



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

**Pwyllgor Deddfwriaeth Rhif 4
Legislation Committee No. 4**

**Dydd Iau, 30 Medi 2010
Thursday, 30 September 2010**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi 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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Christine Chapman	Llafur Labour
Brian Gibbons	Llafur Labour
Helen Mary Jones	Plaid Cymru (yn dirprwyo ar ran Bethan Jenkins) The Party of Wales (substituting for Bethan Jenkins)
Jonathan Morgan	Ceidwadwyr Cymreig Welsh Conservatives
Jenny Randerson	Democratiaid Rhyddfrydol Cymru (Cadeirydd y Pwyllgor) Welsh Liberal Democrats (Committee Chair)

Eraill yn bresennol
Others in attendance

Jane Davidson	Aelod Cynulliad, Llafur, (y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai) Assembly Member, Labour (the Minister for Environment, Sustainability and Housing)
Prys Davies	Rheolwr Deddfwriaeth, Adran yr Amgylchedd, Cynaliadwyedd a Thai Legislation Manager, Department of Environment, Sustainability and Housing
Elisabeth Jones	Llywodraeth Cynulliad Cymru Welsh Assembly Government

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

Sarah Beasley	Clerc Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Joanest Jackson	Cynghorydd Cyfreithiol Legal Adviser
Sarah Sargent	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 9.30 a.m.
The meeting began at 9.30 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

Nid oes recordiad ar gael o ddechrau'r cyfarfod.
No recording is available of the beginning of the meeting.

9.32 a.m.

**Mesur Arfaethedig ynghylch Diogelwch ar Gludiant i Ddysgwyr (Cymru)—
Cyfnod 1
Proposed Safety on Learner Transport (Wales) Measure—Stage 1**

[1] **Jenny Randerson:** —in the following framework. First is the need for a proposed Measure to deliver the stated policy objectives of improving the safety image and traveller experiences of dedicated learner transport. Second is whether the proposed Measure achieves its stated objectives. Third is the key provisions set out in the proposed Measure and whether they are appropriate to deliver its objectives. Fourth is potential barriers to the implementation of the key provisions and whether the proposed Measure takes account of them. Finally, there are the views of stakeholders who will have to work with the new arrangements.

[2] We launched our public consultation earlier this week and it closes on 5 November. Members will be aware that we are required to conclude our scrutiny and publish our report by 17 December. Do Members wish to add any points to the previous procedure that we have been through in relation to the proposed Measure?

[3] **Christine Chapman:** We ought to ask the traffic commissioner to be part of the consultation. We also need to decide how we engage with young people, so the committee should give some consideration to that.

[4] **Jenny Randerson:** I am aware that the committee is keen that we should have a wide consultation that includes young people. We will consider how best to do that immediately. The traffic commissioner has already been invited to give written evidence, but we will, hopefully, find time to invite him in to give us oral evidence. We only have two evidence sessions, so we are very pressed for time. Is everyone content with that? I see that you are.

9.34 a.m.

**Mesur Arfaethedig ynghylch Gwastraff (Cymru)—Cyfnod 2: Ystyried
Gwelliannau
Proposed Waste (Wales) Measure—Stage 2: Consideration of Amendments**

[5] **Jenny Randerson:** I am pleased to welcome the Minister and her officials to move the Government amendments and discuss those that others have tabled.

[6] Members will have before them a copy of the proposed Measure, the marshalled list of amendments, and the grouping of amendments for debate. The marshalled list is, as you know, the list of all amendments tabled marshalled in the order in which the sections to which they relate appear in the proposed Measure. Schedules will be considered with the relevant sections that introduce them. For our meetings, the order in which we consider amendments will be sections 1 to 16, then the Schedule, then sections 17 to 20, new sections, and, finally, the long title. You will see from the groupings list that amendments have been grouped to facilitate debate, but the order in which they are called and moved for a decision is dictated by the marshalled list. Members will need to follow the two papers, although I will advise Members when I call them whether they are being called to speak in the debate or to move their amendments for a decision. There will be one debate on each group of amendments. I will call the proposer for the first amendment in the group, who should then move and speak to the amendment, as well as any other amendments in that group. I will then call any other Member who wishes to speak to the amendments in the group, including any other proposers of amendments in that group, but you should not move your amendments at that stage. In a group where the Minister does not have the lead amendment, I will call the Minister as the penultimate speaker. To conclude each debate, I will call the proposer of the first amendment in the group to wind up.

[7] Following the debate on the group, I will clarify whether the Member who moved the first amendment still wishes to press it to a decision. If not, he or she may seek the agreement of the committee to withdraw it. If it is not withdrawn, I will put the question on the first amendment in the group that the amendment be agreed to. It is my intention that all votes be recorded, so that the names of those voting for, against or abstaining will be recorded in the minutes. I will call the proposers of other amendments in each group to move their amendments at the appropriate time in accordance with the marshalled list. If you do not wish to move your amendment, you should say so clearly when the amendment is called. For the record, only committee members can move amendments. Members will wish to be aware that, in line with the convention for operation of legislation committees, I will move the amendments in the name of the Minister. Members will be aware that the only way to debate a section of the proposed Measure is to have tabled an amendment to it, and any sections that do not have amendments tabled to them will be deemed agreed, as will any sections where tabled amendments are not agreed to. I will announce the sections that have been agreed at the end of the meeting. We are hopeful that we may get through all of the amendments today, but for any sections that are not disposed of today, there will be an opportunity to table further amendments to those sections. In order to be considered at next week's meeting, amendments will need to be tabled by 5 p.m. today.

[8] Are there any questions? Is everyone content? I see that you are.

**Bagiau Siopa Untro—Pen Taith yr Enillion (Gwelliannau 13 ac 1)
Single Use Carrier Bags—Destination of Net Proceeds (Amendments 13 and 1)**

[9] **Jenny Randerson:** The first group, on single-use carrier bags and the destination of net proceeds, comprises amendments 13 and 1. In this group, the first amendment to be considered is amendment 13. I call on Brian Gibbons to move the lead amendment and to speak to it and the other amendment in the group.

[10] **Brian Gibbons:** I move amendment 13 in my name.

[11] We received evidence at an earlier stage of the scrutiny process in which several stakeholders were anxious that the legislation should permit the establishment of a particular fund that could be used for specified purposes outlined elsewhere in the legislation. The purpose of this amendment is to allow proceeds to go to bodies of different sorts that are already established but that are committed to supporting the specified objectives. The effect of this would be to create something along the lines of an endowment or an evergreen fund to continue to support the objectives that the Minister has outlined in her legislation.

9.40 a.m.

[12] **Jenny Randerson:** Thank you, Brian. Does any other Member wish to speak? I see that no-one does. I call the Minister.

[13] **The Minister for Environment, Sustainability and Housing (Jane Davidson):** Thank you, Chair. We very much support the principle behind amendment 13. However, the approach can be accommodated without the need for an amendment. Section 1 allows the Government to make regulations to allow sellers to pay the net proceeds of the charge to specific persons or categories of persons. The persons who can be specified include companies, charities and unincorporated associations. So, bodies of the type envisaged by this amendment are well within the ambit of the power already contained in section 1 of the proposed Measure. I am grateful to Brian for raising the issue so that I can clarify this for the committee, and I am pleased to be able to provide reassurance to the committee on this point. I hope that, in view of these assurances, the amendment can be withdrawn.

[14] **Brian Gibbons:** If the intention is already covered in the legislation, we should not attempt to duplicate. With the committee's agreement, I am happy to withdraw the amendment.

[15] **Jenny Randerson:** Before we close this debate, Minister, you have not spoken to amendment 1.

[16] **Jane Davidson:** Do you wish me to speak to amendment 1 now? I was speaking to amendment 13 first, as it is the lead amendment.

[17] **Jenny Randerson:** Yes, please speak to amendment 1 in the debate on this group. We will then vote at the appropriate point.

[18] **Jane Davidson:** What we aim to achieve with amendment 1 is to make clear the scope of the regulation-making power conferred by section 1 of the proposed Measure. As committee members will recall from Stage 1, the power under section 1 enables regulations to be made about applying the net proceeds of the carrier bag charge to environmental purposes. That power also enables the regulations to deal with recovering sums from sellers and others. The power to deal with recovery is intended to enable the Government to ensure that any proceeds of a carrier bag charge that are not used as they should be can be recovered and applied to the environmental purposes as they ought to have been. The amendment is designed to illuminate the fact that the regulations can allow the Welsh Ministers to retain the recovered sums instead of them being paid into the Welsh consolidated fund.

[19] **Jenny Randerson:** I see that no-one else wishes to speak to amendment 1. Brian, you have indicated that you wish to withdraw amendment 1.

[20] **Brian Gibbons:** The Minister has indicated she would have competence in this area, so it does not seem necessary.

[21] **Jenny Randerson:** I see that there are no objections to the withdrawal of the amendment.

*Tynnwyd gwelliant 13 yn ôl drwy ganiatâd y pwyllgor.
Amendment 13 withdrawn by leave of the committee.*

[22] **Jenny Randerson:** We now come to dispose of amendment 1 in the name of Jane Davidson. Minister, do you wish the amendment to be moved?

[23] **Jane Davidson:** I do.

[24] **Jenny Randerson:** I move amendment 1 in the name of Jane Davidson. The question is that amendment 1 be agreed to. I call for a vote.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary

Morgan, Jonathan

*Derbyniwyd gwelliant 1.
Amendment 1 agreed.*

**Bagiau Siopa Untro—Eithrio Gwerthwyr o Gynllunio Gorfodol (Gwelliannau 14 a 23)
Single-use Carrier Bags—Exclusion of Sellers from Mandatory Scheme (Amendments
14 and 23)**

[25] **Jenny Randerson:** This group relates to the direction of net proceeds from a charge on single-use carrier bags. The first amendment to be considered from this group is amendment 14, and I call on Brian Gibbons to move the lead amendment and to speak to it and the other amendment in the group.

[26] **Brian Gibbons:** I move amendment 14 in my name.

[27] The crucial objective of this legislation must relate to the outcomes of reducing the use of single-use carrier bags rather than the process of getting there. Where sellers have achieved the Government's objectives, the Minister should have the legal flexibility to respond. In short, this is a pro-business amendment to reward good practice by sellers. The specific purpose of the amendment is to allow the Minister, when making regulations, to take into account the achievement of sellers, and to allow sellers who are achieving the relevant level of performance to be exempt from using the proceeds that they have gathered for the designated purposes. In other words, if the sellers are already supporting non-specified charities, they would have the opportunity to continue to do so. We know that a number of sellers already provide considerable support to well-established and much-loved charities in Wales, and I do not think that the public would well understand that level of funding being withdrawn from them as a consequence of the proposed Measure. Businesses will also appreciate the amendment, because they will see it as allowing them to get on with their work rather than being subject to additional regulation and legislation.

[28] **Jenny Randerson:** Are there any other speakers?

[29] **Jonathan Morgan:** I wish to speak to amendment 14, which is in the same group as my amendment 23. We have to realise that the proposed Measure is about a reduction in waste. The whole idea is to ensure that our habits as shoppers are changed and that we do better by the environment by relying less heavily than we do at the moment on the use of single-use carrier bags. My amendment 23 takes the principle of what Brian has set out somewhat further. Chair, do you want me to speak to amendment 23 now?

[30] **Jenny Randerson:** Yes, please.

[31] **Jonathan Morgan:** Much has been said in evidence about the potential move from a voluntary arrangement to a mandatory scheme and the way in which any scheme would be administered. If we are to accept the principle in the amendments then we also have to accept the principle that there needs to be a greater degree of flexibility in the way that the mandatory scheme could come in and the measurement or test against which that judgment would be made. I have attempted to construct our amendment 23 so that, in essence, the second part of the amendment would provide for Ministers to exempt sellers from a mandatory scheme where the seller is able to demonstrate a reduction in the use of single-use carrier bags. It is right for there to be that level of flexibility for the Assembly Government to say to sellers that it will take a judgment on how effective a scheme has been in reducing the use of bags. Clearly, if that is the aim, that should be the underlying principle of the way in which the proposed Measure is constructed.

[32] **Jenny Randerson:** Do any other Members wish to speak? I see that no-one does. Minister, could you please respond in relation to both amendments?

[33] **Jane Davidson:** Turning first to Jonathan's amendment 23, we have always said very clearly that the reduction in the number of single-use carrier bags would be, importantly, one of the criteria for measuring the success of the charge itself, but the use to which the receipts are put would not. That is the fundamental difference in the context of the mandatory scheme. The mandatory scheme is about where the proceeds are put, not about the reduction in the use of carrier bags.

9.50 a.m.

[34] We need to distinguish clearly between the aims and purposes of the climate change legislation and the provisions of the proposed Measure. Regarding Brian's contribution on non-specified charities, we do not feel that the way in which the amendment is being brought forward would be satisfactory for the Government. However, we are happy to reflect on whether the powers under the Climate Change Act 2008 pose any impediment to how flexibly regulations can be applied. So, I would want to bring a technical amendment to the committee at Stage 3 to ensure that there are no barriers in the Act to applying the regulations as flexibly as possible. I am therefore grateful to Jonathan and Brian for raising the issue. However, it is very important in legislative terms that the mandatory scheme deals with where the proceeds go; anybody who is brought into the mandatory scheme would be bound in terms of where their proceeds go, which is a separate issue from the reduction in the number of carrier bags used. We cannot legally bring the two things together in that way.

[35] **Peter Black:** I wish to clarify something, Chair. Minister, you referred to Stage 3, which takes place at a Plenary meeting, not at committee; would you therefore bring an amendment before Plenary?

[36] **Jane Davidson:** Yes.

[37] **Jenny Randerson:** Brian, would you like to reply?

[38] **Brian Gibbons:** Judging by what the Minister has said, her sympathy is with the intention behind these amendments, and that in cases where people are demonstrating performance against desirable outcomes, she will strive to get a better form of wording to deliver that intention. If I follow her argument correctly, she is also saying that some of the precise wording in the amendment may not fit readily in this proposed Measure, and possibly needs to sit elsewhere. On the basis of that written commitment, I am happy to withdraw my amendment, if the committee agrees.

[39] **Jenny Randerson:** Brian has indicated that he wishes to withdraw amendment 14. Does any Member object? I see that you do not.

*Tynnwyd gwelliant 14 yn ôl drwy ganiatâd y pwyllgor.
Amendment 14 withdrawn by leave of the committee.*

[40] **Jenny Randerson:** In line with the marshalled list, we now move to dispose of amendment 23, in the name of Jonathan Morgan. Jonathan, do you wish to move your amendment?

[41] **Jonathan Morgan:** On reflection, Chair, I am happy not to move the amendment on the Minister's assurance that this issue will be examined through an amendment at Stage 3. If the Minister is endorsing—as she has suggested—the principle behind what we have tried to do with this, I am happy not to proceed with the amendment.

[42] **Jenny Randerson:** Does any Member object? I see that you do not.

Ni symudwyd gwelliant 23.

Amendment 23 not moved.

**Bagiau Siopa Untro—Sbardun ar gyfer Cynllun Gorfodol (Gwelliant 24)
Single-use Carrier Bags—Trigger for Mandatory Scheme (Amendment 24)**

[43] **Jenny Randerson:** We now move to group 3, which relates to a trigger mechanism for a mandatory scheme to direct the net proceeds from a charge on single-use carrier bags. The only amendment in this group is amendment 24, and I call on Jonathan Morgan to move and speak to this amendment.

[44] **Jonathan Morgan:** I move amendment 24 in my name.

[45] The principle behind this is similar to what we tried to convey in amendment 23. In essence, there ought to be some way of allowing us to test the point at which a mandatory scheme would be introduced in regulations. The first part of the amendment provides for the Minister to take into account the pattern of carrier bag sales in two distinct years. We put that in there to provide a benchmark. It could provide an evidence base that the Assembly would be legislating for, in order for there to be a test that would need to be met.

[46] The second part takes that forward, stating that the regulations under this paragraph would not be made unless the number of single-use carrier bags issued in the 2011 financial year exceeded the number supplied in the 2014 financial year by 20 per cent. You may ask why have we come to a figure, and why a figure has been used. However, the Assembly should be in a position to take a view as to what sort of test could be applied to judge whether there has been a significant enough reduction for the mandatory scheme not to be introduced. That is important because, going back to the comments that Brian Gibbons made earlier, ultimately we are looking for a reduction in the use of single-use carrier bags. The bulk of section 1 is about the destination of proceeds, but clearly at some point, if a voluntary arrangement is not working, the Assembly Government will want to look at the arrangements and climate within which a mandatory scheme could be introduced. It is important for the Assembly to take a view as to what that test would be, which is why we have framed amendment 24 in the way that we have.

[47] **Jenny Randerson:** Does any other member of the committee wish to speak? I see that they do not. I call on the Minister to respond.

[48] **Jane Davidson:** As I said in the context of the previous amendment, we would want to look carefully at the reduction of carrier bags overall, through the discussions that we are having with the retailers over the voluntary agreement. We will look at defining the trigger mechanism in the context of the mandatory agreement. As you have said, section 1 concerns the use of the net proceeds, as opposed to imposing the charge. Regardless of how great a reduction there may be in the supply of single-use carrier bags, the reduction still sheds no light on whether sellers are using the net proceeds in a beneficial way. I will try to highlight that with an example: you could have a retailer that had demonstrated a 90 per cent reduction in the context of carrier bags, but wanted to send the net proceeds to a gambling organisation. Clearly, the level of reduction in carrier bags would have no bearing whatsoever on the destination of the proceeds. This section is absolutely dedicated, in legislative terms, to the destination of the proceeds. Therefore, in a similar way, we could not support this amendment but, as part of the voluntary agreement, we will want to consider with the retailers what an appropriate trigger mechanism would be. That will be related to the reduction in carrier bags because that is the essence of the delivery of the legislation's policy intention.

[49] **Jenny Randerson:** Jonathan, would you like to reply?

[50] **Jonathan Morgan:** The important thing here is that much of the detail of what will be achieved and what the framework could look like in the event of a mandatory scheme being introduced is down to the discretion of the Government and—as you have said, Minister—whoever the Minister will be in the future. However, in essence, it is not just about the Assembly being content that the Government will be all powerful and merely define what the test should be. On occasion, the Assembly should be taking more legislative responsibility in setting out what it thinks the test for a mandatory scheme will be. Although section 1 is principally about the destination of those proceeds, my understanding is that there is nothing in law stopping us from putting an amendment in here that also governs the way in which the regulations will test how a reduction in carrier bag usage defines the prospect of a mandatory scheme being introduced. Although I accept the argument regarding the principal purpose of section 1 of the proposed Measure, in law, as I understand it, there is no reason why an amendment that is different to the destination of proceeds could not be inserted. Therefore, I am happy with the amendment as it is drafted.

[51] **Jenny Randerson:** Therefore, do you wish to move to a vote on the amendment?

[52] **Jonathan Morgan:** Yes, I do.

[53] **Jenny Randerson:** We now have to vote on amendment 24. The question is that amendment 24 be agreed to. I call for a vote.

Gwelliant 24: O blaid 1, Ymatal 1, Yn erbyn 3.

Amendment 24: For 1, Abstain 1, Against 3.

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

Morgan, Jonathan

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

Chapman, Christine
Gibbons, Brian
Jones, Helen Mary

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Black, Peter

Gwrthodwyd gwelliant 24.
Amendment 24 was not agreed.

10.00 a.m.

Targedau Gwastraff—Cydlafurio (Gwelliannau 16 a 18)
Waste Targets—Collaboration (Amendments 16 and 18)

[54] **Jenny Randerson:** Following the fact that amendment 24 has not been agreed, we move to group 4, which concerns collaboration by local authorities on meeting waste targets. In this group, the lead amendment, and the first amendment to be considered, is amendment 16. There is also, in the same group, amendment 18. I call on Brian Gibbons to move and speak to the lead amendment, amendment 16, and to the other amendment in the group.

[55] **Brian Gibbons:** I move amendment 16 in my name.

[56] The purpose of this amendment is to provide local authorities with the permissive

power. In itself, it will not compel anyone to do anything. However, if local authorities choose to collaborate, this particular amendment will give them an extra statutory option in terms of sharing both the target and the risk of not reaching the target. In other words, this will provide a statutory opportunity to move further along the collaboration agenda to a much more holistic situation, rather than engaging in what might be called an à la carte collaboration, where you pick and choose the bits of collaboration that you like and you take it or leave it. In other words, the amendment has the effect that the failure to make collaboration work will have a price. This will incentivise collaboration or, alternatively, it will provide a stick to ensure that parties make their collaboration work. There might be a concern that this pooling would allow an underperformer to shelter under the wings of a partner, but this would only be possible if the partners were over-performing against national targets. Therefore, any concern about protecting underperformance is balanced by the need under this amendment to over-perform. Therefore, overall underperformance is unlikely to happen.

[57] I accept that this amendment is unlikely to be taken up by many authorities because I think that the responsibilities for increased performance may be quite demanding and consequently result in organisations being reluctant to share the risk and the challenges of others. Nonetheless, if partners feel that this is the best way of meeting national and the Minister's targets, this power should be provided to them, if it is a better way of delivering outcomes.

[58] In conclusion, this is purely a permissive scheme. There is no mandatory element in it, but it promotes a statutory engagement in collaboration, which is not about just working together, but sharing the targets and the consequences for failing to reach those targets.

[59] **Peter Black:** I am happy to support amendment 18, rather than amendment 16. Amendment 18 is slightly broader in its intent and application, in terms of encouraging collaboration and allowing local authorities to pool their targets, if that is the model that they wish to follow. As Brian said, it should be noted that the amendment does not attempt to force pooling on local authorities; it is worded in such a way that the targets will be matched to whatever mode of service delivery that local authorities choose. Therefore, if one local authority has the capacity to manage all of its waste internally, it would probably want to have its own waste targets; however, if two or three authorities share waste management facilities and strategies, which is becoming more common, and which, I understand, the Minister is encouraging, it seems entirely reasonable that they should have the option of pooling their targets to match the way that their facilities work.

[60] Given that my amendment is slightly broader than Brian's, I urge the committee to support amendment 18 rather than amendment 16. I understand that if amendment 16 is passed, amendment 18 will fall. You can confirm that. Thank you, Chair.

[61] **Jonathan Morgan:** I think that these amendments reflect some of the views that we were coming to during Stage 1 of the committee work on this proposed Measure. Week in, week out we hear Government Ministers talking about how local authorities need to collaborate better to deliver better outcomes for their citizens, and I think that it is only right that the proposed Measure reflects the general strategy that the Welsh Assembly Government seems to be employing with regard to local authorities and the way in which services are provided. In fact, I can see the value of both amendments, although I would certainly support Peter on the fact that amendment 18 is somewhat broader than amendment 16 in the way in which it has been drafted. I urge Members to support amendment 18.

[62] **Jenny Randerson:** Do any other Members wish to speak? I see that you do not. I therefore call on the Minister to respond.

[63] **Jane Davidson:** I will start by saying that we very strongly support the collaborative agenda, as I highlighted during my oral evidence to committee and during the Stage 1 Plenary debate. We have demonstrated that there is active support for the anaerobic digestion procurement via local authority hubs and we have provided funding, for example, to Merthyr Tydfil County Borough Council and Rhondda Cynon Taf County Borough Council to work together to explore the costs and benefits of merging their functions. So, we are running a very active and collaborative policy agenda.

[64] Certainly, when I was first asked to look at the concept of pooling targets, it sounded very attractive, but one key aim of the proposed Measure's provision is to ensure that all local authorities achieve high recycling rates and are individually accountable for their performance. I was just comparing the performance of local authorities in the last quarter between this year and last year: on individual accountability, 17 have improved their rates and seven of them have improved their rates dramatically and are up 4 percentage points or more. So, on individual accountability and the published transparent information, local authorities are very much moving upwards on this agenda in Wales.

[65] However, we are concerned that there could be a risk that pooling would result in local authorities collectively failing to meet the targets as well as significant performance variation. If pooling occurred for a 70 per cent target for 2025, a group of authorities in the pool would need to agree their respective recycling targets, so that, collectively, they added up to 70 per cent. To cover one or more authorities that failed to achieve the targets, either inadvertently or deliberately, other authorities would have to exceed the target by an equivalent margin. If their failure were inadvertent, it could be the case that no pooled authority would then have planned to exceed the target. We also know that the local authorities themselves think that the targets are sufficiently challenging. We have worked very closely with them and we have a waste programme board working with them on delivery.

[66] We could take the principle that pooling would be more attractive if you were an authority that felt that it was going to find it more difficult to achieve its targets, but what we want, of course, is for all authorities to up their game. As I have said, we have seen significant performance across the piece in Wales. If we just take Bridgend as an example, it was twenty-first out of 22 in respect of local authority recycling performance last year, but as a result of the re-tender and the appointment of a new contractor, it will be in the top two or three this year. So, on the individual accountability front, local authorities are very much taking this agenda forward. We still believe that common targets for each authority would increase the likelihood of a consistent service.

[67] It is also worth saying that, of course, a statutory target system is only as good as the application of fair penalties, which I think that Members would agree with. The second part of the amendment allows local authorities to agree to proportionate responsibility in the context of financial penalties that may be incurred in the event that pooled waste targets were not achieved. I have to say that, from our perspective, that would very much be a recipe for local argument when what we are looking for is national consistency. We really do not want to end up holding up the statutory development of the recycling agenda.

[68] So, we would not wish to support amendment 16, although we fully understand why Brian Gibbons has tabled the amendment in terms of furthering collaboration. I heard what Members said about amendment 18 and I understand why other Members would want to see the incorporation of amendment 18 rather than amendment 16 because it offers a wider collaborative opportunity.

10.10 a.m.

[69] In the case of amendment 18, there is a similar issue to one that we have had recently, which is that there are already powers to do this, so they do not need restating on the face of this proposed Measure or we will end up with duplication. Only recently we passed the Local Government (Wales) Measure 2009, and under section 9 of that Measure there is a power for local authorities to collaborate to assist a Welsh improvement authority in discharging its duty to meet a performance standard set under the Measure. The waste targets in section 3 of this proposed waste Measure are also being set as performance standards under the Local Government (Wales) Measure 2009, and the first target of 52 per cent was established as a performance standard under the Local Government (Performance Indicators and Standards) (Wales) Order 2010, and will come into force on 1 April 2012. So, there is already a very specific existing power to enable local authorities to work collaboratively in the context of the waste targets. There are also a number of other general powers that enable local authorities to work jointly. Section 101 of the Local Government Act 1972 and section 20 of the Local Government Act 2000 enables local authorities to discharge functions jointly, and section 2 of the Local Government Act 2000 contains a very wide power that enables most aspects of collaboration to take place.

[70] It is worth pointing out that at no point in any of our discussions, or your scrutiny discussions at Stage 1, have local authorities mentioned any legislative constraints in the context of taking this agenda forward. So, we very much support the aims of the tabled amendments, but there are existing powers in place, therefore we do not believe that amendment 18 is needed legislatively, because we always try to avoid duplication in different pieces of legislation.

[71] **Jenny Randerson:** Thank you, Minister. I call on Brian Gibbons to reply.

[72] **Brian Gibbons:** I have listened carefully to what the Minister said. She makes a number of interesting points, not least those about the Local Government (Wales) Measure 2009, which I had the pleasure of bringing forward and therefore know that what she says regarding that Measure is true. I also heard what she said about the existing statutory arrangements and that they will provide sufficient incentives and disincentives for people to make collaboration work. On that basis, I am three quarters convinced to withdraw the amendment. However, I am not totally convinced about asking the committee's permission to withdraw the amendment. I ask whether the Minister could possibly look again, before Stage 3, at ensuring that she is fully content that there are sufficient incentives and punishments, if you like, to ensure that collaborating organisations will deliver. My worry is that people will go through the motions of collaboration because it is the flavour of the month, but if there is no incentive or punishment for not making the collaboration work, it will just be a phoney war. So, if the Minister, at Stage 3 of this legislation, could provide further reassurance in relation to her being content that sufficient incentives and punishments exist in the current collaboration arrangements, I would be happy to withdraw the amendment with the committee's agreement.

[73] **Jenny Randerson:** Brian, do you wish to proceed to a vote on amendment 16 or withdraw it?

[74] **Brian Gibbons:** I wish to withdraw it, Chair.

[75] **Jenny Randerson:** Does any member object? I see that there are no objections.

*Tynnwyd gwelliant 16 yn ôl drwy ganiatâd y pwyllgor.
Amendment 16 withdrawn by leave of the committee.*

[76] **Jenny Randerson:** As amendment 16 is not agreed to, there will be no vote on amendment 18 at this point. You will recall that Peter pointed out that amendment 18 would

fall if amendment 16 was agreed to. Amendment 16 has been withdrawn and therefore there will be no vote on amendment 18 at this point. We will return to vote on amendment 18 later in the proceedings, in accordance with the marshalled list.

Targedau Gwastraff—Ailddefnyddio
Waste Targets—Re-use

[77] **Jenny Randerson:** We now come to group 5 on waste targets and to amendment 15, which relates to preparing for the re-use of waste. The only amendment in this group is amendment 15, and I call on Brian Gibbons to move and speak to his amendment.

[78] **Brian Gibbons:** I move amendment 15.

[79] This is the last of my amendments, you will be pleased to note. I thought that the Minister would be jumping up and down in glee at this clever insight by the committee, which would avoid the inclusion of perverse incentives in the legislation. Indeed, this point was made to us by several witnesses who were concerned that, because composting and recycling feature so heavily in the proposed Measure, the crucial importance of re-use would be neglected. We thought that we were being helpful to the Minister by including this, but she is totally ungrateful for our efforts. [*Laughter.*] She says that she has already covered it completely. If the Minister can provide that assurance, I may have to withdraw amendment 15 as well.

[80] **Jenny Randerson:** Does any other Member wish to speak on this? I see that you do not. I therefore call on the Minister to respond.

[81] **Jane Davidson:** I support Brian Gibbons's intention absolutely in this context. In fact, when we sought the powers from the UK Government, we explored whether re-use should be included as a separate word. However, 'preparing for re-use' is already covered by the 'managing' element of the wording of matter 6.1, inserted into Schedule 5 to the Government of Wales Act 2006 by the National Assembly for Wales (Legislative Competence) (Environment) Order 2010, which is what conferred legislative competence on the National Assembly in relation to waste. Therefore, if we included 'preparing for re-use' alongside 'managing' in this proposed Measure, it would cast doubt over whether the reference to managing waste in the LCO included preparing for re-use. So, Brian, I am jumping up and down, but it is because I want to ensure that we retain the ability to look at preparation for re-use under the term 'managing' as defined in the LCO and replicated in the proposed Measure. However, I am delighted to have had a chance to give reassurance to the committee on that.

[82] **Jenny Randerson:** I call on Brian to reply.

[83] **Brian Gibbons:** On the basis of the Minister's explanation, I do not think that I am left with any choice in the matter. It would be beyond our competence to press the amendment and so, in my view, it is probably necessary to withdraw it, with the committee's agreement.

[84] **Jenny Randerson:** Brian has indicated that he wishes to withdraw amendment 15. Does any Member object? I see that there are no objections. Therefore, amendment 15 is withdrawn.

Tynnwyd gwelliant 15 yn ôl drwy ganiatâd y pwyllgor.
Amendment 15 withdrawn by leave of the committee.

Targedau Gwastraff—Monitro ac Archwilio Cydymffurfedd
Waste Targets—Monitoring and Auditing Compliance

[85] **Jenny Randerson:** We now come to group 6, which relates to the monitoring and auditing of local authorities' compliance with waste targets. The only amendment in this group is amendment 2 in the name of the Minister. Minister, do you wish amendment 2 in your name to be moved?

[86] **Jane Davidson:** I do.

[87] **Jenny Randerson:** I move amendment 2 in the name of the Minister, and I call on her to speak to her amendment.

[88] **Jane Davidson:** The purpose of this amendment is twofold. First, it would enable monitoring information to be provided to 'specified persons'. That is a technical change from the current draft of the proposed Measure, which requires the information to be provided to 'the Welsh Ministers'. The amendment enables the regulations to reflect more accurately the existing approach to monitoring, as local authorities do not currently provide their monitoring information directly to the Welsh Ministers. Secondly, it will allow the regulations to specify the form and manner in which local authorities should provide the information required to monitor compliance with the waste targets. In practice, that will enable the regulations to prescribe the use of a particular reporting system for the purposes of the targets to ensure that the monitoring and auditing arrangements are robust. I ask you to support the amendment.

[89] **Jenny Randerson:** Are there any other Members who wish to speak? I see that there are not. Minister, do you want to say anything further in reply? I see that you do not. Minister, do you wish to move to a vote on amendment 2?

[90] **Jane Davidson:** I do.

[91] **Jenny Randerson:** The question is that amendment 2 be agreed to.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

Derbyniwyd gwelliant 2.
Amendment 2 agreed.

10.20 a.m.

Targedau Gwastraff—Cosbau
Waste Targets—Penalties

[92] **Jenny Randerson:** We now move to group 7, in relation to penalties for non-compliance with waste targets. The only amendment in this group is amendment 19. I call on Jonathan Morgan to move and speak to his amendment.

[93] **Jonathan Morgan:** One of the issues that struck me during the taking of evidence, and perhaps considering the evidence further to these sections, was that there were always going to be issues around the capacity of local authorities to meet targets, whatever targets are set—I suppose in the same way that one would argue that there will always be issues of capacity in other areas of the public sector where targets have been set for delivery of services. What we have tried to do with this particular amendment is to provide for the waiver of a penalty where a local authority fails to meet the relevant targets due to what we have called the inadequacy of resources available to it for recycling preparation for re-use and composting. There may well be occasions in the future where a local authority wishes and is attempting to meet a target, but fails to do so through no fault of its own. The amendment contains that flexibility and allowance for a waiver of the penalty for those reasons. It is fair that, when we are legislating to put duties on local authorities, we do so in a way that is fair and proportionate and takes into account the circumstances that those local authorities may find themselves in.

[94] **Peter Black:** I support this amendment. I fully accept that section 6 says that the Minister can put a provision for waiver into the regulations if she so wishes. However, I feel strongly that it should be on the face of the proposed Measure, to make clear the possibility of amelioration based on a lack of resources. For that reason I feel that this amendment is appropriate.

[95] **Jenny Randerson:** Do any other Members wish to speak? I see not. I therefore call on the Minister to respond.

[96] **Jane Davidson:** We do not think that it is necessary to set out potential grounds for waiving a penalty on the face of the proposed Measure. As I have highlighted throughout Stage 1 scrutiny, our approach to dealing with potential waivers has actually been to develop a protocol with local government, and the protocol that we are proposing would be similar to the existing protocol in relation to the Landfill Allowance Scheme (Wales) Regulations 2004. It describes how the Welsh Assembly Government will respond when a local authority has been identified as potentially not meeting its waste targets. The officials are already in the process of drafting the protocol, it will be consulted upon with local government in due course, and that, I believe, is the appropriate opportunity for the Assembly Government to consider any factors that have impacted on a local authority's failure to meet the waste targets. That is the appropriate mechanism—not putting this on the face of the proposed Measure. That is why we would ask Members not to support this amendment.

[97] **Jenny Randerson:** I call on Jonathan Morgan to reply.

[98] **Jonathan Morgan:** Part of the problem is that, when it comes to protocols and regulations, they are very much within the power of Welsh Ministers, and it is vital for the Assembly as a legislature to set out where it believes waivers could apply, and where not. The provision is there for a waiver to be applied by Ministers, and the issue is sufficiently serious to warrant inclusion on the face of the proposed Measure. Throughout this entire process of discussing and attempting to amend proposed Measures, we are constantly told that there is no need for something to be on the face of the proposed Measure, and that the Government will simply put it in regulation, guidance, protocols or ministerial letters. If the Assembly is to be regarded as a legislature that takes a view on the conditions and environment within which the law would apply, it is right for Measures to be more detailed than they currently are. I am one of those Members who would like to see that approach being taken. We have to accept that there will be circumstances in which a local authority will fail to meet the targets for reasons beyond their control, and we have to accept that resources could well be an issue. Therefore, it is right for there to be an amendment to the proposed Measure to allow for that.

[99] **Jenny Randerson:** Do you wish to press this to the vote?

[100] **Jonathan Morgan:** Yes.

[101] **Jenny Randerson:** The question is that amendment 19 be agreed to.

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

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

Black, Peter
Morgan, Jonathan

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

Chapman, Christine
Gibbons, Brian
Jones, Helen Mary

*Gwrthodwyd gwelliant 19.
Amendment 19 not agreed.*

Targedau Gwastraff—Canllawiau Waste Targets—Guidance

[102] **Jenny Randerson:** These amendments relate to the provision of guidance for waste targets. In this group, the first amendment to be considered is amendment 4 in the name of the Minister. Minister, do you wish for amendment 4 to be moved?

[103] **Jane Davidson:** I do.

[104] **Jenny Randerson:** I therefore move amendment 4 in the name of the Minister. I call on the Minister to speak to her amendment and the other amendment in the group.

[105] **Jane Davidson:** Amendment 4 gives effect to one of the recommendations of the Constitutional Affairs Committee during Stage 1. The committee proposed that the proposed Measure be amended to include a provision to consult with local authorities on the development of any guidance in relation to waste targets. This takes account of the potential impact that the waste targets provisions could have on local authorities. As I indicated at the Stage 1 Plenary debate on 6 July, I agree with the Constitutional Affairs Committee on this point, so I welcome the opportunity to bring forward this Government amendment to meet that commitment.

[106] The Government amendment is slightly wider than the committee's original proposal, as it also includes a requirement to consult with the Environment Agency and other appropriate persons. It recognises the important role that the Environment Agency will play in the monitoring of statutory waste targets, but it also ensures consistency with the existing provision in the proposed Measure, which requires consultation with local authorities, the Environment Agency and other appropriate persons before making any orders or regulations in relation to the waste targets.

[107] Amendment 3 is purely a drafting change. The result will be to move section 8 on guidance so that it immediately follows section 6 relating to regulations and penalties. This amendment is consequential to amendment 4, which is why it is in this group, to enable a more straightforward amendment to be made to section 7, which deals with consultation.

[108] **Jenny Randerson:** Do any other Members wish to speak? I see not. Do you wish to move to a vote on amendment 4, Minister?

[109] **Jane Davidson:** I do.

[110] **Jenny Randerson:** The question is that amendment 4 be agreed to. I call for a vote.

*Gwelliant 4: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 4: For 5, Abstain 0, Against 0.*

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 4.
Amendment 4 agreed.*

[111] **Jenny Randerson:** In line with the marshalled list, we will now dispose of amendment 3. Minister, do you wish for amendment 3 in your name to be moved?

[112] **Jane Davidson:** I do.

[113] **Jenny Randerson:** I move amendment 3 in the name of the Minister. The question is that amendment 3 be agreed to.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 3.
Amendment 3 agreed.*

Gwelliannau Technegol—Drafftio Newidiadau a Chywiriadau Technical Amendments—Drafting Changes and Corrections

[114] **Jenny Randerson:** This group is of technical amendments, namely amendments 5, 6, 7, 8 and 9. The lead amendment is amendment 5 in the name of the Minister. Minister, do you wish amendment 5 to be moved?

[115] **Jane Davidson:** I do.

[116] **Jenny Randerson:** I move amendment 5 in the name of the Minister. I call on the Minister to speak to her amendment and the other amendments in the group.

[117] **Jane Davidson:** Amendments 5, 6, 7 and 8 make drafting changes to the Welsh-language version of the proposed Measure; they do not apply to the English-language version, and they do not have any legal effect on the provisions of section 10.

10.30 a.m.

[118] Amendment 9 is to correct an oversight in section 13(d) of the proposed Measure. Section 13 provides Welsh Ministers with the power to make provision with regard to offences and penalties in relation to site waste management plans. As drafted, section 13(d) would enable Welsh Ministers to make provision about the use of fines by the enforcement authorities. However, the policy intention was that the provision should refer specifically to the use of fixed penalties receipts by the enforcement authorities, to ensure that they are spent on appropriate purposes. The amendment seeks to correct this. I ask Members to support these changes.

[119] **Jenny Randerson:** Does any Member wish to speak? I see that no-one does. Minister, do you wish to move to a vote on amendment 5?

[120] **Jane Davidson:** I do.

[121] **Jenny Randerson:** The question is that amendment 5 be agreed to. I call for a vote.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 5.
Amendment 5 agreed.*

[122] **Jenny Randerson:** In accordance with the marshalled list, we now come to dispose of amendment 6. Minister, do you wish amendment 6 in your name to be moved?

[123] **Jane Davidson:** Yes.

[124] **Jenny Randerson:** I move amendment 6 in the name of Jane Davidson. The question is that amendment 6 be agreed to. I call for a vote.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 6.
Amendment 6 agreed.*

Tirlenwi—Gorfodi (Gwelliant 22)
Landfill—Enforcement (Amendment 22)

[125] **Jenny Randerson:** Amendment 22 is in a group on its own concerned with enforcement in relation to landfill. I call Jonathan Morgan to move amendment 22 and to speak to it.

[126] **Jonathan Morgan:** I move amendment 22 in my name with the name of Peter Black in support.

[127] During Stage 1 consideration, we took evidence on who would be the enforcement authority with regard to landfill bans. In her evidence, when asked who would be responsible for providing the monitoring and enforcement role, the Minister stated that it would seem sensible if the responsibility lay with the Environment Agency Wales because it already has an important regulatory function in relation to landfill sites. The committee came to a view and made a recommendation that there should be clarity about who would be responsible for monitoring compliance with landfill bans and enforcing any civil sanctions in the event of non-compliance. Amendment 22 seeks to clarify that the Environment Agency takes on the role of enforcement authority.

[128] **Jenny Randerson:** Does any Member wish to speak to the amendment? I see that no-one does, so I call the Minister to reply.

[129] **Jane Davidson:** In practice, the Environment Agency or a successor body is likely to be the enforcement authority, given the agency's existing role in regulating landfills under the environmental permitting regime. However, the Government still does not consider it necessary to specify this in the proposed Measure itself. We believe that the proposed Measure should provide flexibility with regard to the enforcement arrangements because we are not yet at the stage of considering particular landfill bans or restrictions. We need to be able to consult on the potential restrictions and the enforcement function, so we cannot support the amendment at this time.

[130] **Jonathan Morgan:** The committee took a definitive view on this. In fact, the committee's recommendation was that the proposed Measure should be amended in order to clarify who the enforcement authority would be. It was not a decision that we jumped to quickly; we gave the matter careful thought. If the Minister agrees that it would be sensible if the authority lay with the Environment Agency Wales, I see no reason why we do not specify that in law. Given that Members were happy to support the requirement for the proposed Measure to be amended in this way, I hope that they will support the position they took during Stage 1.

[131] **Jenny Randerson:** Does anyone else wish to speak to amendment 22? I see that no-one does. Jonathan, do you wish to move to a vote on the amendment?

[132] **Jonathan Morgan:** Yes.

[133] **Jenny Randerson:** The question is that amendment 22 be agreed to. I call for a vote.

Gwelliant 22: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 22: For 2, Abstain 0, Against 3.

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

Black, Peter
 Morgan, Jonathan

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

Chapman, Christine
 Gibbons, Brian

Jones, Helen Mary

*Gwrthodwyd gwelliant 22.
Amendment 22 not agreed.*

[134] **Jenny Randerson:** In accordance with the marshalled list, we now come to dispose of amendments 7 and 8 in the name of Jane Davidson. Minister, would you like amendment 7 to be moved?

[135] **Jane Davidson:** Yes.

[136] **Jenny Randerson:** I move amendment 7 in the name of Jane Davidson. The question is that amendment 7 be agreed to. I call for a vote.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 7.
Amendment 7 agreed.*

[137] **Jenny Randerson:** Minister, would you like amendment 8 to be moved?

[138] **Jane Davidson:** Yes.

[139] **Jenny Randerson:** I move amendment 8 in the name of Jane Davidson. The question is that amendment 8 be agreed to. I call for a vote.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 8.
Amendment 8 agreed.*

**Cynlluniau Rheoli Gwastraff Safle—Awdurdodau Gorfodi (Gwelliannau 20 a 25)
Site Waste Management Plans—Enforcement Authorities (Amendments 20 and 25)**

[140] **Jenny Randerson:** This group of amendments concerns enforcement authorities in relation to site waste management plans. The lead amendment is amendment 20 in the name of Jonathan Morgan, which is grouped with amendment 25. I invite Jonathan to move amendment 20 and speak to it and the other amendment in the group.

[141] **Jonathan Morgan:** I move amendment 20 in my name with the name of Peter Black in support. These amendments stem from the consideration that we gave to the issue of site waste management plans during Stage 1. The view that the committee took was that local authorities would enforce the site waste management plans. The purpose of the amendment is to provide for that and, in doing so, to endorse the view that we came to during Stage 1. I understand that there may be a typographical error in amendment 20. So, if the committee supports amendment 20, I will have to move a further amendment at Stage 3 to correct the error.

[142] **Jenny Randerson:** Do any other Members wish to speak? I see that no-one does. I call on the Minister to reply.

[143] **Jane Davidson:** Section 12(2)(c) as drafted is essential to the effective operation of the site waste management plan regime. It not only provides a clear power for regulations to specify who is to be an enforcement authority, but allows for the regulations to set out the powers and duties of the enforcement authority. The term ‘enforcement authority’ is then used in various provisions in sections 12 and 13, which define key aspects of the regime. The combined effect of these amendments—although I do not think it is the intention behind them—would be to replace these powers with a provision simply to make a provision about enforcement plans by local authorities and the functions of those authorities. This would be ineffective, as there would no longer be a power to identify who the enforcement authorities are to be or to confer on them the enforcement powers and duties on which effective plans would depend. That would render key elements of the site waste management plan regime ineffective. If the overarching purpose of the amendments is to ensure that the authorities responsible for enforcing the regime prepare a plan, setting out how they are going to exercise their enforcement functions, the existing section 12(2)(c) is sufficient to ensure that such an obligation is included in the regulations. Finally, the amendment appears to presume that local authorities should be the enforcement authorities in respect of the regulations. Once again, we believe that it is more appropriate for the enforcement authority to be set out in the regulations following consultation. So, we will not be supporting the amendment.

10.40 a.m.

[144] **Jonathan Morgan:** On the basis that there is a typographical error in the amendment, I am happy to withdraw it at this Stage. However, I think that this issue should be returned to at Stage 3, because we took a definitive view that local authorities should be the enforcement authorities with regard to site waste management plans. Again, the Government merely wishes to have the flexibility to make a decision at a future date as to who they should be, whether the local authorities or anyone else, but if the local authority will not act as the enforcement agency, I do not know who will be fulfilling this role. Again, it is important for the Assembly to be able to take a view as to who we think should be the appropriate body enforcing the arrangements for the plans. So, I am happy to withdraw the amendment at this stage, but the Assembly should consider this at Stage 3.

[145] **Jenny Randerson:** Does anyone object to the withdrawal? I see that there are no objections.

*Tynnwyd gwelliant 20 yn ôl drwy ganiatâd y pwyllgor.
Amendment 20 withdrawn by leave of the committee.*

[146] **Jenny Randerson:** In the light of the link, Jonathan, with amendment 25, are you happy not to move that amendment?

[147] **Jonathan Morgan:** Yes.

*Ni chynigiwyd gwelliant 25.
Amendment 25 not moved.*

[148] **Jenny Randerson:** We now come to dispose of amendment 9. Minister, do you wish for amendment 9 to be moved?

[149] **Jane Davidson:** I do.

[150] **Jenny Randerson:** I move amendment 9 in the name of Jane Davidson. The question is that amendment 9 be agreed to. I call for a vote.

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

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

Peter Black
Christine Chapman
Brian Gibbons
Helen Mary Jones
Jonathan Morgan

*Derbyniwyd gwelliant 9.
Amendment 9 agreed.*

**Cynlluniau Rheoli Gwastraff Safle—Cosbau (Gwelliant 10)
Site Waste Management Plans—Penalties (Amendment 10)**

[151] **Jenny Randerson:** The only amendment in this group is amendment 10 in the name of the Minister. Minister, do you wish for amendment 10 to be moved?

[152] **Jane Davidson:** I do.

[153] **Jenny Randerson:** I move amendment 10 in the name of Jane Davidson. I call on the Minister to speak to the amendment.

[154] **Jane Davidson:** Section 12 of the proposed Measure largely restates provisions in the Clean Neighbourhoods and Environment Act 2005. Those restated provisions are not limited by the usual restriction on penalties contained in paragraph 2 in Part 2 of Schedule 5 to the Government of Wales Act 2006. Section 12(2)(e) enables Welsh Ministers to make provision about fees and charges schemes in relation to site waste management plans. As it is a new provision, it would be subject to the Government of Wales Act 2006 limitation. Therefore, I have proposed an amendment that would confirm that offences relating to fees and charges would be subject to the appropriate restriction under the Government of Wales Act 2006, and that sets clear boundaries for penalties arising from the restated provisions. Members will recall that, at Stage 1, Legislation Committee No. 4 and the Constitutional Affairs Committee both recommended that I bring forward an amendment to clarify this aspect of the proposed Measure. We are content to amend the proposed Measure to reflect the committee s' views on this matter.

[155] **Jenny Randerson:** Do any other Members wish to speak? I see that the Minister does not wish to say anything else at this stage.

[156] **Brian Gibbons:** Sorry, are you referring to section 12 or section 13? I think,

Minister, that you said section 12, but ‘section 13’ is stated in the document.

[157] **Jane Davidson:** The power in section 13 depends on section 12. So, section 12 is the area—

[158] **Brian Gibbons:** However, it says ‘section 13’: it refers to inserting into section 13 and leaving out from section 13.

[159] **Jane Davidson:** That is because section 13 depends for its powers on section 12.

[160] **Brian Gibbons:** However, it is section 13 that changes.

[161] **Jane Davidson:** Or resists the changes. This one is my amendment, to change section 13 to reflect the powers in section 12, and to clarify the penalties for the offences in section 12.

[162] **Peter Black:** It is stipulating the fines and the penalties—*[Inaudible.]*.

[163] **Brian Gibbons:** Yes, but it is section 13 that is amended, even though it is referring to section 12.

[164] **Jenny Randerson:** Are Members now clear on that? I see that you are. Minister, do you wish to move to a vote on amendment 10?

[165] **Jane Davidson:** I do.

[166] **Jenny Randerson:** The question is that amendment 10 be agreed to.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 10.
Amendment 10 agreed.*

Cynlluniau Rheoli Gwastraff Safle—Sanctiynau Sifil Site Waste Management Plans—Civil Sanctions

[167] **Jenny Randerson:** We now move on to group 13, concerning civil sanctions in relation to site waste management plans. The lead amendment in this group is amendment 12, in the name of the Minister. Do you wish amendment 12 to be moved, Minister?

[168] **Jane Davidson:** Yes.

[169] **Jenny Randerson:** I formally move amendment 12 in the Minister’s name and call on the Minister to speak to the lead amendment and the other amendment in the group, which is amendment 11.

[170] **Jane Davidson:** Amendment 12 is consequential upon amendment 11, which introduces civil sanctions and powers in relation to site waste management plans, and the effect of the amendment is that any regulations made to apply civil sanction powers in respect of site waste management plans would be subject to the National Assembly's affirmative resolution procedure. The purpose of amendment 11 is to allow the Welsh Ministers to enable enforcement authorities to impose civil sanctions in relation to offences committed under the site waste management plan regulations. The proposed Measure currently enables enforcement authorities to secure criminal sanctions by prosecuting offences committed under those regulations. These powers would remain, but civil sanctions would provide enforcement authorities with a flexible and proportionate alternative to prosecution where an offence has been committed. The approach follows that in section 10 on the landfill offences, and will follow the established model provided by the Regulatory Enforcement and Sanctions Act 2008. It impacts only on the administrative and enforcement aspects of the site waste management plans and does not change in any way the scope or purpose of the site waste management plans regime, or the offences that may be created under it. I hope that the committee will be able to support these amendments.

[171] **Jenny Randerson:** Do any Members wish to speak to this? I see not. Do you have anything to add, Minister?

[172] **Jane Davidson:** No, Chair.

[173] **Jenny Randerson:** Do you wish to move to a vote on amendment 12?

[174] **Jane Davidson:** I do.

[175] **Jenny Randerson:** The question is that amendment 12 be agreed to. Will all Members please show their hands?

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 12.
Amendment 12 agreed.*

Cynlluniau Rheoli Gwastraff Safle—Cychwyn Waste Site Management Plans—Commencement

[176] **Jenny Randerson:** We now move on to group 14, which consists of amendment 17 only. This concerns commencement provisions in relation to site waste management plans, and I call on Peter Black to move and speak to this amendment.

[177] **Peter Black:** I move amendment 17 in my name, with the name of Jonathan Morgan in support.

[178] This amendment changes the commencement date for the section on site waste management plans. We believe that this section of the proposed Measure could have a huge

impact on the construction and demolition sector in Wales, and it would impose new requirements on the sector. As a result, a lot of new information will have to be sent through to decision makers in that industry. Next year will see the devolution of building regulations to the Assembly, which in turn will alter the regulatory framework for businesses operating in the construction industry. The committee at Stage 1 of this proposed Measure felt that it would be sensible for the commencement of this section to coincide with the date of the devolution of building regulations so that that change could be as smooth as possible. It would also make life easier for the Welsh Assembly Government—and I am always happy to make life easy for the Minister—to inform the industry of changes to the regulatory framework under which it operates if both potentially huge changes happened on the same day.

10.50 a.m.

[179] **Jenny Randerson:** Do any other Members wish to speak?

[180] **Jonathan Morgan:** Yes. I endorse Peter's comments. During the Stage 1 consideration of the proposed Measure, we discussed the fact that it would make perfect sense for this to coincide with the introduction of powers over building regulations. Unless committee members wish to correct my recollection of that discussion, we were unanimous on that. I think it right for the proposed Measure to include a reference to a specific date. I think that Peter is absolutely right to table this amendment in line with what the committee discussed.

[181] **Jenny Randerson:** Do any other Members wish to speak? I see that no-one does, so I call the Minister to respond.

[182] **Jane Davidson:** It is important to say that there is absolutely no link between powers being devolved to the Welsh Ministers over building regulations and the site waste management plan regime, which is completely freestanding. Therefore, the timing is in no way dependent on the building regulation powers transfer. It is also not appropriate for us to bind our successors. We want to offer sufficient flexibility to bring forward site waste management plan regulations before 2011—in December this year—if considered appropriate by the Assembly Government. We will be consulting on the site waste management plan regulations, and the timing for making the regulations will be considered in the normal way following consultation. So, we do not agree that this amendment is appropriate.

[183] **Jenny Randerson:** Peter, do you wish to respond?

[184] **Peter Black:** The Minister says that she does not want to bind our successors, but the entire proposed Measure binds our successor, as does any legislation that we pass in the Assembly. What we are suggesting is in line with the committee's unanimous recommendation in the Stage 1 report. It makes perfect sense for the building industry—although perhaps not as far as the Government is concerned—that we do not impose a succession of changes on it that will cause it administrative difficulties. So, it seems sensible to link the two even if, in the Minister's mind and in law, they are not linked.

[185] **Jenny Randerson:** Thank you. Do you wish to move to a vote on amendment 17?

[186] **Peter Black:** Yes.

[187] **Jenny Randerson:** The question is that amendment 17 be agreed to. I call for a vote.

*Gwelliant 17: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 17: For 2, Abstain 0, Against 3.*

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

Black, Peter
Morgan, Jonathan

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

Chapman, Christine
Gibbons, Brian
Jones, Helen Mary

*Gwrthodwyd gwelliant 17.
Amendment 17 not agreed.*

[188] **Jenny Randerson:** In line with the marshalled list, we now come to dispose of amendments 11 and 18. Minister, do you wish amendment 11 in your name to be moved?

[189] **Jane Davidson:** I do.

[190] **Jenny Randerson:** I move amendment 11 in the name of Jane Davidson. The question is that amendment 11 be agreed to. I call for a vote.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 11.
Amendment 11 agreed.*

[191] **Jenny Randerson:** Peter, do you wish to move 18 in your name?

[192] **Peter Black:** I move amendment 18 in my name with the name of Jonathan Morgan in support.

[193] **Jenny Randerson:** The question is that amendment 18 be agreed to. I call for a vote.

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

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

Black, Peter
Morgan, Jonathan

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

Chapman, Christine
Gibbons, Brian
Jones, Helen Mary

*Gwrthodwyd gwelliant 18.
Amendment 18 not agreed.*

**Cynlluniau Rheoli Gwastraff Safle—Ymgynghori (Gwelliant 21)
Site Waste Management Plans—Consultation (Amendment 21)**

[194] **Jenny Randerson:** We now come to the final grouping of amendments. Amendment 21 is in a group of its own. I call Jonathan to move and speak to amendment 21.

[195] **Jonathan Morgan:** I move amendment 21 in my name with the name of Peter Black in support.

[196] At various points in the proposed Measure, consultation is explicitly provided for. For example, section 7 provides for consultation before regulations are made under sections 3, 4, 5 or 6, and I think that we have endorsed that approach. Section 11 also provides for consultation before regulations are made under section 9. However, no such provision exists for section 12 in relation to site waste management plans. In my view, consistency is needed in the provision for consultation as set out in the proposed Measure, and I believe that there needs to be a commitment in law that follows the principles set out in sections 7 and 11 in relation to other parts of this proposed Measure. My amendment 21 merely seeks to extend the precedent set elsewhere in this proposed Measure to ensure consultation on site waste management plans also.

[197] **Jenny Randerson:** Do any other Members wish to speak to this amendment? I see that you do not, so I invite the Minister to respond.

[198] **Jane Davidson:** Thank you, Chair. I am content for the proposed Measure to be amended to provide certainty that the Welsh Ministers will be required to consult on the regulations, and I am also content with the proposed wording of the amendment, which would ensure consistency with the existing consultation provisions. I am therefore happy to endorse Jonathan Morgan's amendment 21, and I urge the committee to support it.

[199] **Jenny Randerson:** I call on Jonathan to respond.

[200] **Jonathan Morgan:** That is not necessary, thank you.

[201] **Jenny Randerson:** Right. Do you wish to move to a vote?

[202] **Jonathan Morgan:** I do, yes. [*Laughter.*]

[203] **Jenny Randerson:** The question is that amendment 21 be agreed to.

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

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

Black, Peter
Chapman, Christine
Gibbons, Brian
Jones, Helen Mary
Morgan, Jonathan

*Derbyniwyd gwelliant 21.
Amendment 21 agreed.*

[204] That brings us to the end of today's consideration of amendments. For the record, all sections of the proposed Measure have been deemed agreed by the committee. That brings Stage 2 proceedings to a close. Stage 3 begins tomorrow. Further details about the dates for Stage 3 proceedings and the deadlines for tabling amendments will be sent to Members and published on the Assembly's website in due course. I declare the meeting closed.

Daeth y cyfarfod i ben am 10.57 a.m.
The meeting ended at 10.57 a.m.