



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

**Y Pwyllgor Is-ddeddfwriaeth
The Subordinate Legislation Committee**

**Dydd Mawrth, 25 Tachwedd 2008
Tuesday, 25 November 2008**

Cynnwys
Contents

- 3 Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest
- 4 Offerynnau na fydd y Cynulliad yn Cael ei Wahodd i Roi Sylw Arbennig Iddynt o
dan Reol Sefydlog Rhif 15.2 ac Offerynnau sy'n Agored i Gael eu Dirymu yn Unol â
Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
Instruments in Respect of which the Assembly is Not Invited to Pay Special Attention
under Standing Order No. 15.2 and Instruments Subject to Annulment Pursuant to a
Resolution of the Assembly (Negative Procedure)
- 4 Darpariaethau Pwerau Dirprwyedig 'Mesur Arfaethedig ynghylch Llywodraeth Leol
(Cymru) 200-'
Delegated Powers Provisions in 'The Proposed Local Government (Wales) Measure
200-'
- 14 Unrhyw Fater Arall
Any Other Business
- 15 Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg. Mae hon yn fersiwn ddrafft o'r cofnod. Cyhoeddir fersiwn derfynol ymhen pum diwrnod gwaith.

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. This is a draft version of the record. The final version will be published within five working days.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Dr Brian Gibbons	Aelod Cynulliad, Llafur (Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol) Assembly Member, Labour (The Minister for Social Justice and Local Government)
Reg Kilpatrick	Pennaeth Is-adran Polisi Llywodraeth Leol, Llywodraeth Cynulliad Cymru Head of Local Government Policy Division, Welsh Assembly Government
Sioned Tobias	Cyfreithiwr Lawyer

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

Anna Daniel	Clerc Clerk
Joanest Jackson	Cynghorydd Cyfreithiol Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 8.16 a.m.
The meeting began at 8.16 a.m.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest

[1] **David Lloyd:** Croeso ichi i gyd i gyfarfod diweddaraf y Pwyllgor Is-ddeddfwriaeth. Croesawaf fy nghyd-Aelodau, swyddogion, ac aelodau'r cyhoedd i'r cyfarfod. **David Lloyd:** I welcome you all to the latest meeting of the Subordinate Legislation Committee. I welcome my fellow Members, officials, and members of the public.

[2] Os bydd argyfwng, bydd y tywyswyr yn ein harwain at yr allanfa agosaf. Gellir defnyddio'r clustffonau i glywed cyfieithiad ar y pryd ac i addasu lefel y sain. Gall y **In the case of an emergency, the ushers will guide us to the nearest exit. Headphones can be used to hear the simultaneous interpretation and to adjust the sound level.**

tywyswyr ddangos i'r cyhoedd sut i'w defnyddio. Rhaid diffodd ffonau symudol yn llwyr. Mae cyfieithiad ar y pryd o'r Gymraeg i'r Saesneg ar gael ar sianel 1, a gellir clywed cyfraniadau yn yr iaith wreiddiol ar sianel 0.

The ushers can show members of the public how to use them. All mobile phones must be switched off completely. Simultaneous translation from Welsh to English is available on channel 1, and contributions in the original language can be heard on channel 0.

[3] Ni chafwyd unrhyw ymddiheuriadau. No apologies have been received.

8.17 a.m.

Offerynnau na fydd y Cynulliad yn Cael ei Wahodd i Roi Sylw Arbennig Iddynt o dan Reol Sefydlog Rhif 15.2 ac Offerynnau sy'n Agored i Gael eu Dirymu yn Unol â Phenderfyniad gan y Cynulliad (y Weithdrefn Negyddol)
Instruments in Respect of which the Assembly is Not Invited to Pay Special Attention under Standing Order No. 15.2 and Instruments Subject to Annulment Pursuant to a Resolution of the Assembly (Negative Procedure)

[4] **David Lloyd:** Mae Joanest wedi bod yn craffu ar SLC218, Gorchymyn Iechyd Planhigion (Cymru) (Diwygio) (Rhif 2) 2008 ac SLC219, Rheoliadau Cyfraniadau Ardrethu Annomestig (Cymru) (Diwygio) (Rhif 2) 2008. Joanest, mae'r adroddiadau gerbron. A oes gennych unrhyw beth ychwanegol i'w hadrodd?

David Lloyd: Joanest has been scrutinising SLC218, the Plant Health (Wales) (Amendment) (No. 2) Order 2008 and SLC219, the Non-Domestic Rating Contributions (Wales) (Amendment) (No. 2) Regulations 2008. Joanest, the reports are before us. Do you have anything to add?

[5] **Ms Jackson:** Nid oes dim i'w ychwanegu.

Ms Jackson: There is nothing to add.

[6] **David Lloyd:** Diolch yn fawr. A yw pawb yn hapus i'w pasio? Gwelaf eich bod.

David Lloyd: Thank you very much. Is everyone content to pass them? I see that you are.

8.18 a.m.

Darpariaethau Pwerau Dirprwyedig 'Mesur Arfaethedig ynghylch Llywodraeth Leol (Cymru) 200-'
Delegated Powers Provisions in 'The Proposed Local Government (Wales) Measure 200-'

[7] **David Lloyd:** Dyma brif eitem y bore yma. Croesawaf y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol, Dr Brian Gibbons. Croesawaf hefyd Reg Kilpatrick, pennaeth yr Is-adran Bolisi Llywodraeth Leol, a Sioned Tobias, sy'n gyfreithiwr. Bore da a chroeso.

David Lloyd: This is the main item this morning. I welcome the Minister for Social Justice and Local Government, Dr Brian Gibbons. I also welcome Reg Kilpatrick, the head of the Local Government Policy Division, and Sioned Tobias, who is a lawyer. Good morning and welcome.

[8] Mae papurau cefndirol ac y bydd pawb wedi'u darllen. Yn ôl ein harfer, mae ystod eang o gwestiynau wedi eu paratoi eisoes. Y bwriad yw—os ydych yn hapus, Weinidog—i fwrw ymlaen yn syth gyda'r

There are background papers, which everyone will have read. As usual, we have a wide range of questions that have been prepared in advance. The intention—if you are happy, Minister—is to move directly to

cwestiynau. Gwelaf eich bod yn hapus i wneud hynny. Dechreuaf i. O dan adran 7 yn y Mesur arfaethedig, ddyletswydd cyffredinol er gwellhad, yr ydym wedi clywed tystiolaeth yn y pwyllgor sy'n craffu ar y Mesur arfaethedig sy'n awgrymu gallai cynnwys yr amcanion hyn er gwellhad ar wyneb y Mesur arfaethedig yn adran 4 bod yn ddryslyd ac y byddai'n well pe baent yn ymddangos mewn cyfarwyddyd statudol, gan fyddai'n haws iddynt gael eu gwella. Felly, paham y mae'r amcanion er gwellhad wedi cael eu cynnwys yn adran 4 a phaham ydynt yn destun unrhyw welliant gan Orchymyn o dan y broses gadarnhaol o dan adran 7?

questions. I see that you are happy to do so. I will start. Under section 7 of the proposed Measure, the general improvement duty, we have heard evidence in the committee scrutinising the proposed Measure that suggests that including these improvement objectives on the face of the proposed Measure in section 4 could be confusing and that it would be better for them to appear in statutory guidance, as it would be easier for them to be improved. Therefore, why have the improvement objectives been included in section 4 and why are they subject to improvement by Order through the affirmative process under section 7?

8.20 a.m.

[9] **The Minister for Social Justice and Local Government (Brian Gibbons):** To answer the first question, if we did not include the areas of improvement in the Measure, I believe that it would be very much like *Hamlet* without the Prince of Denmark. I do not believe that, when people look at the proposed Measure, they would have any clear idea as to what it was about, and, even when it went through the Assembly, people would be asking, 'What is all this about? How are we going to measure improvement?' and so on. Therefore, the criteria by which we feel that improvement should be measured is at the very heart of what is proposed.

[10] However, on the criteria by which improvement will be measured, even though, in drawing up the proposed Measure, the intention was that it should be as fit for purpose and as comprehensive as possible, time can move on, and amendment is conceivable, although it is difficult at this stage to imagine what would go into that. As we will be changing the criteria by which success or improvement will be measured—that is at the heart of the proposed Measure—and making further additions to that, it would seem appropriate that the more rigorous affirmative process would be used for an Order, and that more consideration and time would be given to it.

[11] **David Lloyd:** Yn dilyn o hynny, nodwch yn eich memorandwm esboniadol y gall Gorchymyn a gaiff ei wneud o dan adran 7
David Lloyd: Following on from that, you state in your explanatory memorandum that an Order made under section 7 could

[12] 'fundamentally reshape or expand the strategic focus of authorities'

[13] Felly, pam nad oes gofyniad i ymgynghori yn y Mesur arfaethedig pan mae Gorchymynion yn cael eu gwneud o dan adran 7?
 Therefore, why is there no requirement in the proposed Measure to consult on Orders made under section 7?

[14] **Brian Gibbons:** The expectation would be that intensive dialogue would take place with all the relevant parties around any change to the criteria listed in the Measure. Therefore, it would not be something that would go through on the nod, and using the affirmative process makes that less likely to happen, because the Assembly itself has to consider the matter. I am sure that the Assembly would expect dialogue and debate with all the key parties in advance of any approval of a further amendment to the Measure.

[15] **Alun Davies:** I think that you are right, Minister, about the approach that that dialogue would take. However, having that expectation in political terms, which you have outlined this morning, and having an actual duty written on the face of a Measure are very different matters. One issue that we have had as a committee in the past is that Ministers have said that they would expect something to happen, but unless it is written down—either in guidance or on the face of a Measure—there is no requirement for it to happen. If a Minister is taking responsibility for reshaping the focus of a local authority's work, which is determined by locally elected members, without any need for consultation, it seems rather curious.

[16] **Brian Gibbons:** I can see that your point has some merit. However, I would not agree with your final point. The focus of what local authorities should be doing is constant improvement. What we are talking about is adding or deleting a possible further dimension to continuing improvement. However, the focus has to be the improvement, rather than the various components to the improvement, which are listed in subsection 3(3).

[17] **David Lloyd:** Yn olaf, o dan adran 7 a'r dyletswydd cyffredinol i wella, a ydych yn fodlon bod y darpariaethau yn y Mesur fel y maent yn sefyll yn ddigon hyblyg? **David Lloyd:** Finally, under section 7 and the general improvement duty, are you satisfied that the provisions in the Measure as they stand are sufficiently flexible?

[18] **Brian Gibbons:** Yes, I think so. There is a balance to be struck between arbitrarily adding and taking from the Measure, and giving Members here and, indeed, key stakeholders an opportunity to engage with us. So, using the affirmative procedure in this regard is a proportionate approach. It is sufficiently flexible given that the alternative would be to bring forward another Measure, which would be excessively disproportionate. So, amending this in the way that we propose through the affirmative procedure seems to be appropriate.

[19] **David Lloyd:** The next series of questions are from Eleanor.

[20] **Eleanor Burnham:** Section 8 confers on Welsh Ministers a power to prescribe by Order performance indicators and performance standards against which a Welsh improvement authority's performance will be measured. To what extent does this power differ from that currently held by Welsh Ministers under the Local Government Act 1999 in respect of setting performance indicators? Can you explain about the proposed Measure because my understanding is that it will also control bodies that are outside of the direct control of the Assembly at the moment?

[21] **Brian Gibbons:** The powers are in many respects fairly similar, but the difference is that the current powers operate within the context of the Best Value regime. This Measure is trying to move away from the Best Value regime. So, in some respects, there is a similarity even if the purpose of the similarity is different. In other words, you can kick a football, but you may be playing soccer or rugby. The activity is the same, but the context is different. Here, performance indicators in many respects are similar to what is currently available, but they will be implemented within the context of this new Measure, which will be different.

[22] **Eleanor Burnham:** I cannot quite understand what is wrong with the existing Local Government Act 1999.

[23] **Brian Gibbons:** That is at the very essence of it. If you remember, the Best Value regime was introduced in 1999 as the antidote to the compulsory competitive tendering of the Conservative years. The Best Value regime was clearly a step forward, but we have found in practice, in the years since then, that the Best Value regime is too inflexible and does not have a sufficiently clear citizen focus. So, the clear purpose of this proposed Measure is to move the improvement regime for local authorities away from the Best Value regime.

[24] The Best Value regime will have its own performance indicators, so in that sense, the two regimes are similar—they will have a range of performance indicators, but as I said, because we are moving away from the Best Value regime towards the Wales programme for improvement or, indeed, this proposed Measure's philosophical approach, the indicators will largely be in place, but the legislative context will be different.

[25] **Eleanor Burnham:** So, whoever is in Government will be able to override, picking up on Alun's question, the wishes of the local electorate, who elected the local government in their area?

[26] **Brian Gibbons:** Unless you are suggesting that that electorate is voting for bad local governments that have not improved, then I do not think that that will be the case.

[27] **Eleanor Burnham:** So, how frequently have the existing Local Government Act powers been used?

[28] **Brian Gibbons:** Not very often. I do not know whether someone else can give you more detail on that. The set of indicators are there and people can have a look at those on the local government data unit website.

[29] **Eleanor Burnham:** If you say, 'not very often'—

[30] **Brian Gibbons:** Sorry, I thought you asked how often they had been modified.

[31] **Eleanor Burnham:** How often have the existing powers been used?

[32] **Brian Gibbons:** The existing powers are used to put in place the criteria according to which the Best Value regime is evaluated. However, changes to the legislative framework for a Best Value regime and the performance indicators have not often taken place.

[33] **Eleanor Burnham:** It might be useful to have note on this.

[34] **Brian Gibbons:** I am not clear what you want to know.

[35] **Eleanor Burnham:** We are just trying to find out if existing Local Government Act powers have been used at all.

8.30 a.m.

[36] **Brian Gibbons:** Sorry, the Best Value regime, which is the current framework by which improvement is driven, has been in operation since 1999. We are trying to move from that legislative framework to the new one that is outlined in the proposed Measure. The problem is that the Best Value regime is in operation, but best practice is finding itself increasingly at variance with the legislative framework.

[37] **Eleanor Burnham:** Right, I think that we have clarified that point. We have been scrutinising the proposed Measure, and we have received evidence from the Auditor General for Wales expressing the view that all references to specific dates should be removed from the face of the proposed Measure. The Welsh Local Government Association has also supported that view. Why was the decision made to place dates on the face of the proposed Measure rather than in statutory guidance or regulations that could be more easily amended?

[38] **Brian Gibbons:** First, in terms of amending the dates, we are suggesting that they could be changed by a ministerial Order, so we think that that will give us some flexibility. It

is not quite as rigid as you are suggesting, but I think that the—

[39] **Eleanor Burnham:** I am not suggesting that; the Auditor General and the WLGA are suggesting it.

[40] **Brian Gibbons:** Okay; point taken. I think that there is flexibility there, but, equally, I think that including the dates gives some sense of purpose as to the timescale within which local authorities and the auditor general will respond. There is a clear intention in terms of the improvement agenda, namely that the evaluation that these dates cover will be able to influence practice in the relevant year. If you did not have a date of some sort, conceivably, the evaluation could come in on 31 March of the following year, which would be of no real, practical benefit for the year in context. So, we think that the other means would provide the necessary flexibility and that having the dates on the face of the proposed Measure gives a clear sense of perspective and a framework within which these important reports will be published. That will make them relevant to the year in which, hopefully, they will be able to contribute to improvement.

[41] **Eleanor Burnham:** Thank you. Section 16 enables Welsh Ministers to add to the bodies listed and other bodies that have a responsibility for auditing, regulating or inspecting relevant authorities and/or the services that they provide. Would this empower Welsh Ministers to add regulatory bodies that deal with non-devolved functions, such as the Benefit Fraud Inspectorate?

[42] **Brian Gibbons:** Yes, if they were within our legal competence. Clearly, if we did not have legislative competence within that area, we could not do it. Non-devolved bodies could find themselves covered by this, but the caveat has to be—it is self-evident really—that we must have the legal competence to do it.

[43] **Eleanor Burnham:** Do you consider it appropriate that Welsh Ministers can confer duties on bodies that deal with non-devolved functions?

[44] **Brian Gibbons:** Yes, as I said, as long as we have the legal competence to do so.

[45] **David Lloyd:** Alun has the next series of questions on section 32 of the proposed Measure.

[46] **Alun Davies:** Section 32 seems to give the Government extraordinary, wide-ranging powers. Minister, could you just confirm my understanding of what these powers involve? It appears to me that you are giving Welsh Ministers significant powers to reshape, to repeal or to amend legislation.

[47] **Brian Gibbons:** That is true.

[48] **Alun Davies:** You would be doing that without going through a parliamentary procedure, as it were, but by using what we call a superaffirmative procedure.

[49] **Brian Gibbons:** Again, it has to be within the context of an area in which we have legal competence. Obviously, there has been a lot of legislation in this area, but this area of activity has been devolved to us, so it is entirely appropriate that we should be able to make legislation in this area of competence.

[50] **Alun Davies:** I understand that. Thank you for that answer, Minister. It is quite interesting when you say, ‘to us’, because I assume that you mean the Government, but—

[51] **Brian Gibbons:** No, I mean the National Assembly for Wales.

[52] **Alun Davies:** If we, in the Assembly, are going to be amending legislation, would it not be better to do so through a proper procedure? The superaffirmative procedure that you have outlined is far better than other procedures that we have seen in other Measures over the last year or so, but do you have any concerns that this might, in some way, subverting the Assembly's opportunity to scrutinise what you are doing?

[53] **Brian Gibbons:** No. I cannot remember the details of the time process involved in the superaffirmative procedure, but it is a two-stage process in which the proposals for change are examined and then the actual proposals are subject to the legislative process of the Assembly. So, the merits of the case and then the specifics of the case are looked at. Perhaps Sioned can spell out the details. It is a fairly exhaustive process in which the National Assembly has two opportunities to look at what is being proposed, precisely for the reasons that you outlined in your opening remarks.

[54] **Ms Tobias:** Essentially, additional steps are included in the superaffirmative procedure in terms of the obligation on Welsh Ministers, initially, to consult the authorities that would be affected by the proposals. After that consultation, if they decide that they want to proceed, the Welsh Ministers will lay a document before the National Assembly explaining the proposals and setting out a proposed Order. Following that, there would be a 60-day period during which Assembly Members could make representations to Welsh Ministers. It is only once that 60-day period has ended that Welsh Ministers could propose an Order before the National Assembly. In doing so, they would have to lay a statement along with the Order setting out any representations that have been received and considered as well as any changes made to the draft that was initially laid as the result of any recommendations. It would then follow the affirmative procedure, which you are familiar with.

[55] **Alun Davies:** Thank you for the explanation; I appreciate it. There is a difference between the quality of a review of legislation undertaken in public consultation—and I would not disagree with having public consultation—and the scrutiny undertaken by the Assembly. That is something that we can discuss as a committee at another time, though, as the subject crops up regularly.

[56] **Brian Gibbons:** It is worth pointing out that, as Sioned said, even before the Assembly considers the draft legislation, it has the opportunity to consider the merits of, or the discussions on, what has been proposed, so there will be a two-stage consideration by the National Assembly.

[57] **Alun Davies:** In the explanatory memorandum, Minister, you say that these are similar powers to those that already exist in the Local Government Act 1999. Are those powers being exercised, and if so, in what way?

[58] **Brian Gibbons:** No. They are scarcely being exercised, if at all.

[59] **Ms Tobias:** They have not been exercised. They were granted to the Welsh Ministers from 30 December 2007, so they are relatively new powers. As far as we are aware, they have not been exercised as yet.

[60] **David Lloyd:** The next series of questions falls to Mark Isherwood to ask.

[61] **Mark Isherwood:** The proposed Measure imposes a duty to participate in community planning, and section 38 enables Welsh Ministers to amend the list of community planning partners. In what circumstances might Welsh Ministers seek to do that?

8.40 a.m.

[62] **Brian Gibbons:** There are two contexts. One is that some new bodies that could make a significant contribution to the quality of community planning in a particular area would come into being. Also, one of the main reasons behind the present arrangements is that while some national organisations here in Wales can contribute to community planning, it would be unreasonable to expect them to have the capacity to do it. For example, there is only one Environment Agency, but there are 22 local authorities. Engaging intensively with every local authority across Wales would have significant resource and capacity implications for the Environment Agency. So, in that context, we think that it would be unreasonable to place a duty on the Environment Agency, and that is the same for other national bodies. Let us suppose, purely on a hypothetical basis, that local government was reorganised and we ended up with four county councils in Wales, as opposed to 22. In that case, it might not be unreasonable for the Environment Agency to have an immediate involvement in community planning, but as we have 22 local authorities, it is probably asking too much, and the resource implications would probably be disproportionate.

[63] **Mark Isherwood:** The Sustainable Communities Act 2007 applies in England and Wales, although it does not specify Welsh authorities. It obviously has an impact on Wales in terms of public consultation and the degree to which community involvement in planning is concerned. How does this relate to, or interact with, that? Is there any conflict that might arise?

[64] **Brian Gibbons:** I would not say so. If you look at the criteria for improvement in the proposed Measure, you will see that section 3(3)(e) is sustainability, so it is one of the criteria by which improvement will be measured. Therefore, sustainability includes environmental sustainability; that is one of the criteria. One would expect the Environment Agency to be a statutory planning partner if there were areas of concern. Just because you are not a community planning partner does not mean that you do not contribute to the development of the community plan. We would expect all organisations that had an interest to contribute to the community plan, but we do not want to place the same onerous statutory duty on an organisation that operates at a national level in Wales, because we feel that that would be disproportionate, and there would be major resource implications for that organisation. It would have to have a structure that would be able to interface with the 22 local authorities, and these organisations are not organised in such a way, and the resource implications would be massive.

[65] **Mark Isherwood:** The Sustainable Communities Act 2007 is not about consultation or community involvement on sustainability and environment matters exclusively; it states that, in order for a community be sustainable, there must be community participation. Are we not at a risk of having two different pieces of legislation that focus on similar things but with different regimes?

[66] **Brian Gibbons:** I would need to check that. There has been recent legislation—I cannot recall the title of it—about which we received representations from a number of organisations that understood that the legislation gives them new opportunities to engage with Government. If it is the same piece of legislation that you are referring to, we can check it, so we will give you a note on this, Chair. If it is the same piece of legislation, it is England-only legislation in its application, so it may not be relevant to Wales. I will check that.

[67] **Alun Davies:** My question follows up the issues that Mark raised on the Sustainable Communities Act 2007. It would be useful, Minister, if we had a statement from you and the Minister for Environment, Sustainability and Housing on the Welsh Assembly Government's attitude towards the Sustainable Communities Act, and on whether you intend to make any part of it applicable in Wales. Many of us have been somewhat confused about what the Government's attitude towards this legislation and other pieces of legislation is. Do you see

this as being, in some ways, a Welsh equivalent of the Act, or will you, at some point, seek to apply the Sustainable Communities Act in full, or in part, to Welsh authorities and Welsh planning issues? It would be useful to have a statement at some point from the Government.

[68] **Brian Gibbons:** Yes.

[69] **Mark Isherwood:** Wales is included on the face of that.

[70] **Brian Gibbons:** It is. Wales is included on the face of it, if we are talking about the same piece of legislation, but the operational sections of that Act relate to England only.

[71] **Mark Isherwood:** Changing tack, why is the affirmative procedure considered appropriate for Orders under this section?

[72] **Brian Gibbons:** Including a new partner would have more than just administrative implications. As I said in response to your earlier point, adding a new organisation to, or deleting an organisation from, the list would have significant implications for that organisation. It could also have a fairly significant implication for how community plans are developed at a local level. Using the affirmative procedure ensures that due thought, consideration and gravity are applied to any decision to add to or delete from the list of statutory community planning partners.

[73] **Mark Isherwood:** Finally, could Orders be applied to non-devolved bodies that nonetheless have a legitimate interest in community planning?

[74] **Brian Gibbons:** Yes, if we had the legislative competence to do so. The police, for example, are included as a community planning partner in this instance, even though they are not a devolved body, so that shows that it is possible with other non-devolved bodies, although we would have to have the legal competence to do so.

[75] **Alun Davies:** I wanted to ask you about that. The police stand out in the list of potential community partners, because the others are all devolved bodies, but the police are not. I do not understand on what legal basis you can legislate on that.

[76] **Brian Gibbons:** As I understand it, in the development of community strategies in the original legislation, the police were specifically mentioned as a partner, and acknowledged in the original thinking behind the development of community strategies. The valuable role that the police play in developing community strategies is hardly a matter for debate. When the original proposals for the development of community strategies were drawn up, the crucial role of the police was acknowledged in the primary legislation from day one. That is why we are where we are in this regard. I am not fully up to date on the history. I do not know whether Sioned can add to that.

[77] **Ms Tobias:** The legal basis for adding the police authorities and chief constables to section 38 is matter 12.4, which the Assembly Government will be relying on when it makes the proposed Measure in due course. That enables the Welsh Ministers to make a Measure that includes provisions,

[78] ‘imposing requirements in connection with such strategies on other persons with functions of a public nature’.

[79] The key here is ‘functions of a public nature’. If a body has such functions and satisfies all the other legislative competence rules, such as relating to Wales and so forth, it would be added, because it would fall within that category. We are confident that we have the legislative competence to ensure that those bodies are included.

[80] **Alun Davies:** I very much welcome the fact that that is in this legislation, and I think that you are absolutely right to include the police, Minister. I am just interested in the boundaries of devolution, which seem a little fuzzier this morning than they did last night.

[81] **Brian Gibbons:** As Sioned said, where public bodies could be caught up in our legislation, it is always made explicit that they are public bodies that have functions that are carried out in Wales. We could not have any influence over public bodies that do not operate in Wales.

8.50 a.m.

[82] **David Lloyd:** Moving on, Mark had another question, No. 17.

[83] **Mark Isherwood:** Section 51 confers a power on Welsh Ministers to amend, repeal, or revoke enactments for the purpose of making consequential amendments to give full effect to any provision made by the proposed Measure. It applies in this case to procedures for the exercise of power, depending on the nature of the amendment to be achieved, and it generally follows conventionally accepted procedures—namely the use of the affirmative procedure for amending Acts or Measures, and the negative procedure if amending subordinate legislation. Are you satisfied that there is no need to depart from those usually accepted procedures?

[84] **Brian Gibbons:** The short answer is ‘yes’.

[85] **Mark Isherwood:** That was a nice closed question. Why? [*Laughter.*]

[86] **Brian Gibbons:** I know that Sioned can answer, but I see section 51 as the list of snags regarding legislative competence. There may be some loopholes or anomalies that have not been totally ironed out of the legislation, perhaps because of an oversight. Section 51 gives us an opportunity to address any issues in that context. If such a deficiency or loophole became obvious, the negative or affirmative procedure would apply to any amendment, depending on its nature. The affirmative procedure is used if it affects the substance of a proposed Measure, and the negative procedure if it is just an administrative issue, affecting a date, or something like that.

[87] **David Lloyd:** Thank you. Joyce will round off with the last couple of questions.

[88] **Joyce Watson:** Section 30(7) enables the Welsh Ministers to make provision by regulation relating to an enactment that confers on them a function in respect of a Welsh improvement authority, and which they consider necessary or expedient for cases where they make a direction under section 30(6), where an authority fails to comply with the proposed Measure. Why are the regulations made under section 30(7) to be subject to the negative rather than the affirmative procedure?

[89] **Brian Gibbons:** First, we hope that we will not have to use these powers very often, because they relate to the ability of the Minister to direct local authorities to do something about failing services. So, these are backstop measures, and the ball is in local government’s court when it comes to delivering its own improvement agenda. If that is not happening, this is the backstop.

[90] These powers are likely to be implemented in that context, so it may be that the local authority is at high risk of failing to deliver improvement, and time could therefore be of the essence. So, the negative procedure is more streamlined and would allow some period for reflection, but it is not so long and protracted as to cause us miss the opportunity to make effective intervention to deliver improvement.

[91] **David Lloyd:** Eleanor has a short supplementary on this point.

[92] **Eleanor Burnham:** Do you not believe that this is very centralist, and perhaps even non-democratic? Surely, the affirmative procedure would be better. Is this the kind of measure that you would envisage using given today's report about a particular local authority in north Wales, where there has been a grave failing of governance, according to the report from the Wales Audit Office. I will not identify the authority in question, but I think that you know which one I am referring to.

[93] **Brian Gibbons:** In that particular instance, my understanding is that the local authority in question accepts that it needs to improve, so, even though some fairly heavy-duty criticisms have been made of it, it is demonstrating that it has the capacity to acknowledge its weaknesses, and to put in place an action plan to address them. Therefore, this legislation would not be relevant to it. However, if a report came out that was similar to that one, and the local authority said that is was a load of nonsense and it would not do anything about it, under existing powers, unless there was a severe service failure, such as that which happened in education, we would have to stand by and let it take that decision. That is a good example, but, in fairness to the possible local authority that we are talking about, it realises the urgency of the situation and is trying to put a programme of remedial action in place. So, we would not intervene and use these powers in that context.

[94] **Joyce Watson:** The proposed Measure provides that the Welsh Ministers are required to undertake consultation before exercising the power to make Orders under section 8, which is 'Performance indicators and standards', section 31, 'Powers of direction: collaborative arrangements', section 33, 'Orders under section 32', section 28, 'Meaning of "community planning partners"', and section 48, which is 'Guidance'. A previous question—question 1—concerned the point that there is no requirement to consult on Orders made under section 7. Are you satisfied, Minister, that that requirement to consult should be confined to those sections only, or should the requirement apply more widely?

[95] **Brian Gibbons:** Our view is that the balance is right and the opportunities for wider consultation are appropriate to the relevant issues. However, we are not digging ourselves a trench by saying that this is our position and we will not move no matter what. We will listen to the evidence given, and your considerations and reflections on this, but, from where we stand, this is good practice. However, we are not drawing a line in the sand and saying that we cannot be budged on this. We will listen to reasoned debate and suggestions, and, if they make sense, we would be happy to give the matter further consideration.

[96] **David Lloyd:** Dyna ddiwedd y sesiwn gwestiynu. Diolchaf i'r Gweinidog ac i'w swyddogion am eu cyfraniad, ac am esbonio darpariaethau'r is-ddeddfwriaeth yn y Mesur arfaethedig inni mewn ffordd mor raenus.

David Lloyd: That brings this questioning session to a close. I thank the Minister and his officials for their contributions, and for explaining the subordinate legislation provisions in the proposed Measure so comprehensively.

[97] Bydd clerwr y pwyllgor yn anfon trawsgrifiad o drafodion heddiw ichi ei wirio cyn cyhoeddi'r fersiwn derfynol. Mae croeso i'r Gweinidog ymadael yn awr, ac nid oes rhaid iddo aros hyd ddiwedd y pwyllgor, er na fyddwn yn hir iawn yn gadael ar ei ôl.

The committee clerk will send a transcript of this morning's proceedings for you to check before the final version is published. The Minister is welcome to leave now and does not have to stay till the end of the committee, although we will not be long after him.

[98] Y ffordd ymlaen i'r pwyllgor yw inni lunio adroddiad drafft a'i ystyried mewn

The way forward for this committee is to draw up a draft report and consider it at a

cyfarfod yn y dyfodol agos cyn ei gyflwyno i'r Pwyllgor ar y Mesur Arfaethedig ynghylch Llywodraeth Leol. Mae Joyce a minnau yn aelodau o'r pwyllgor hwnnw hefyd, ac felly byddwn yn ystyried adroddiad y pwyllgor hwn ym mhwyllgor y Mesur arfaethedig. Diolch am eich cyfraniad y bore yma.

meeting in the near future, before submitting it to the Proposed Local Government Measure Committee. Joyce and I are also members of that committee, and so we will be considering this committee's report in the proposed Measure committee. Thank you for your contributions this morning.

9.00 a.m.

Unrhyw Fater Arall Any Other Business

[99] **David Lloyd:** A oes unrhyw fater arall? **David Lloyd:** Is there any other business?

[100] **Alun Davies:** We consider each proposed Measure individually, as is right and proper, according to the issues that we have to consider. However, towards the end of this session, when we have considered the Government's legislation, could we look back and review the proposed Measures that have been presented to us in their totality, to see whether we are happy with the overall balance between what is written on the face of the legislation and what is being done on subordinate legislation, as well as with how the Government seeks to ensure that subordinate legislation is delivered to it, given the procedures that it is adopting? Perhaps we could review at the end of the year how Measures are written and enacted in Wales. It is the first time that we have passed legislation in Wales, and I think that it would be useful for us to fulfil that role.

[101] **Eleanor Burnham:** Credaf y dylem hefyd adolygu'r defnydd o'r gweithdrefnau negyddol a chadarnhaol, ac edrych i weld pa mor ddemocrataidd yw defnydd y Llywodraeth a'r Gweinidogion o'r weithdrefn negyddol. Mae'r ffaith bod cymaint o bŵer gan Weinidogion neu Lywodraeth y Cynulliad yn peri ychydig bryder imi.

Eleanor Burnham: I believe that we should also review the use made of the negative and affirmative procedures, and look at how democratic the use of the negative procedure is by the Government and Ministers. The fact that so much power now lies with Ministers or the Assembly Government causes me concern.

[102] **David Lloyd:** Credaf fod cyflwyno rhyw fath o adroddiad blynyddol yn fwriad gan y pwyllgor hwn. Gallwn fwydo'r awgrymiadau hynny i'n hadroddiad blynyddol, i edrych yn ôl ar yr hyn mae'r pwyllgor hwn wedi'i gyflawni yn ystod y flwyddyn.

David Lloyd: I think that it was this committee's intention to draw up some kind of annual report. We can feed those suggestions into our annual report, so that we review what this committee has achieved over the year.

[103] **Alun Davies:** Bydd yn rhaid i ni gael rhyw fath o bapur a chrynodeb o'r trafodaethau a gawsom ar bob Mesur, yn ogystal â thrafodaeth o ddifrif yma ar y pwnc.

Alun Davies: We will have to have some kind of paper and a summary of the discussions that we have had on each Measure, in addition to a serious discussion here on the issue.

[104] **David Lloyd:** Dyna ni. Gwnawn hynny cyn i ni eu cyflwyno mewn adroddiad blynyddol. Mae hynny'n ddigon teg.

David Lloyd: All right. We will do that before we feed them into an annual report. That is fair enough.

[105] **Alun Davies:** Nid wyf am ei weld yn cael ei golli mewn adroddiad blynyddol. Credaf ei fod yn rhywbeth y dylem ei ystyried fel pwnc trafod.

Alun Davies: I do not want to see it being lost in an annual report. I think that it is something that we should consider as an issue in committee.

[106] **Eleanor Burnham:** Yn enwedig o ystyried y tuedd bellach i bŵer orwedd gyda Gweinidogion a'r Llywodraeth yn gyffredinol.

Eleanor Burnham: Particularly given the tendency now for power to lie with Ministers and the Government in general.

[107] **David Lloyd:** Iawn; fe wnawn ni fwydo hynny i'r adroddiad. Felly, byddwn wedi cael trafodaeth yn y pwyllgor hwn cyn ei gyflwyno yn ein hadroddiad blynyddol.

David Lloyd: Okay; we will feed that into the report. Therefore, we will have had a discussion in this committee before it is included in our annual report.

[108] Gwelaf nad oes mater arall i'w godi.

I see that there is no other business to discuss.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[109] **David Lloyd:** Gallaf gyhoeddi, wrth gau'r cyfarfod, y cynhelir y cyfarfod nesaf wythnos i heddiw, sef 2 Rhagfyr 2008.

David Lloyd: I can announce, in closing, that the next meeting will be held a week today, on 2 December 2008.

[110] Diolch am eich presenoldeb. Dyna ddiwedd y drafodaeth. Diolch hefyd am y gwasanaeth cyfieithu.

Thank you for your attendance. I now bring the meeting to a close. I am also grateful for the interpretation.

*Daeth y cyfarfod i ben am 9.02 a.m.
The meeting ended at 9.02 a.m.*