wyf am gyhoeddi bod rhan gyhoeddus y cyfarfod yn dirwyn i ben, gan ddiolch i'r Gweinidog unwaith eto. Hefyd, er gwybodaeth i'm cyd-Aelodau, dyna ddiwedd y sesiynau tystiolaeth. Yn awr, bydd angen drafod yn breifat, am rai munudau, y themâu sy'n dod i'r amlwg o'r holl drafodaethau yr ydym wedi eu cael yn ystod y sesiynau tystiolaeth lafar ac ysgrifenedig.

With those concluding remarks, I will announce the end of the public part of the meeting. Once again, thank you, Minister. Also, for my fellow Members' information, that is the end of the evidence-taking sessions. We now need to continue in private for a few minutes to discuss the themes that have emerged from our oral and written evidence sessions.

2.41 p.m.

### Cynnig Trefniadol Procedural Motion

[229] **David Lloyd:** Cynigiaf fod *the committee resolves to exclude the public from the remainder of the meeting and future meetings at which it considers its report in accordance with Standing Order No. 10.37(vi):*

*y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod a chyfarfodydd y dyfodol lle bydd yn ystyried ei adroddiad yn unol â Rheol Sefydlog Rhif 10.37(vi).*

[230] Gwelaf fod y pwyllgor yn gytûn. I see that the committee is in agreement.

*Derbyniwyd y cynnig.*

*Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 2.42 p.m.*  
*The public part of the meeting ended at 2.42 p.m.*