



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

Y Pwyllgor Cyllid **The Finance Committee**

Dydd Iau, 7 Tachwedd 2013
Thursday, 7 November 2013

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The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Christine Chapman	Llafur Labour
Jocelyn Davies	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Paul Davies	Ceidwadwyr Cymreig Welsh Conservatives
Mike Hedges	Llafur Labour
Ann Jones	Llafur Labour
Julie Morgan	Llafur Labour
Simon Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Mark Drakeford	Aelod Cynulliad, Llafur (Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol) Assembly Member, Labour (The Minister for Health and Social Services)
Sally Hughes	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Mark Osland	Dirprwy Gyfarwyddwr, Cyllid, yr Adran Iechyd a Gwasanaethau Cymdeithasol, Llywodraeth Cymru Deputy Director, Finance, Department of Health and Social Services, Welsh Government

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

Fay Buckle	Clerc Clerk
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser

Dechreuodd y cyfarfod am 08:59.
The meeting began at 08:59.

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[1] **Jocelyn Davies:** Good morning and welcome to this meeting of the Finance Committee. May I remind you all to check that you have turned off your mobiles and any other electronic devices, because they interfere with the broadcasting equipment? We are not expecting a fire drill, so, if you hear the alarm, please follow the direction of the ushers. We have had no apologies and we are expecting Ann Jones to join us very shortly.

09:00

Bil Cyllid y Gwasanaeth Iechyd Gwladol (Cymru): Cyfnod 2—Trafod y Gwelliannau National Health Service Finance (Wales) Bill: Stage 2—Consideration of Amendments

[2] **Jocelyn Davies:** We will turn now to the first substantive item on our agenda this morning, which is the National Health Service Finance (Wales) Bill: Stage 2, where we are considering the amendments. We have with us the Minister, Mark Drakeford; Sally Hughes, who I understand is a Welsh Government lawyer; and Mark Osland, deputy director of finance in the department of health and social services. The marshalled list of amendments and the groupings of amendments have been circulated to Members, so we will turn straight away to the amendments.

Grŵp 1: Dyletswyddau Ariannol Byrddau Iechyd Lleol (Gwelliannau 8, 3 a 2) Group 1: Financial Duties of Local Health Boards (Amendments 8, 3 and 2)

[3] **Jocelyn Davies:** The first group of amendments relate to the financial duties of local health boards. The lead amendment in the group is amendment 8. Minister, would you like amendment 8 in your name to be moved?

[4] **The Minister for Health and Social Services (Mark Drakeford):** Yes.

[5] **Jocelyn Davies:** I move amendment 8 in the name of the Minister and call on the Minister to speak to amendment 8 and the other amendments in the group.

[6] **Mark Drakeford:** Thank you, Chair. Amendment 8 has been brought forward to respond to Members' concerns at the Stage 1 general principles debate regarding tolerances. The amendment that the Government puts forward as amendment 8 would amend section 2 of the Bill, which in turn amends section 175 of the National Health Service (Wales) Act 2006. These changes would make the meeting of the financial duty by a local health board subject to a new power of direction by Welsh Ministers. The amendment provides that Welsh Ministers may use their direction-making powers to set tolerances at a suitable level. I want to make clear that the amendment does two main things. First, it distinguishes unanticipated end-of-year need for flexibility from the main purpose of the Bill, which is, of course, to provide planned flexibility over a three-year period. The second thing it does is that it allows the level of discretion to be fixed according to changing circumstances.

[7] There are important reasons why the level of flexibility at end of year has to be constrained. As members of this committee will be very well aware, local health boards are defined as central Government bodies for resource-accounting and budgeting purposes. That means that the outturn of local health boards is consolidated into my department's resources within its main annual expenditure group, and that, in turn, is the MEG approved by the

National Assembly. So, any overspends or tolerances have to be included within that consolidated position and that, inevitably, constrains the level of tolerance that can be provided. The dilemma in this will always be the extent to which money is handed over directly to LHBs at the start of the year and the extent to which money is held back centrally in order to cover any unforeseen and last-minute need for tolerance. However, the Government has been persuaded by the arguments put forward by other Members earlier in the process, and this amendment will allow for that unforeseen end-of-year need for flexibility to be provided.

[8] Since the amendment was tabled, Members will be aware of, and will have seen, the letter written by the Wales Audit Office that raises some issues about the terminology that the drafting of this amendment uses. I hope that, at the end of the discussion that I was keen to have, Members will understand that my intention will not be therefore to put this amendment to the vote as drafted, because I think it is important that the auditor general and my lawyers are able to continue a discussion. We hope to bring forward an amendment at Stage 3 that will have the effect that I have described this morning, but in terminology that does not provide difficulties from an audit perspective.

[9] Chair, there are two other amendments in this group. Amendment 2 seeks to amend the National Health Service (Wales) Act 2006 so as to require Welsh Ministers to seek the agreement of the Assembly to any increase in funding for the NHS. I understand that there is a provision within the amendment for emergency action. However, the Government will resist this amendment for two reasons, firstly and mostly because we are not persuaded of the principle here. The principle as we see it is that the National Assembly has its key role in approving a budget put forward by the Welsh Government. Once that budget has been agreed, it is then for Ministers to make decisions within the approval that the National Assembly has given to it. I do not think, from the Government's perspective, that it is acceptable to be in a position where the legislature can then choose to dip across that line in particular instances and require Ministers to act differently within the overall ambit that they have been given.

[10] There are practical reasons that this amendment will be difficult, even if you accepted the principle, which, as I say, we do not. In a normal year, there may be between 50 and 80 in-year allocation adjustments to each local health board, as central budgets are allocated out to the service by policy leads. As it is drafted, each and every one of those would have to be brought to the Assembly floor for the Assembly to vote on. It simply is not a practical proposition, and the Government will resist that amendment.

[11] I apologise; I should have probably dealt with Paul Davies's amendment first because it also deals with tolerance levels. The Government will also resist amendment 3. A tolerance level at 3.5% of the Department for Health and Social Services main expenditure group equates, in cash terms, to £200 million. My understanding of it is that it would entrench within the system something that we are very keen to avoid. We have been keen to avoid the situation in which health boards believe, every year, that there is a sum of money being held centrally, which they will be able to call on to get themselves out of difficulty at the year end. On that scale, having to hold £200 million back centrally in order to hand it out right at the end of a year, we would actually be encouraging health boards to do exactly what we have said in the past that we do not want them to do. I have said before that I do not like the term 'bail-out'; it is a pejorative term, but it is a bail-out culture in which we are holding back sums on that scale and then inviting health boards to draw that money down right at the end of the year. For that reason, and because I think that a specific percentage on the face of the Bill will not help us to provide the flexibility that we will need to deal with unforeseen end-of-year adjustments, amendment 3 will also be resisted by the Government.

[12] **Paul Davies:** I speak to amendment 3, tabled in my name. Members will be aware that I have argued that the three-year period in this Bill, given that it is a rolling three-year

period, means that health boards would be provided with greater flexibility only in the first two years of this Bill being passed because, after the first two years, each financial year thereafter would, of course, require its budget to marry up with the previous two years' expenditure. Therefore, all that this Bill could achieve in its current format is to push financial pressures on by two years, hence my reason for tabling amendment 3.

[13] I believe that my amendment is being very specific with regard to tolerance limits. The reason for the specific tolerance figure of 3.5% is that the net funding gap across the NHS is around £200 million, as the Minister has just said. In response to this figure, I am therefore suggesting that the tolerance limits are equivalent to this figure, as £200 million is around 3.5% of the total health budget. The Minister has argued this morning that specifying a tolerance limit could be restrictive in the future, but I would like to think that the current funding gap of £200 million will not worsen. This figure, I believe, is a sensible and reasonable figure that will give local health boards the necessary flexibility that they need in the future. I would therefore urge Members to support amendment 3.

[14] I want to formally support amendment 2, tabled in the name of Simon Thomas. Fundamentally, this amendment means that, at any time during the three-year rolling period, when Ministers believe that additional funding above what has been agreed, including tolerance levels, is required by any health board, Ministers should have to bring that recommendation to Plenary and that that would need approval by resolution of the whole Assembly. I believe that this amendment serves to provide greater democratic accountability. I would therefore urge Members to support this amendment. Thank you.

[15] **Simon Thomas:** Yr wyf yn siarad o blaid yr holl welliannau yn y grŵp hwn, ond, yn ffurfiol, byddaf yn cynnig fy ngwelliant i—gwelliant 2—hefyd. Hoffwn roi ar gofnod ein bod yn cefnogi'r holl welliannau sydd wedi'u cyflwyno ar gyfer y bore yma gan Paul Davies hefyd, i fod yn glir.

Simon Thomas: I speak in favour of all of the amendments in this group, but, formally, I will be moving my own amendment—amendment 2—as well. May I also place on record that we support all the amendments that have been tabled for this morning by Paul Davies, just for clarity?

[16] Yr hyn rydym i gyd yn ceisio ei wneud yw gwella'r Bil i geisio dod ag eglurder a mwy o dryloywder i'r penderfyniadau, sy'n gallu—mae pawb yn derbyn—digwydd o bryd i'w gilydd pan mae angen rhoi arian ychwanegol i mewn i'r system. Fe ddywedodd y Gweinidog, ac rwy'n cytuno'n llwyr ag ef, fod angen cael gwared ar unrhyw olion diwylliant sy'n credu bod arian ychwanegol yn mynd i ddod ar ddiwedd y flwyddyn ariannol, a bod y Llywodraeth wastad yn barod felly i—cawn ddweud—roi arian ychwanegol i mewn i'r system. Ni wnawn ddefnyddio unrhyw air arall, ond i gofnodi hynny.

What we are all seeking to achieve is to improve the Bill in order to bring greater clarity and transparency to decisions, which, everyone accepts, can happen from time to time, when there will be a need to add additional funds into the system. The Minister said, and I agree with him entirely, that we need to get rid of any semblance of a culture where there is a belief that additional money will be provided at the end of the financial year, and that the Government will always be ready—shall we say—to add additional funds into the system. We will not use any other term, but I will put that on record.

[17] Mae'n bwysig, yn y cyd-destun hwn, i gofnodi, yn ystod yr 11 blynedd diwethaf, fod arian ychwanegol wedi mynd mewn i'r gwasanaeth iechyd ar ddiwedd y flwyddyn ar wahân i un flwyddyn, a oedd bron degawd yn ôl. Roedd hwnnw'n gyfnod pan oedd yr arian a oedd yn mynd i mewn i'r gwasanaeth

It is also important, in this context, to put on record that, during the last 11 years, additional money has been provided to the health service at the end of the financial year, with the exception of one year, which was almost a decade ago. That was at a time when the money going into the health service and

iechyd a'r byrddau iechyd a'u rhagflaenwyr yn cynyddu o ryw 10% pob blwyddyn. Felly, hyd yn oed pan oedd mwy o arian yn mynd i mewn i'r system, roedd angen i'r cyrff hynny ddod at y Llywodraeth am arian ychwanegol ar ddiwedd y flwyddyn ariannol. Roedd hynny'n amrywio o £20 miliwn i dros £120 miliwn—o gwmpas £80 miliwn i £90 miliwn fel arfer.

[18] Rwy'n meddwl bod diwylliant wedi datblygu bod yr arian hwn ar gael os gofynnir amdano, ac mae diwylliant wedi tyfu lle mae'r byrddau'n teimlo eu bod yn cyflawni eu nodau cyllido drwy gynnwys yr arian hwn. Cawsom dystiolaeth, Gadeirydd, nid wyf yn cofio gan bwy, ond gan un o gyfarwyddwyr y ddau fwrdd iechyd a fu i mewn yn trafod gyda ni, a holais i, 'Beth am y ffaith nad ydych chi wedi cwrdd â'ch amcanion ariannol bron bob blwyddyn?' a dywedodd ef, 'Na, na, rydym wedi cyflawni'n amcanion cyllidol pob blwyddyn'. Fodd bynnag, yr hyn yr oedd e'n golygu oedd eu bod wedi cyflawni eu hamcanion gyda'r arian ychwanegol oddi wrth y Llywodraeth. Rwy'n meddwl bod y diffyg cynllunio cyllidol hwnnw wedi bod yn sylfaenol wael ymysg y byrddau iechyd.

[19] Rwy'n cytuno â phwrpas y Bil hwn, ac yn ei gefnogi'n llwyr, i geisio dod dros y broblem honno a dod â strwythur llawer mwy cryf i mewn i'r system, ac rwy'n cefnogi'r hyn y mae'r Gweinidog yn ceisio ei wneud yn y fan hon. Fodd bynnag, os coda adeg pan fydd angen rhoi arian ychwanegol, am ba bynnag reswm, i mewn i'r system y tu fewn i'r cyfnod cyllidol tair blynedd, rwy'n meddwl ei fod yn bwysig iawn, o ran egwyddor, fod gan y Cynulliad rôl yn hynny. Yn hynny o beth, dyna le rwy'n anghytuno â'r Gweinidog.

[20] Yr ydym wedi clywed ei ddadl ef yng Nghyfnod 1, ac roeddwn wedi gobeithio bod fy ngwelliant i dipyn bach yn fwy soffistigedig, efallai, na'r hyn a gafodd ei awgrymu yn ystod y drafodaeth honno. Yr hyn rwyf wedi trio ei wneud yn y gwelliant hwn yw defnyddio'r patrwm sydd eisoes wedi ei sefydlu, hynny yw, bod y Cynulliad yn cymeradwyo cyllideb ychwanegol. Fel arfer, mae hynny'n digwydd dwywaith y flwyddyn, ac rwyf yn ceisio dilyn y patrwm

health boards and their predecessors was increasing by some 10% per annum. So, even when there was more money going into the system, there was a need for those bodies to approach the Government for additional funds at the end of the financial year. That varied from £20 million to over £120 million—it was usually around £80 million or £90 million.

I think that a culture had developed whereby these funds were assumed to be available if requested, and a culture has developed where the boards feel that they are achieving their financial objectives by including this additional funding. We had evidence, Chair, I cannot remember from whom, but it was from one of the directors of the two health boards who came in to give evidence, and I asked, 'What about the fact that you have not met your financial targets on an annual basis?' and he said, 'No, no, we have achieved our targets on an annual basis'. However, what he meant was that they had achieved them with the additional funding from the Government. I think that that lack of financial planning has been fundamentally poor among the health boards.

I agree entirely with and support the objective of this Bill to try to overcome that problem and bring a structure that is far more robust into the system, and I support what the Minister is endeavouring to do here. However, if a time does arise when additional funding will need to be put into the system for whatever reason, within the three-year financial period, I think that it is extremely important, from a point of principle, that the Assembly has a role in that. In that respect, that is where I disagree with the Minister.

We heard his point at Stage 1, and I had hoped that my amendment was a little more sophisticated, perhaps, than what had been suggested during that debate. What I have endeavoured to do in this amendment is to use the pattern that is already established, that is, that the Assembly should approve a supplementary budget. That happens, usually, twice a year and I am trying to follow that established pattern.

hwinnw.

[21] Rwy'n derbyn y pwynt, o bosibl, a wnaeth y Gweinidog: efallai nad yw'r geiriad yn berffaith, efallai bod rhywbeth ymhlyg yn y geiriau presennol a allai olygu dod i'r Cynulliad yn fwy aml na hynny, ac efallai bod hynny'n anghywir a bod angen ailedrych ar hynny. Fodd bynnag, pe bai'r Llywodraeth yn derbyn yr egwyddor, byddai modd i'r Llywodraeth fynd i ffwrdd a gweithio ar y geiriau hynny. Nid wyf yn meddwl mai geiriau yw'r broblem fan hon; o ran yr egwyddor y mae anghytundeb.

I accept the point, possibly, that the Minister made: perhaps the wording is not perfect, and perhaps there is something implicit in the current wording that could mean that the Assembly's approval would be required more often than expected, and perhaps that is wrong and that we need to look again at that. However, if the Government accepts the principle, perhaps it could go away and look at that wording. I do not think that the wording is the problem; it is regarding the principle that there is disagreement.

[22] Serch hynny, mae'n bwysig ein bod yn gweld hwn, oherwydd rydym yn dueddol o rhoi £5 biliwn i'r byrddau iechyd a gadael iddynt benderfynu sut mae'n cael ei wario. Os ydynt yn dod wedyn ac yn holi am fwy, ac os oes rhaid i'r Llywodraeth benderfynu roi arian ychwanegol i'r MEG i bob pwrpas, i mewn i'r system, mae'n briodol ein bod ni, fel y corff sydd, yn y pen draw, yn penderfynu ar gyllideb Llywodraeth Cymru—er mai Gweinidogion sy'n penderfynu sut i wario'r gyllideb honno yn fras iawn—yn dod â mwy o dryloywder ac atebolrwydd i mewn i'r system, a thipyn bach mwy o graffu gan y Cynulliad ar rai o benderfyniadau'r byrddau iechyd.

Having said that, it is important that we see this, because we tend to give £5 billion to the health boards and let them decide how it is spent. If they then come to request more, and if the Government has to make a decision to provide additional money over and above the MEG to all intents and purposes, it is appropriate that we, as the body that ultimately decides on the Welsh Government's budget—although Ministers make decisions on how that is spent—bring more transparency and accountability into the system, and a little more scrutiny by the Assembly of some of the decisions taken by the health boards.

09:15

[23] Yn y bôn, rwy'n meddwl bod y gwelliant hwn yn cryfhau'r ffordd y mae Bil y Llywodraeth yn craffu ar benderfyniadau cyllidol ac ariannol y byrddau iechyd. Yn hynny o beth, byddwn yn gobeithio y bydd y pwyllgor yn gallu cefnogi'r gwelliant mewn egwyddor ac, os hynny, bydd modd gwella'r geiriau erbyn Cyfnod 3, os yw rhai o'r problemau y mae'r Gweinidog wedi eu crybwyll y bore yma yn wir.

So, essentially, I think that this amendment strengthens the way in which the Government Bill actually scrutinises the financial decisions of the health boards. In that respect, I would hope that the committee could support the amendment in principle and, if it is supported in principle, we can improve the wording by Stage 3, if there are some problems as the Minister has suggested.

[24] **Mike Hedges:** I have a couple of points. First, if local authorities behaved like health boards, they would have commissioners being sent in and councillors would be being disqualified. We have a serious problem with the way that health boards are run, and that is one that I think the Minister is well aware of. There are a couple of points that I would like to make. If you set 3.5%, it is like giving somebody an overdraft limit; people will spend up to it, and why would they not? It would disadvantage them not to, because if they expect to have that money provided at the end, they would actually be not receiving money that they could get if they spent to it. In monetary terms, 3.5% for Powys and 3.5% for Betsi Cadwaladr makes an awful lot of difference. It is a substantial difference. So, setting 3.5% is not a good idea. In fact, I do not think that setting any number is a good idea. All you are doing is telling

people what you think they should spend up to.

[25] I am confused by the other amendment, if I can find it, on page 4. What I understand—and people will correct me if I am wrong—is that we get two supplementary budgets, and if there is additional money provided, it should be picked up in those supplementary budgets. So, I am not quite sure why we would not get that information, which we would get if more money was provided, as we had in the past, for example, with the botanic gardens. When that happens it comes through a supplementary budget and we would report our views on that. So, I am not quite sure how this, if we did what Simon Thomas appeared to say that he wanted us to do, would actually do any more than we currently do, in terms of looking at additional moneys being provided. Or, are we expecting the health budget to be looked at more than any of the others? So, I have some concerns about that amendment.

[26] **Peter Black:** I am very happy to support all three amendments in this group. The issue, as I see it, is that if we have accepted the principle of tolerance—which we have done under amendment 8, which the Minister tabled—then we need to say, ‘What are the limits of that tolerance?’. I think it is quite reasonable to say, on the face of the Bill, that there should be a limit to that tolerance, and that that limit should amount to roughly where we are at the moment, which is 3.5%. That is why I feel that it is right to support that. I understand Mike Hedges’s argument about health boards spending up to that limit, but I think if you have an unlimited tolerance, that makes it even worse, in a sense, because the health boards feel that they can spend beyond that amount. I think they need to understand that there are clear limits as to what level of tolerance is going to be allowed as part of this Bill.

[27] In terms of amendment 2, my view is that, first, this is a new system, and I think that it is very clear that there should be proper accountability through the National Assembly in terms of any variation to the budget that has been approved by us. Secondly, I think it is important that there should be a principle, as per the supplementary budget, that any tolerance that is put in here is approved by the Assembly, and I think that there is already, as Mike Hedges said, a principle here whereby Ministers do bring variations in the budget to the Assembly for approval. I do not think it unduly constrains a Minister in his actions by saying that this should come before Members for a vote in terms of that. So, I think that, on balance, it seems to me quite right and proper, in terms of one of the largest chunks of the budget—a third of the Assembly’s budget, which also happens to be the most opaque part of the Assembly’s budget in terms of accountability and understanding by Assembly Members of how it is spent, and accountability for it—that any changes to that budget should come before us for approval, debate and discussion. Therefore, I am happy to support amendment 2.

[28] **Jocelyn Davies:** Julie is next.

[29] **Julie Morgan:** I understand that these amendments are put forward in order to improve the Bill, but I do have—

[30] **Peter Black:** Why else would we do it?

[31] **Julie Morgan:** Yes, exactly.

[32] **Simon Thomas:** We are not wrecking this Bill.

[33] **Julie Morgan:** As I said, they are put forward in good faith. However, I do share some of the concerns that have been expressed by Mike Hedges, particularly with regard to amendment 3 and this fixing of a point, because I do think that bodies would spend up to that amount, and I think that it does really entrench the culture that we are trying to get rid of. So, I would certainly resist that.

[34] **Jocelyn Davies:** Minister, would you like to respond to the debate?

[35] **Mark Drakeford:** Thank you very much, Chair. Let me make it clear that amendment 8 does not provide for unlimited tolerance in any way. Indeed, the discussion with the auditor general is about our efforts to make that as clear as we can on the face of the Bill. I agree with the points that Mike Hedges and Julie Morgan made. The only way in which we could allow local health boards to spend up to the limit of their credit card, as Mike said, would be to hold that sum of money back in the first place in order to allow us to cover it at the end of the year when they have done that. Thinking of the way that Simon Thomas was describing what he believed to be a culture within the health service that is doing that, amendment 3 would simply entrench that right in the very DNA of the way that the system would work, and we really will not be able to accept it.

[36] I thought that Simon made a very lucid and understandable case for his amendment. It does just come down to a difference of view about it. I think that there is an important distinction to be made in terms of the way that a whole Government's budget is debated and approved by the National Assembly, and when the whole Government has to move money around and needs to reallocate money through supplementary budgets, that whole-Government position ought to be brought back to the Assembly and reported to it. When we go beyond that and we try to allow the legislature to have a decision-making role in the way that money within individual MEGs is then dispersed, I think that blurs the distinction between the legislative and the executive that was established in the Government of Wales Act 2006 after a great deal of debate. Despite the persuasive nature of the argument, I am not persuaded to go there, so we will resist both those amendments, and, if Members are agreeable, I would not seek to put amendment 8 to the vote, so that we can bring it back in a new form at Stage 3.

[37] **Jocelyn Davies:** Members, you have had sight of the auditor general's letter. The Minister does not wish to proceed to a vote. Are all Members agreed? I see that you are.

*Tynnwyd gwelliant 8 yn ôl gyda chaniatâd y pwyllgor.
Amendment 8 withdrawn by leave of the committee.*

[38] **Jocelyn Davies:** Paul, would you like to move amendment 3?

[39] **Paul Davies:** Yes. I move amendment 3 in my name, supported by Peter Black.

[40] **Jocelyn Davies:** The question is that amendment 3 be agreed to. Does any Member object? There is objection, so we will move to a vote by a show of hands. Please raise your hands so that we can see them.

*Gwelliant 3: O blaid 4, Ymatal 0, Yn erbyn 4.
Amendment 3: For 4, Abstain 0, Against 4.*

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

Black, Peter
Davies, Jocelyn
Davies, Paul
Thomas, Simon

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

Chapman, Christine
Hedges, Mike
Jones, Ann
Morgan, Julie

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).

As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).

*Gwrthodwyd gwelliant 3.
Amendment 3 not agreed.*

[41] **Jocelyn Davies:** We shall return to vote on the remaining amendment in this group later in proceedings, according to the marshalled list.

**Grŵp 2: Dyletswyddau Cynllunio Byrddau Iechyd Lleol a Gweinidogion Cymru
(Gwelliannau 1 a 10)**

Group 2: Planning Duties of Local Health Boards and Welsh Ministers (Amendments 1 and 10)

[42] **Jocelyn Davies:** We have amendments 1 and 10 in this group, and I call on Simon Thomas to move and speak to amendment 1 and the other amendment in the group.

[43] **Simon Thomas:** Cynigiau welliant 1 yn fy enw i, gyda chefnogaeth Peter Black a Paul Davies. **Simon Thomas:** I move amendment 1 in my name, supported by Peter Black and Paul Davies.

[44] Diolch, Gadeirydd. Mae'r grŵp yn cynnwys, fel yr ydych wedi ei ddweud, dau welliant gennyf: gwelliannau 1 a 10. Mae'r ddau ynghlwm wrth ei gilydd, gan fod rhif 10 yn dilyn yn naturiol o bwrpas gwelliant 1. Rwy'n gobeithio, o leiaf o ran egwyddor, y caf wrandawriad tipyn gwell gan y Gweinidog ar y mater hwn, achos mae gwelliant 1 yn ceisio ei gwneud yn gliriach ar wyneb y Bil sut y mae cynllunio cyllidol yn awr yn digwydd y tu mewn i gyd-destun y Bil hwn, sy'n gosod cyfnod cynllunio o dair blynedd. Thank you, Chair. The group, as you said, includes two amendments in my name: amendments 1 and 10. Both are related, as amendment 10 follows naturally from the objective of amendment 1. I hope that, at least in principle, the Minister will give me a better hearing on this issue, because amendment 1 attempts to make it clearer on the face of the Bill as to how financial planning should now happen in the context of this Bill, which puts a three-year planning period in place.

[45] Rwy'n meddwl ei bod yn bwysig rhoi hyn ar wyneb y Bil yn union oherwydd y drafodaeth yr ydym newydd ei chael ar y grŵp cyntaf o welliannau. Mae trafferthion yn y sector. Mae rhai byrddau iechyd yn llawer gwell na'i gilydd o ran cynllunio ariannol, ac rwy'n credu y gwelsom hynny fel pwyllgor wrth gymryd tystiolaeth tua phythefnos yn ôl. Felly, mae eisiau cydnabod y rhai sy'n perfformio'n dda, ac mae eisiau helpu'r arfer da hwnnw i ledaenu ar draws y sector. Yn wir, ni chaiff amcanion y Llywodraeth yn y Bil hwn eu gwireddu neu'u cyflawni oni bai bod y cynllunio ariannol gorau posibl yn cael ei ledaenu ar draws y sector. I do think that it is important to include this on the face of the Bill, for the very reason outlined in the discussion that we have just had on the first group of amendments. There are difficulties in the sector. Some health boards are far better than others in terms of financial planning, and I think that we as a committee saw that when we took evidence around a fortnight ago. So, we need to acknowledge those that are performing well, and we need to assist in spreading that good practice across the sector. Indeed, the Government's objectives in this Bill will not be achieved unless the best possible financial planning is spread across the sector.

[46] Felly, yr hyn y mae gwelliant 1 yn ceisio ei wneud yw sicrhau bod y cynllunio integredig ar gyfer gwasanaethau ar draws y bwrdd iechyd, gan gynnwys, wrth gwrs, y cynllunio ariannol sydd ynghlwm wrth y gwasanaethau hynny ac yn sylfaen iddynt, yn Therefore, what amendment 1 endeavours to do is to ensure that the integrated planning for services across the health board, including, of course, the financial planning that is integral to those services, and is the foundation to them, is approved directly by

cael ei gymeradwyo yn uniongyrchol gan Weinidogion Cymru—nid gan y Cynulliad, mae'n dda gennyf ddweud yn y cyd-destun hwn, ond gan y Gweinidogion. Efallai ein bod wedi anghytuno ychydig ar y grŵp cyntaf, ond rydym yn cytuno yn y fan hon, yn sicr, mai gan Gweinidogion Cymru mae'r atebolrwydd gweithredol ac wedyn bydd craffu arnynt gan y gwrthbleidiau a phleidiau eraill—a phlaid y Llywodraeth, hyd yn oed, o ran Aelodau meinciau cefn yn y Cynulliad. Felly, credaf ei fod yn bwysig bod y cynlluniau hynny yn cael eu gosod ar wyneb y Bil, gan ei fod yn gyrru signal cryf iawn i'r byrddau iechyd bod disgwyl iddynt wneud hyn. Bydd y Gweinidog yn craffu ar y broses hon a byddwn ni, yn ein tro, yn craffu ar y Gweinidog ynglŷn â'i atebolrwydd o ran y broses hon. Felly, pwrpas gwelliant 1 yw gosod hynny ar wyneb y Bil.

[47] Pwrpas gwelliant 10, yn sgîl hynny, yw sicrhau, pan fydd Gweinidogion Cymru yn asesu a chymeradwyo'r prosesau tair blynedd o gynllunio gwasanaethau a chynllunio ariannol, eu bod yn cael eu cyfarwyddo i sicrhau bod y gwasanaethau hynny yn cyrraedd y nodau perfformiad a disgwylir o dan yr holl ystod o ddeddfau sy'n ymwneud â'r gwasanaeth iechyd. Felly, drwy dderbyn y ddau welliant hyn, byddem yn sicrhau, o ran yr egwyddor, bod y cynllunio tair blynedd yn cael ei osod ar wyneb y Bil, bod y cynllunio hwnnw'n cynnwys gwasanaethau a chynllunio ariannol, bod y Gweinidog yn gyfrifol am graffu ar y broses honno, a'n bod yn rhoi dyletswydd—wel, efallai nid dyletswydd, ond gorfodaeth—ar y Gweinidog i sicrhau bod y cynllunio dros dair blynedd yn cwrdd â'r gofynion perfformiad yn y system. Felly, drwy'r gwelliannau hyn, rydych yn cau'r blwch rhwng y cynllunio, sy'n bwysig—ar hyn o bryd, mae'r Bil ond yn ymwneud â chynllunio ariannol, ond rydym yn ceisio adeiladu pont rhwng y cynllunio a'r effaith ar wasanaethau a pherfformiad. Dyna yw pwrpas cynllunio ariannol da, wedi'r cyfan: nid dim ond ticio bocsys a chadw'r llyfrau yn lân, ond sicrhau bod arian ar gael ar gyfer gwasanaethau da. Dyna'r hyn rydym yn ceisio ei wneud drwy'r gwelliannau hyn. Felly, gobeithiaf yn fawr iawn y bydd y pwyllgor o leiaf yn cefnogi'r gwelliannau o ran egwyddor. Os oes angen gweithio arnynt,

Welsh Ministers—not by the Assembly, I am pleased to say in this context, but by the Ministers. We may have disagreed slightly on the first group, but we agree here, certainly, that Welsh Ministers have the executive accountability and then will be scrutinised by the opposition and other parties—and by the Government party, even, in terms of backbench Assembly Members. Therefore, I think that it is important that those plans are placed on the face of the Bill, as it sends a very strong signal to the health boards that they are expected to do this. The Minister will scrutinise this process and we, in turn, will scrutinise the Minister in relation to his accountability with regard to this process. Therefore, the purpose of amendment 1 is to place that on the face of the Bill.

The purpose of amendment 10, in light of that, is to ensure that, when Welsh Ministers assess and approve the three-year process of service planning and financial planning, that they are directed to ensure that those services meet the performance targets expected under the whole range of laws relating to the health service. Therefore, by accepting both of these amendments, we would ensure, in terms of the principle, that the three-year planning is placed on the face of the Bill, that that planning includes services and financial planning, that the Minister is responsible for scrutinising that process, and that we place a duty—well, perhaps not a duty, but an obligation—on the Minister to ensure that the three-year planning meets the performance requirements within the system. Therefore, through these amendments, you are closing the gap between the planning, which is important—at the moment, the Bill deals with financial planning only, but we are trying to build a bridge between the planning and the impact on services and performance. That is the purpose of good financial planning, after all: not just to tick boxes and to keep the books in order, but to ensure that funding is available for good services. That is what we are trying to achieve here through these amendments. So, I very much hope that the committee will at least support these amendments in principle. If we need to work on them, we have Stage 3 to ensure that they are good enough and robust enough for the

mae gennym Gyfnod 3 er mwyn sicrhau eu Government's purposes.
bod yn ddigon da a digon cryf at bwrpas y
Llywodraeth.

[48] **Paul Davies:** I would like to formally support these amendments. As I understand it, the purpose of these amendments is to ensure that the financial plans of all LHBs are formally approved and assessed by Ministers and that this principle is put on the face of the Bill. I very much support these amendments. I think they provide the Government of the day with increased accountability. I am sure that Members have sometimes been frustrated by the lack of accountability in relation to NHS finances, and I believe that these amendments seek to address just that.

[49] As was discussed in Plenary, it has not always been straightforward to scrutinise LHB finances, because, while Ministers are directly responsible to us as Assembly Members, when we have tried to scrutinise individual health board expenditure with Ministers, we have, effectively, been referred back to those individual health boards. In Plenary, the Minister said:

[50] 'Local health boards are accountable to me, I am accountable to you, and I want to make sure that you have that accountability in a full and proper sense.'

[51] Therefore, I believe that these amendments serve to strengthen the Bill by creating a direct level of accountability for us to effectively scrutinise LHB spend with Ministers who have clearly approved the three-year integrated service plans, and I urge Members to support these amendments.

[52] **Peter Black:** I am also happy to support these amendments. The opposition parties are always very keen to put things on the face of the Bill, but I believe that, in this particular instance, it is justified. This Bill is not just about setting up a new framework, but about sending a clear message to the health boards about how we expect them to operate in the future. Although the mechanisms set out in these amendments will also be the mechanisms that the Minister will follow in any case, to have them set out in the Bill makes it clear to health boards that that is how their financial plans will be viewed and dealt with, and that the Assembly has an expectation of the Minister to do that for it. In that case, I think it is very useful to have these particular procedures set out on the face of the Bill so that health boards can see them in that context.

09:30

[53] **Jocelyn Davies:** I call the Minister.

[54] **Mark Drakeford:** I thank Members for their contributions. I listened very carefully to the points made by Simon and others, and I am happy to say that I am supportive of the principles behind the amendments in this group. I have tried to say in earlier discussions that it is very important, from the Government's perspective, that the financial flexibility being afforded to LHBs through this Bill is supported by strong and effective planning, and that we have a well-understood system in which there are clear responsibilities that LHBs must discharge in carrying out that planning, and a role for Ministers in finally deciding whether or not that flexibility is to be afforded to them.

[55] I am happy to support the principle of both amendments. There are some technical issues, which I am advised, from the Government's perspective, that we might like to tidy up a little. There is potentially an unintended issue of retrospectivity here. LHBs are well under way in preparing the integrated medium-term plans for the period when this Bill will have effect, and I want to avoid wasted effort on their part. I am also keen that the specific language used in any amendment here should be consistent with the revised financial standing

orders that we are providing to LHBs, and the planning framework that we have already issued to them.

[56] So, what I can do today is to give an undertaking to come back at Stage 3 with a Government amendment taking the text that we have today and giving effect to its principles. I am very willing to say to the Member who has proposed these amendments that the Government would make our amendments available at the earliest point that we could, so that, if our text was not acceptable to the Member, there would still be an opportunity to put down an alternative amendment at Stage 3 and to have a further debate about it then. I do not dissent from any of the things that all three Members who contributed said as principles, and we are persuaded of them in that it would be to the advantage of the Bill to put this framework on the face of the Bill for reasons of accountability, clarity and transparency.

[57] **Jocelyn Davies:** Simon, would you like to respond?

[58] **Simon Thomas:** Yes. I welcome what the Minister has said. If the committee is in agreement, I will withdraw amendment 1, because I would like to give the Government an opportunity to bring forward amendments that meet the range of other considerations around financial standing orders, and so forth; I think that that is a fair point. However, I am glad to hear that the Government has accepted the principle of both amendments, which relate to the financial planning but also the responsibility of the Minister to oversee that. I think that will strengthen the scrutiny that we give.

[59] **Jocelyn Davies:** Members will have heard Simon saying that he does not wish to proceed to a vote. Does any Member object to the withdrawal of the amendment? There are no objections. Thank you.

*Tynnwyd gwelliant 1 yn ôl gyda chaniatâd y pwyllgor.
Amendment 1 withdrawn by leave of the committee.*

[60] **Jocelyn Davies:** In accordance with the marshalled list, we will now dispose of amendment 2, which was debated in group 1. Simon, would you like to move amendment 2?

[61] **Simon Thomas:** Cynigiaf welliant 2 **Simon Thomas:** I move amendment 2 in my yn fy enw i, gyda chefnogaeth Peter Black a name, supported by Peter Black and Paul Paul Davies. Davies.

[62] **Jocelyn Davies:** The question is that amendment 2 be agreed to. Does any Member object? There is objection. We will take a vote on that amendment by show of hands.

*Gwelliant 2: O blaid 4, Ymatal 0, Yn erbyn 4.
Amendment 2: For 4, Abstain 0, Against 4.*

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

Black, Peter
Davies, Jocelyn
Davies, Paul
Thomas, Simon

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

Chapman, Christine
Hedges, Mike
Jones, Ann
Morgan, Julie

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).

As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).

*Gwrthodwyd gwelliant 2.
Amendment 2 not agreed.*

[63] **Jocelyn Davies:** We now come to amendment 10. Simon has indicated that he does not wish to proceed with amendment 10. Does any Member object? There are no objections.

*Ni chynigiwyd gwelliant 10.
Amendment 10 not moved.*

[64] **Jocelyn Davies:** We have disposed of all the amendments in group 2, and can move on to group 3.

**Grŵp 3: Diffiniadau (Gwelliannau 9 a 7)
Group 3: Definitions (Amendments 9 and 7)**

[65] **Jocelyn Davies:** The lead amendment in this group is amendment 9. Minister, would you like amendment 9 in your name to be moved?

[66] **Mark Drakeford:** Yes, please.

[67] **Jocelyn Davies:** I move amendment 9 in the name of the Minister, and call on the Minister to speak to amendment 9 and the other amendment in the group.

[68] **Mark Drakeford:** Thank you, Chair. I have brought forward amendment 9 so as to add clarity to the definition of 'expenditure' within the National Health Service (Wales) Act 2006. The definition will put beyond doubt that expenditure for the purpose of section 175 of that Act includes the use of resources through their consumption or reduction in value. Section 176 of the 2006 Act introduced the term 'resource limits' as part of the Government Resources and Accounts Act 2000. Previously, it was necessary for Government departments to make a distinction between cash-based reporting and accruals or resource-based reporting. This distinction is no longer necessary as all expenditure is now recorded and reported on an accruals basis as required under the Government's financial reporting manual. Section 176 is therefore redundant, and has, in practice, been so for some time. The financial duty of local health boards is under section 175. Inserting this definition of 'expenditure' puts this position beyond a doubt by confirming that 'expenditure' includes the use of resources.

[69] I understand, Chair, that I must address amendment 7 in this group, but, of course, amendment 7 is not a standalone amendment, it is really consequential to amendment 6, which will be considered in a later group, and, at that time, I will set out the reasons why I feel that amendment 6 is not required and cannot be supported. If we are talking about amendment 7 in a standalone way, then the definitions of 'Assembly', 'Assembly Committee', and so forth are not required because they do not feature in the Bill as terms used in any other provisions, and, therefore, I will be asking the committee to support amendment 9, but to resist amendment 7.

[70] **Paul Davies:** As the Minister said, amendment 7 tabled in my name is a technical amendment, which relates to my substantive amendments 5 and 6 in group 5, on reporting back to the Assembly. I will also speak to amendments 5 and 6 later in the proceedings, but I would urge Members to support amendment 7 when the time comes.

[71] **Jocelyn Davies:** Minister, would you like to reply to the debate?

[72] **Mark Drakeford:** I have nothing further to add.

[73] **Jocelyn Davies:** Okay. Minister, do you wish to proceed to a vote on amendment 9?

[74] **Mark Drakeford:** Yes, please.

[75] **Jocelyn Davies:** The question is that amendment 9 be agreed to. Does any Member object? There are no objections. Therefore, amendment 9 is agreed.

Derbyniwyd gwelliant 9 yn unol â Rheol Sefydlog 17.34.

Amendment 9 agreed in accordance with Standing Order 17.34.

[76] **Jocelyn Davies:** We will, of course, return to vote on the remaining amendment in the group later in proceedings, in accordance with the marshalled list.

Grŵp 4: Pŵer i Fenthyca (Gwelliant 4)
Group 4: Power to Borrow (Amendment 4)

[77] **Jocelyn Davies:** We have just one amendment in this group, which is the lead amendment. It is amendment 4, and I call on Paul Davies to move and speak to his amendment.

[78] **Paul Davies:** I move amendment 4 in my name, supported by Peter Black.

[79] The purpose of this amendment is to give local health boards the ability to raise funds through the use of borrowing powers. As we are all aware, local health boards have substantial budgets, and, given these substantial budgets, I believe it is appropriate that they are given the ability to borrow. At the moment, any substantial capital project has to be financed from current budgets, and giving LHBs the ability to borrow could help to alleviate their financial pressures. The Minister previously has rightly made the point that, if you are going to borrow, you have to be able to provide a revenue stream to pay back that borrowing. I fully accept that point. The Welsh NHS does raise some of its income independently and, therefore, a revenue stream is available to pay back any borrowing. For example, we know that the Welsh NHS often charges rents to tenants on its estate and it charges rent to consultants for private practice.

[80] Figures obtained by the Wales Audit Office tell us that just under £325 million is raised independently by the Welsh NHS. That is a significant income stream that local health boards could use to borrow so that they can invest in their capital infrastructure. Therefore, given this potential revenue stream, I believe that we should provide local health boards with the option of accessing borrowing powers and that this should be incorporated within this piece of legislation. This Bill is the perfect opportunity to ensure that local health boards receive the appropriate support that they need, and allowing them the opportunity to borrow to finance capital projects will provide them with an additional tool to manage their finances.

[81] Let us not forget that NHS trusts in Wales already have borrowing powers subject to controls and limits contained in regulations. With regard to the effect of the specific borrowing power on the Welsh block, it will be for internal Government accounting arrangements to determine how the borrowing power would work in practice. The Minister has stated that he is open to looking at giving borrowing powers to local health boards, and this is a clear indication, therefore, that appropriate accounting arrangements can be put in place. We know that the Auditor General for Wales has expressed concern about the huge backlog of maintenance on the NHS estate—worth at least £395 million according to the latest finance report. Giving LHBs the ability to borrow might be one tool to help start tackling this backlog, as well.

[82] As I have said, the Minister has indicated that he is not against giving local health boards the power to borrow, but he thinks that this Bill is not the vehicle to introduce it. I

believe that he has suggested that he will introduce legislation to give local health boards the power to borrow at a later date. However, that could take another few years. My argument is that we have the chance right now to introduce borrowing powers for local health boards and I think that this Bill is the right vehicle to do so. I would urge Members to support this amendment.

[83] **Mike Hedges:** I have a number of different points. I still find it bizarre that people say that you need a revenue stream to borrow, but not to enter into long-term contracts. You can enter into a 30-year contract and you do not need a revenue stream, but if you borrow over 30 years, you do. That is a bizarre view, which seems to be owed very much to the fact that everybody just says it, but no-one has ever actually explained it in any way.

[84] I want to raise the FE college situation, where we are going to pass something on to FE colleges to try to move them further away from the Welsh Government to stop them counting against the Welsh Government's capital programme. FE colleges are set up as organisations outside of direct Welsh Government control, whereas the Minister, if he so wished—he might, on occasion—could sack every single member of every health board in Wales. They are wholly owned subsidiaries, in business terms, of the Welsh Government. So, I cannot understand how, if we gave them the power to borrow, it would not have the same effect as the WDA powers, which we have at the moment. Giving them the power to borrow is fine, but if it comes off the Welsh capital block, it is a meaningless power. The Welsh Government could borrow £100 million tomorrow using WDA powers and would just have £100 million taken off its capital block, so effectively, you do not actually generate any extra money.

[85] I do not understand why, if FE colleges, which are at least two steps removed from the Welsh Government, are in danger of being picked up as part of the Welsh capital block, NHS boards, which are half a step away from the Welsh Government and can be reorganised by the Welsh Government and can have all of these changes made by Welsh Government and are almost totally dependent on it for income, whereas FE colleges probably only get 65% or 70% of their money from the Welsh Government, would not be picked up, as well. So, if you give this power, all you are doing is giving either a meaningless power, or one that is going to have a negative effect.

[86] **Julie Morgan:** I support the idea that LHBs should have borrowing power. I can see in my own area where this would be of huge advantage, so I am pleased that you say that the Minister is sympathetic, in principle, to this happening. However, I think that we need a lot more debate and discussion about this and we have not had a first stage of this Bill where we could look into this in more detail. So, I am sympathetic to what is being proposed, but we need a bit more debate and discussion.

[87] **Peter Black:** It is not our doing that we have not had a Stage 1, of course. In terms of this power, I think that generally, in principle, everyone is agreed that it is useful for local health boards to have. The question is: what is the timing of giving them this power and in what form should it be given? In my view, this amendment is timely, because we have an opportunity to introduce it as part of this Bill. In terms of how it is set out, there are clear safeguards in terms of the Minister being able to set limits and accountability to ensure that health boards do not get carried away with using the power.

09:45

[88] I understand, as Mike Hedges, quite lucidly set out, that any borrowing undertaken by a local health board will apply against the Welsh block, and that is why it is important that the Minister has some control over that. However, we are entering a new era, where the Welsh Government will have borrowing powers that go beyond the Welsh block. Putting this in

place now will enable us to take advantage of that when that power comes to the Welsh Government. It will ensure that health boards are perfectly primed to borrow to take advantage of those new powers coming to us without having to wait for further legislation. For that reason, I think that this is the right time to put this in this Bill.

[89] **Simon Thomas:** Rwy'n cefnogi'r gwelliant hwn yn enw Paul Davies. Rwy'n meddwl hefyd bod Peter wedi rhoi ei fys ar y brif ddadl dros gyflwyno'r gwelliant yn awr, yn hytrach nag aros am gyfnod pellach. Ar un olwg, mae rhoi pwerau benthg i'r cyrff hyn yn edrych yn boncyrs, gan nad yw'r cyrff wedi bihafio'n arbennig o gall tuag at gynllunio ariannol yn y gorffennol. Fodd bynnag, gan ein bod yn symud at gyfnod newydd a gan bod y Llywodraeth yn dymuno symud i drin yr holl gyrff byrddau iechyd mewn ffordd llawer mwy aeddfed, lle mae cynllunio ariannol yn digwydd dros dair blynedd, mae gofyn i'r byrddau iechyd ystyried yn llawn sut maent yn mynd i gynllunio. Os ydych yn cynllunio dros dair blynedd, rydych i bob pwrpas yn estyn cynllunio dros bum mlynedd—rydych yn estyn ymlaen ac yn symud o'r feddylfryd bresennol flynyddol, sef chwilio am arian ar ddiwedd y flwyddyn, neu beth bynnag, i rywbeth llawer mwy synhwyrol ac aeddfed. Mae'r pŵer benthg yn dod yn rhan o hynny; byddai unrhyw gorff cyfrifol am gael hynny. Dyna yw'r holl ddadl, fel roedd Peter yn dweud, dros y ffaith y dylai'r Cynulliad a'r Llywodraeth gael y pwerau benthg hyn. Rydym yn gorff aeddfed sydd wedi dangos ei fod yn gallu ymdrin ag arian, felly dylem gael y pwerau i gydfynd.

[90] Yn anffodus, ni allaf dderbyn dadl Mike Hedges, ar wahân i'r pwynt diddorol ynglŷn â mynd i gytundebau tymor hir, sydd yn berthnasol, gan nad yw'r colegau yn gyfatebol yn y fan hyn. Yr hyn sydd wedi digwydd yn y fan honno yw bod yr ONS wedi newid y diffiniad o golegau. Nid ydym yn dymuno gwneud hyn, ac oherwydd hynny, mae perygl iddynt ddod ar lyfrau'r Llywodraeth, ac mae'r Llywodraeth eisiau cael gwared arnynt yn go glou. Mater arall yw hynny. Mae'r Llywodraeth eisoes wedi cymryd y penderfyniad polisi bod byrddau iechyd yn dod yn rhan ohoni. Cafodd wared ar ymddiriedolaethau, ac roedd yn benderfyniad polisi bod y byrddau iechyd yn dod yn rhan o lyfrau cyllidol y Llywodraeth. Felly, y cwestiwn yn awr yw sut rydym yn

Simon Thomas: I support this amendment in the name of Paul Davies. I also think that Peter put his finger on the main argument for bringing forward this amendment now, rather than waiting until a later stage. From one perspective, giving borrowing powers to these bodies seems bonkers, given that they have not been behaving particularly wisely in terms of financial planning in the past. However, as we are moving to a new regime and as the Government wants to move to deal with all the health boards in a far more mature way, where financial planning happens over a three-year period, there is therefore a requirement for the health boards to consider fully how they will plan. If you are planning over three years, to all intents and purposes you are extending it into a five-year period—you are rolling it on and moving from the current annual mindset, namely seeking funds at the end of the financial year, or whatever, to a far more sensible and mature position. Borrowing powers become an integral part of that; any responsible body would want those powers. That is the whole argument, as Peter said, for the Assembly and the Government to have these borrowing powers. We are a mature body that has shown that it can deal with financial issues, so we should have powers in accordance with that.

Unfortunately, I cannot accept Mike Hedges's argument, apart from the interesting point about entering into long-term contracts, which is relevant, because colleges do not correlate to this at all. What has happened there is that the ONS has changed the definition of colleges. We are not seeking to do that, and as a result there is a risk that they will come on to the Government's books, and the Government wants to take them off their books relatively quickly. That is another issue. The Government has already taken the policy decision that health boards would become part of it. It got rid of trusts, and it was a policy decision that the health boards should be on the Government's books. The question now is how we can give a reasonable amount of freedom to these

gallu rhoi'r rhyddid rhesymol i'r byrddau hyn gynllunio dros gyfnod hir, a defnyddio eu gwahanol arian—boed yn llif incwm, fel roedd Paul yn ddweud, neu arian o'r Llywodraeth—i gynllunio'r gwasanaethau gorau ar gyfer eu hardal. Rwy'n meddwl bod Julie Morgan wedi sôn yn benodol am hynny, achos roedd ganddi ysbyty benodol yn ei hetholaeth o dan ystyriaeth.

boards to plan over a longer term, and use their various funding sources—be it income flow, as Paul said, or Government funding—to plan the best possible services for their area. I think that Julie Morgan mentioned that point specifically, because I think she had a particular hospital in her constituency in mind.

[91] Mae'n gwbl briodol, felly, bod y byrddau iechyd yn cael pwerau benthyc, ac ni allaf weld y bydd cyfle gwell nag i roi'r pwerau iddynt yng nghyd-destun y Bil hwn, sy'n newid y ffordd mae cynllunio ariannol yn digwydd ymysg y byrddau iechyd.

It is entirely appropriate, therefore, that health boards should have borrowing powers, and I cannot see that there is a better opportunity to provide those powers in the context of this Bill, which changes financial planning among health boards.

[92] Y pwynt olaf yw bod y gwelliant eisoes yn diogelu hawl y Gweinidog i sicrhau, drwy reoliadau, nad yw'r pwerau hyn yn cael eu gordefnyddio, na'u defnyddio mewn ffordd annoeth.

The final point is that the amendment already safeguards the Minister's right to ensure, through regulation, that these powers are not over-used or abused.

[93] **Mark Drakeford:** I thank Paul Davies for stimulating debate around this matter from the first opportunity, when the Bill was discussed on the floor of the Assembly, and for the very detailed work that has gone into drafting the amendment that he has moved this morning. I think that all of that is a genuine contribution to our discussion around this issue.

[94] The Government cannot support the amendment because of, essentially, the argument that I have made previously; it probably has two main points to it. First of all, I still feel a responsibility for having gone to the Business Committee to make a case for the accelerated procedure that we are using, on the basis that this was a narrow Bill. The need not to have a Stage 1 was predicated on the fact that this committee and others had already had an opportunity to take evidence and to cross-examine witnesses, and so on, on the issue of a three-year planning horizon for local health boards. Although it is encouraging to hear three opposition parties agree on the basic principle of this, I still think that it would not be an act of good faith, with the proposition that we began, if I were suddenly to agree to extend the scope of the Bill into an area that has not been tested in Stage 1 proceedings, where no LHB, regulator or Minister has been called in front of any committee to give oral evidence on this possibility and to have that case tested through the Assembly's procedures. On the principle of borrowing powers, all three Members who have spoken have made a persuasive case as to why this is something that it would be worth looking at properly and in detail. Some of the complexity was highlighted in what Mike said. The principle is one that it is worth exploring, but some of the detail takes you into areas where that principle begins to come under a bit of pressure. Before the Government could commit to actual legislation, we believe that that would need to be done. So, I will say what I said before: there are further legislative opportunities that I hope to bring forward through the health portfolio. This is a matter that is now firmly on the agenda as a result of the discussions that we have had. I will want to explore this possibility in greater detail as part of any future opportunities there may be.

[95] **Jocelyn Davies:** Paul, would you like to respond to the debate?

[96] **Paul Davies:** Yes, thank you, Chair, Clearly, there is agreement in principle that LHBs should have the ability to borrow, but I am disappointed that the Minister has decided not to take this opportunity to grant borrowing powers now to local health boards. I believe

that this legislation is the perfect vehicle to grant LHBs borrowing powers, and I believe that it is more important than ever that LHBs have a variety of tools at their disposal to help to manage their finances. I appreciate that the Minister may look at introducing legislation on borrowing in the future, but that is a number of years away and LHBs require all the tools at their disposal now to deal with the financial challenges that they are facing. Therefore, I urge the Minister to reconsider his position and I urge Members to support this amendment.

[97] **Jocelyn Davies:** Paul, you obviously wish to proceed to a vote.

[98] **Paul Davies:** Yes, please.

[99] **Jocelyn Davies:** The question is that amendment 4 be agreed to. Does any Member object? I see that there is objection. Therefore, we will proceed to a vote.

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

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

Black, Peter
Davies, Jocelyn
Davies, Paul
Thomas, Simon

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

Chapman, Christine
Hedges, Mike
Jones, Ann
Morgan, Julie

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).

As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).

*Gwrthodwyd gwelliant 4.
Amendment 4 not agreed.*

[100] **Jocelyn Davies:** We have disposed of all of the amendments in group 4.

Grŵp 5: Cyflwyno Adroddiadau (Gwelliannau 5 a 6) Group 5: Reporting (Amendments 5 and 6)

[101] **Jocelyn Davies:** If neither amendment 5 nor 6 is agreed, then amendment 7 will fall. The lead amendment in this group is amendment 5, and I call on Paul Davies to move that amendment and to speak to the other amendment in the group.

[102] **Paul Davies:** I move amendment 5 in my name, supported by Peter Black.

[103] Amendments 5 and 6 have been tabled to ensure that the impact of this legislation is reviewed and that the Assembly is able to scrutinise its effectiveness. First, I am calling for Welsh Ministers to report to the Assembly on the effectiveness of this Bill after four years of its implementation, which will allow for a full three-year rolling period. I believe that this is a sensible and reasonable request that would provide the Assembly with the opportunity to study an entire cycle and to witness the effect of this legislation. It is crucial that this report addresses in particular the effect of this Bill on the financial duties of each LHB in Wales. Following that, I am calling for an annual report. I strongly believe that reporting back to the National Assembly for Wales on an annual basis should be required, so that the Assembly, not only the Welsh Government, can regularly scrutinise and review LHB plans. It is crucial that we establish transparency and accountability in this legislation, and I therefore hope that Members will support these amendments.

[104] **Peter Black:** I am happy to support both these amendments. Although there is clearly a principle already established that Welsh Ministers come to committees and report on their operations and the decisions that they take, and are scrutinised upon them, putting a clear duty in the Bill sends a message about how this particular Bill should be scrutinised. It also places a duty and obligation not just on this Minister, but on future Ministers, to report in this way. So, in principle, this is a valid and perfectly acceptable amendment that should be taken forward, and we should have that provision on the face of the Bill so that there is a clear mechanism set out through which reporting on how this is operating comes to committee on a regular basis.

[105] **Simon Thomas:** Rwy'n cytuno â'r hyn y mae Peter a Paul wedi ei ddweud. Mae'n edrych braidd yn gomig i roi ar wyneb Bil rywbeth sy'n digwydd beth bynnag yn y Cynulliad. Rydym yn galw Gweinidogion i bwyllgor ac yn trafod mewn pwyllgorau, ac mae proses i gynnal dadleuon gwrthbleidiau ac ati. Nid oes dwywaith na fydd craffu ar y cynlluniau hyn yn y Cynulliad yn gyson, ond rwy'n meddwl taw pwrpas gwelliant Paul Davies yw sicrhau bod neges yn mynd at y byrddau iechyd eu bod yn gorfod dangos aeddfedrwydd yn hyn o beth, gyda neges yn cael ei gyrru at Weinidogion y dyfodol hefyd ynglŷn â'r ffaith bod hwn yn rhywbeth sy'n dod yn rhan o'u hadrodd cyson i'r Cynulliad. Felly, ar y cyfan, rwyf am gefnogi'r gwelliant gan fod y Bil yn cyflwyno rhywbeth eithaf newydd i'r system. Felly, mae angen bod yn glir iawn am sut y bydd hyn yn cael ei adrodd yn ôl i'r Cynulliad cyfan.

Simon Thomas: I agree with the comments made by Peter and Paul. It looks a little comical to put on the face of the Bill something that already happens in the Assembly. We call Ministers to committee and we discuss issues at committee meetings, and there is a process for holding opposition party debates and so on. There is no doubt that these plans will be scrutinised regularly in the Assembly, but I think the purpose of Paul Davies's amendment is to ensure that a message is conveyed to the health boards that they will need to show maturity in this regard, with a message being sent to future Ministers about the fact that this is something that should be part of their regular reporting to the Assembly. Therefore, on the whole, I would support the amendment, as this Bill introduces something relatively new to this system. Therefore, we need clarity as to how that will be reported back to the Assembly as a whole.

[106] **Mark Drakeford:** I listened very carefully during the whole of the discussion of this Bill to the arguments that have been made about the need for a level of scrutiny to match the new processes and procedures that the new flexibility duty will provide. For that reason, I am persuaded by the arguments put forward by Paul Davies in respect of amendment 5. The Bill sets up a new financial framework, and amendment 5 sets out new scrutiny procedures to match that new set of processes. As I say, I have heard the arguments, and I am persuaded that putting that on the face of the Bill will secure the level of scrutiny that the Assembly is absolutely entitled to have. It will be on top of the level of scrutiny that the local health boards will already have in developing their own annual accounts, and we should not forget that the Bill provides a new provision for the Wales Audit Office to provide narrative reports within their accounts, which is another level of new scrutiny that will be available.

[107] As I had to say in relation to an earlier amendment from Simon, there are some technical changes to the wording of amendment 5 that the Government would like to make, to make sure that its terminology is consistent with the Bill and with the way that other legislative duties on Welsh Ministers to report to the Assembly are set out in other legislation. If the Member is content, I can give a commitment that the Government will bring back a Government amendment at Stage 3 and that we will do it in the same way—as I explained to Simon, we will share a draft as early as we can with Mr Davies, and if he is not satisfied with our draft, he would still be able to move his own amendment at Stage 3.

[108] Amendment 6 I feel differently about, as I think that it really does fall into the area that Simon Thomas mentioned. It is more or less a direct replication of section 37 of the Government of Wales Act 2006, but it introduces a new level of detail, which I think is not necessary and has not been found to be necessary in the way that section 37 has previously operated. So, the Government, persuaded by amendment 5, will bring forward its own version, but we are not persuaded by amendment 6, and therefore not by amendment 7, which goes with it.

[109] Chair, I would just briefly add something, because this will be the last chance to thank the committee for being willing to take Stage 2 of this Bill. I thank Members for the very constructive way in which our previous discussion and the debates have been conducted this morning.

[110] **Jocelyn Davies:** Paul, would you like to respond to the debate?

[111] **Paul Davies:** Thank you, Chair. I am very pleased that the Minister has confirmed that he will look to table similar Government amendments at Stage 3 in order to achieve the aim of my amendment 5 in this group. Given his assurances, I am happy to withdraw both of these amendments, because I think that amendment 6 is closely associated with amendment 5. I am therefore happy not to press them to a vote on the understanding that the Minister will introduce Government amendments at Stage 3, but I want to make it clear to him, of course, that if the Government amendments do not reflect the aims of my amendments, then I will look to retable my amendments at Stage 3.

10:00

[112] **Jocelyn Davies:** Paul Davies has indicated that he does not wish to proceed to a vote on amendment 5 and will withdraw it. Does any Member object? There are no objections.

*Tynnwyd gwelliant 5 yn ôl gyda chaniatâd y pwyllgor.
Amendment 5 withdrawn by leave of the committee.*

[113] **Jocelyn Davies:** Paul has also indicated that he does not want to move amendment 6. Does any Member object? There is no objection.

*Ni chynigiwyd gwelliant 6.
Amendment 6 not moved.*

[114] **Jocelyn Davies:** As a result of amendment 6 not being moved, amendment 7 falls.

*Methodd gwelliant 7.
Amendment 7 fell.*

[115] **Jocelyn Davies:** We have disposed of all the amendments in group 5, so, for the record, all sections of the Bill are now deemed agreed by the committee, and Stage 3 begins tomorrow. The deadline for tabling amendments will be notified to Members in due course. *[Interruption.]* Oh—we do not need that. Okay. There you are. We have concluded Stage 2 proceedings. Thank you very much, Minister. I think you have worked very well with the committee and we thank you for your consideration.

10:01

Papurau i'w Nodi
Papers to Note

[116] **Jocelyn Davies:** Members, we have a number of papers to note. We have the minutes of 23 October, 17 October and 9 October. Are all Members happy with them? We have a letter from the Minister for Health and Social Services about the National Health Service Finance (Wales) Bill, and a letter from the Minister for Education and Skills about the Education (Wales) Bill. Do all Members note those? I see that you do.

10:02

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod**
**Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Meeting**

[117] **Jocelyn Davies:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).

[118] I see that all Members are content.

Derbyniwyd y cynnig.
Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 10:02.
The public part of the meeting ended at 10:02.