National Assembly for Wales
Constitutional Affairs Committee

Supplementary Report on the proposed Local Government (Wales) Measure

March 2011

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Constitutional Affairs Committee

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Constitutional Affairs Committee

The Constitutional Affairs Committee must consider and report on any of the matters set out in Standing order 15.2 and may consider and report on any of the matters set out in Standing orders 15.3, and 15.6.

Powers

The Constitutional Affairs Committee was established in June 2007 (as the Subordinate Legislation Committee). Its powers are set out in the National Assembly for Wales' Standing orders, particularly SO 15. These are available at www.assemblywales.org

Committee membership

Committee Member	*Party*	*Constituency or Region*
Janet Ryder (Chair)	Plaid Cymru	North Wales
Alun Davies	Labour	Mid and West Wales
William Graham	Welsh Conservatives	South Wales East
Rhodri Morgan	Labour	Cardiff West
Kirsty Williams	Welsh Liberal Democrats	Brecon and Radnorshire

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Recommendation 2. We recommend that the Business Committee considers whether there is a need for clearer guidance to Members on whether amendments fall within the scope of a Measure and within the general principles agreed at Stage 1. **page 15**

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Recommendation 4. We recommend that the Government should consider whether replacing the new provisions with ones that would provide them instead with a power to compel collaboration, would not be a better way of meeting their overall objective of service improvement. **page 19**

In the event of the amendments not being withdrawn or replaced, we make the following additional recommendations:

Recommendation 5. We recommend that the proposed Measure is amended so that words to the effect of "in the area concerned" are added to amendment 91(1). **page 21**

Recommendation 6. We recommend that the proposed Measure is amended so that the meaning of "effective local government" in

amendment 91(2) is clearly defined on the face of the Measure and clearly restricted to the context of the power to amalgamate councils set out in the amendment. **page 21**

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Recommendation 11. We recommend that the Measure is amended to include a specific requirement to consult organisations or interests outside the areas immediately affected by the proposal to amalgamate. **page 24**

The Committee's Role

Standing Orders

1. The Constitutional Affairs Committee may consider and report on:

   - 'the appropriateness of provisions in proposed Assembly Measures .....that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General'[1].
   - 'any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers'[2].

2. The purpose of this report is to:

   - inform the Assembly's Stage 3 consideration of the proposed Measure in relation to Government amendments agreed in Stage 2 Committee, which grant powers to the Welsh Ministers to amalgamate local authorities by order; and
   - to consider whether the amendments in question raise any matters of a general nature that Ministers and the Assembly may wish to take into account when considering any future proposed Measures or Bills.

[1] Standing order 15.6(ii)
[2] Standing order 15.6(v)

Background

Introduction of the Measure and Stage 1 Consideration

3. The Proposed Local Government (Wales) Measure was introduced on 12 July 2010 by Carl Sergeant AM, Minister for Social Justice and Local Government and was followed by a legislative statement on 13 July 2010.

4. The proposed Measure was referred to Legislation Committee No. 3 for stage 1(general principles) consideration. The Committee reported on the general principles of the proposed Measure on 16 December 2010.[3] The Finance Committee[4] and the Constitutional Affairs Committee[5] also considered the Measure and took oral evidence from the Minister. They reported to the Assembly on 9 and 15 December respectively.

5. None of the Committee reports offered any fundamental criticism of the proposed Measure and indeed were broadly supportive and welcoming.

6. The Assembly debated and agreed the general principles of the proposed Measure on 11 January 2011.[6]

Stage 2 Consideration

7. Following the Assembly's agreement to the general principles of the proposed Measure, detailed consideration of the proposed Measure and any amendments proposed to it (Stage 2), began on 12 January.

8. The Minister, Carl Sergeant, tabled 47 amendments to the proposed Measure on behalf of the Government on 25 January. A further 43 amendments were tabled by other Assembly Members on 26 January. These amendments were in respect of parts of the proposed Measure that had been subject to consideration during Stage 1. This report does not concern itself with these amendments.

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[3] Proposed Local Government (Wales) Measure - Stage 1 Committee Report – Legislation Committee No. 3 - December 2010

[4] Report on the financial implications of the Proposed Local Government (Wales) Measure - Finance Committee - December 2010

[5] Report on the Proposed Local Government (Wales) Measure - Constitutional Affairs Committee - December 2010

[6] Record of Proceedings - Tuesday, 11 January 2011 - General Principles of the Proposed Local Government (Wales) Measure

9. On 27 January the Minister tabled a further 13 amendments. The effect of these amendments was to insert a new part into the proposed Measure that would provide a power to the Welsh Ministers to establish new local authorities by amalgamating two or three existing authorities. The amendments set out the circumstances in which the powers to make such amalgamations could be used, the procedures for doing so and a number of ancillary matters including any revised electoral arrangements that would apply. The admissibility of these amendments was considered by the Presiding Officer, who ruled that they were admissible.

The Amendments Proposed

10. **Amendment 91** introduces the **power to make amalgamation orders** by amalgamating two or three principal local authorities. The power can only be used if Ministers are satisfied that effective local government is not likely to be achieved, in one of the local government areas concerned, by the use of its powers to secure continuous improvement, and where necessary achieve collaboration, between local authorities, which were given to local authorities and Ministers under the Local Government (Wales) Measure 2009.

11. The amendment also sets out a range of matters that must be provided for in relation to any new authority created by an amalgamation order, including its name, whether it is to be a county council or a county borough, boundaries, winding up and dissolution.

12. **Amendment 92** allows the amalgamation order to make provision for a range of **electoral matters** including the total number of members, ward boundaries and numbers of councillor for each ward, names of wards, cancellation of elections, election of a mayor, the appointment by Welsh Ministers of a shadow authority and its functions.

13. Where one of the existing authorities operates a mayor and cabinet executive system **amendment 93 requires a shadow authority to hold a referendum** on whether the new local authority should do likewise.

14. **Amendment 94** provides the Welsh Ministers with **powers to direct a shadow authority to hold a referendum** in certain circumstances and related provision.

15. **Amendment 95** gives Ministers **powers to make ancillary provision** by regulation for the purposes of or in consequence of amalgamation orders or to give full effect to such orders. Among the range of matters covered are transfers of property and staff.

16. It should be noted that regulations under this section may be of "general application", that is they could set out arrangements for a number of amalgamations, including ones that had not been yet been proposed.

17. **Amendment 96** allows the Welsh Minister to direct the Local Government Boundary Commission for Wales to **review electoral arrangements** for a new local government area.

18. **Amendment 97** makes consequential amendments to the Local Government Act 1972.

19. **Amendment 98** sets out a **super affirmative** procedure to be followed by the Welsh Ministers in making any amalgamation order. The procedure would involve the following steps:

- A requirement to consult "such persons as appear to them to be representative of persons or interests affected by the proposals". This does not include a specific requirement to consult the local authorities concerned.
- A requirement, following consultation to lay before the Assembly a document explaining the proposals, a draft of the order and details of the consultation.
- A 60 day period before a final draft order can be laid before the Assembly.
- A requirement for the Welsh Ministers to consider any further representations made during the 60 day period. This could include any recommendations made by Assembly Committees or individual Assembly Members.
- A requirement for the Welsh Ministers to set out details of the representations they have received and any changes made to the draft order laid originally.

20. **Amendments 99-103** make other consequential and interpretive changes to the Measure.

21. The amendments are attached as Annexe A and were considered by Legislation Committee 3 on 9 February and were agreed.

Decision to take Further Evidence

22. The Constitutional Affairs Committee has not previously taken further evidence about a proposed Measure once it has reported during Stage 1. However, in the view of Committee Members, the amendments introduced a significant new subordinate legislation procedure, which neither the Constitutional Affairs Committee, nor any other Assembly Committee, had the opportunity to scrutinise at Stage 1.

23. The amendments also appeared to raise issues of a more general legislative nature about the policy processes behind the amendments and the scrutiny arrangements for considering them.

24. In the light of this, the Committee agreed to invite the Minister for Local Government and Social Justice to provide further oral evidence on the amendments and the policy development that lay behind them.

25. The Committee published recently the report of its Inquiry into lessons to be learned from the drafting of Welsh Government Measures in the third Assembly[7]. This included recommendations around the rigour of the Welsh Government's policy clearance process as well as principles for considering the appropriateness of the procedure for scrutinising legislation.

26. The Wales Governance Centre had contributed to that Inquiry so were asked to provide the Committee with written and oral evidence about the amendments, looking in particular at:

- the fact that the powers were to be exercised by order;
- the appropriateness of the procedure to be used for making any order;
- whether the amendments provided enough detail about the circumstances in which the power to make such an order might be used;

[7] "Inquiry into the Drafting of Welsh Government Measures: Lessons from the first three years" Constitutional Affairs Committee – February 2011

- whether the amendments provided sufficient clarity about the practical arrangements that might apply to any amalgamation of authorities; and
- the relatively late stage at which the Government was introducing, what appear to be amendments of such significance and substance;

27. The Wales Governance Centre provided the Committee with a paper for its meeting on 3 February. They also attended the meeting to give Members the opportunity to ask questions about their paper. Following their appearance on 3 February they also provided a further paper. Their written and oral evidence is attached to this report as Annexes B-D.

28. The Minister for Social Justice and Local Government attended the Committee's meeting on 10 February to answer questions from Members. As the time available on the day was relatively limited, he also agreed to provide written answers to questions that were not asked at the meeting. The Record of Proceedings for 10 February, the Committee's written questions to the Minister and his response are attached as Annexes E-G.

Constitutional Affairs Committee Consideration

29. We have considered the additional evidence that we have received and have reached agreement on a number of conclusions and recommendations. These are set out below.

Policy Background, Timing and Procedure

30. In our report on the lessons to be learned from the first three years of Drafting Welsh Government Measures we expressed the view that:

> "…there needs to be more rigour in the policy development process, particularly in terms of wider external challenge to policies before they become legislative propositions."[8]

31. We went on to argue for the publication of detailed policy proposals before new laws are introduced[9].

32. It is not a matter of dispute that, before the Government tabled them on 27 January, there had been no prior consideration of the amendments or of what they sought to achieve by Assembly Committees or the Assembly. It is also not disputed that there had been no consultation with any outside organisation before the amendments were published. While the Welsh Local Government Association may have been given some advance notice of the proposals, it is clear from their published remarks[10] and from the Minister's answers to our question that this did not constitute meaningful consultation.

33. It is also not a matter of dispute, irrespective of whether there are adequate controls on how the new powers are used, that the amendments introduce significant additional powers for Welsh Ministers, which go into new areas. We accept the current Minister's assurance that he has no intention of using them for the purpose of a general reorganisation of local government. We also agree that they are probably not a particularly effective way of doing so, but the fact remains that these powers could, if there was a will, be used to redraw the local government map of Wales.

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[8] Ibid Paragraph 14
[9] Ibid Paragraph 15
[10] Welsh Local Government Association, *WLGA warns of the dangers of an 11th hour approach to legislation*, Press Release, 27 January 2011.

34. We believe it is neither good practice nor good policy to seek powers of this level of significance at short notice, without proper consultation, with inadequate explanation of why the powers are being sought, how they will work in practice, what they will cost and why alternative approaches could not achieve the same ends. Such an approach can lead to suspicions about hidden agendas and makes proper scrutiny harder to achieve.

35. To avoid this sort of criticism arising in future, we believe there is a need to strengthen the Welsh Government's guidance to Ministers and their Departments in this area. The Wales Governance Centre drew our attention to UK Cabinet Office Guidance on procedures and policy for introducing policy changes to a UK Government Bill after it has been introduced.[11] There appears to be no similar guidance available to Welsh Ministers.

36. While we would not expect the Welsh Government to follow Whitehall practice slavishly, the absence of guidance leaves a vacuum and is not desirable. In this case, such guidance would, at the very least, have facilitated an objective test of reasonability in relation to the timing of the Government's submission of these amendments. Going forward, such published guidance would help concentrate the minds of Ministers and officials as to whether introduction of amendments of this significance might be considered reasonable by the Assembly.

Recommendation 1 - We recommend that the Welsh Government considers the Cabinet Office guidance "Guide to Making Legislation" and draws up and publishes as a matter of urgency its own guidance on these matters, including its procedural advice to Departments on the introduction of amendments after initial introduction of a Measure.

37. While the Minister has made the valid point that he has complied with the Assembly's procedural requirements in submitting these amendments, this is not the same thing as being the wisest course of action. What it turns on is whether the content of the new amendments submitted, both in this and in future cases are truly an extension to what is already in the draft measure or are really new issues being tagged on as an afterthought but which are not actually natural extensions of the proposed Measure. In the light of this

[11] http://umbr4.cabinetoffice.gov.uk/making-legislation-guide/drafting_the_bill.aspx,

particular example, the Assembly may wish to consider whether its own standing orders and procedures could beneficially be amended to secure greater clarity about what can legitimately be considered to be within the scope of a Measure.

Recommendation 2 - We recommend that the Business Committee considers whether there is a need for clearer guidance to Members on whether amendments fall within the scope of a Measure and within the general principles agreed at Stage 1.

The Principle of Abolishing Statutory Bodies by Order

38. The Wales Governance Centre's evidence argued, that to keep in line with UK Cabinet Office Guidance, controversial matters are best dealt with on the face of legislation. The Assembly can thereby consider them once as a matter of principle rather than having to return to them each time individual delegated legislation falls to be considered. This would also enable amendments to be considered as opposed to the ultimately 'take it or leave it' approach of subordinate legislation. They also suggested that bodies that have been created by statute should always be abolished by statute.

39. We agree that both of these propositions are worthy of consideration as guiding principles when drawing up legislation. Local Authorities themselves are democratically elected and although no functions are being removed from local authorities, a particular sensitivity will always be seen to apply to amalgamation of one democratically elected body with another, a sensitivity that is greater than in the case of other crown bodies such as 'quangos'. This has particular force, when the legislative proposition under consideration has not formed part of an election manifesto or an agreed programme for Government, voted on in the Assembly.

40. We are not convinced that these principles are or should become a rigid rule. For instance, there may be occasions when a phased approach to a programme of reform may lends itself to using subordinate legislation rather than primary legislation. Similarly, where Governments have a clear mandate for change, subordinate legislation powers may offer the most practical way forward.

41. The Minister himself offered us some examples of where statutory bodies have been or can be abolished by order. The Public

Bodies Bill[12] currently before Parliament, the Local Government and Public Involvement in Health Act 2007[13] and the Government of Wales Act 1998[14] were all given as specific examples. However, we are not convinced that any of the examples cited are completely analogous to these proposals.

42. The Public Bodies Bill is not yet law and has been criticised by the Constitution Committee of the House of Lords. The Committee said:

> "When assessing a proposal in a Bill that fresh Henry VIII powers be conferred, we have argued that the issues are 'whether Ministers should have the power to change the statute book for the specific purposes provided for in the Bill and, if so, whether there are adequate procedural safeguards'.[5] In our view, the Public Bodies Bill [HL] fails both tests."[15]

43. We understand that the UK Government has now responded to the Committee's report and has decided to withdraw proposals that bodies and offices can be abolished by Ministers using subordinate legislation.[16]

44. It is true that the Local Government and Public Involvement in Health Act 2007 allows the responsible Secretary of State to implement proposals for structural or boundary changes to local authorities by order. However, these powers are subject to the limitation that any proposals must be instigated by local authorities themselves.[17] This is very different to the powers being sought in the current Measure where the initiative lies solely with the Welsh Ministers.

45. As to the Government of Wales Act 1998, it followed a referendum, which created a democratic body and abolished the post of Secretary of State. Again, this is a relatively thin precedent for what is proposed now.

46. Although we are not in principle opposed in all cases to the abolition by order of statutorily created bodies, in this case, we believe

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[12] Public Bodies Bill [HL] 2010-11
[13] Local Government and Public Involvement in Health Act 2007 c. 28
[14] Government of Wales Act 1998 c. 38
[15] HL Constitution Select Committee, *Public Bodies Bill* [HL], Sixth Report 2010-2011, November 2010
[16] House of Lords Hansard – Public Bodies Bill[HL] Committee 7th Day 28 February 2011 – Column 798-800
[17] Local Government and Public Involvement in Health Act 2007 c. 28

there is a need for more consultation and consideration to allow a rounded judgement to be made about their appropriateness. We are also concerned that, as drafted, they are insufficiently precise about the restrictions on the type of circumstances in which they could be used.

47. We do not therefore feel that we are able to make a judgement at this point on whether it is reasonable to exercise these powers by order. Given the lack of time available for consideration and consultation for these proposals and that they relate to democratically elected bodies established by statute, and although they do not remove any functions from local government, we believe it would be better to substitute these proposals with improved versions which would achieve the Government's aims in a more measured and considered way.

Recommendation 3 - We recommend that the Government considers whether its aims could be better achieved as regards the amendments concerned in this Measure by substituting them with the wording suggested in following paragraphs and consulting appropriately on the reframed amendments.

The Policy Development behind the Power to Amalgamate

48. Legislation Committee 3 in their Stage 1 report on the Measure said.[18]

> "413. The Local Government (Wales) Measure 2009 gives Welsh Ministers the power to direct collaboration and compel local authorities to work together where they are failing in their duty to secure continuous improvement in the exercise of their functions. **Given the drive towards collaboration across public services generally, we believe that the proposed Measure needs to be strengthened to provide a more effective tool to compel collaboration in circumstances beyond the current limited powers in the 2009 Measure. We recommend that the Minister seeks ways of addressing this issue and strengthening the proposed Measure to look at other circumstances where the Minister may want to compel local authorities to collaborate.**"

[18] "Proposed Local Government (Wales) Measure Stage 1 Committee Report" Legislation Committee No. 3 - December 2010

49. The Minister made it as clear as he could to us that it is not his intention to use these powers to bring about a general or even widespread reorganisation of local government in Wales. We accept his assurances on that point.

50. The Minister's position seems to be that the proposals contained in the Government's amendments are an additional tool that would allow him or future Ministers to amalgamate Councils where one of them was unreasonably failing to collaborate with another Council or where a Council was failing to improve. The powers would be used only where the powers provided by the 2009 Measure had not worked or Ministers believed they were not likely to work. As such, the amendments are a response to the Legislation Committee's recommendation set out above as well as a response to a discussion in the Assembly's Health, Wellbeing and Local Government Committee in June 2009 when the Minister was asked to look at a model of how greater collaboration could be achieved.

51. Although the Minister talked of failing councils and the need to move quickly to address such situations, in answer to our questions, it became clear that this was not the main intention behind his proposals. Paragraphs 71 to 80 of his oral evidence make clear that his main intention is to compel greater collaboration, or to compel councils to improve where they are currently failing to improve, rather than address absolute or catastrophic failure. In answer to later questions (see paragraphs 112 to 124) the Minister estimated that six to seven months might be needed to get an amalgamation order approved, which again suggests that these powers were not intended to cover instances of genuine emergency.

52. We remain to be convinced that Legislation Committee 3 had in mind a power to amalgamate councils when they recommended strengthening the power to collaborate. However, we take the Minister at his word that this was his understanding of their recommendation and that these amendments are, in part at least, a response to it.

53. These amendments seem to us, therefore, to provide what is essentially a big stick with which to threaten Councils if they are failing to collaborate or improve. The powers would seem to be far too cumbersome a solution in the case of a genuine emergency, for example where an outright collapse of children's services might put lives at risk. As presently drafted, they could provide a way to

substantially reorganise local government by the back door. While we accept that this is not what lies behind the amendments, the issue is whether the safeguards are sufficiently strong to prevent such a use of them in the future, given that the current Minister's assurances cannot bind future Ministers or Governments.

54. Whether a threat to amalgamate councils is the most appropriate way of achieving collaboration and driving improvement is a matter for the political process rather than for us to consider. We are concerned that amalgamation, or the threat of it, did not fall within the range of possible policy options that were considered in this Measure to improve and collaborate from the outset. Nor was this solution proposed by anyone who gave evidence at Stage 1.

55. We have already outlined our concerns that these amendments have been introduced late in the legislative process with little consultation or explanation. We have made it clear that we do not believe this to be good practice and that there is a need to tighten procedures in this respect in future.

56. While we are expressing concerns about the way the amendments have been brought forward on this occasion, we believe it would have been reasonable for Ministers to secure stronger reserve powers to compel local authorities to collaborate in specified circumstances, related to the service improvement agenda. We believe this would have been more aligned with the overall intention of the Measure and was the point that was specifically considered and recommended by the Legislation Committee and the Assembly at Stage 1.

Recommendation 4 - We recommend that the Government should consider whether replacing the new provisions with ones that would provide them instead with a power to compel collaboration, would not be a better way of meeting their overall objective of service improvement.

The Precedent Created by these Amendments

57. As we make clear elsewhere, we accept the Minister's assurance that these amendments will not be used by him to effect a widespread reorganisation of local government in Wales by the back door (while also noting that he cannot bind the actions of future Ministers). We also accept that the amendments have been submitted as subsidiary to

the main thrust of the Measure in line with the Assembly's own procedures. The Minister has also argued that these amendments are simply another tool available to him to help push local authorities to collaborate for the purposes of service improvement.

58. Nevertheless, we believe the Government needs to be aware that for many in local government in Wales, these amendments do appear to introduce wholly new matters that are simply not subsidiary to the original thrust of the Measure.

59. It is arguable that the relatively late stage submission of these amendments to the Measure, without consultation and without proper explanation, could set a precedent that will encourage other Ministers in succeeding administrations to justify similar actions in future, quoting this present set of amendments as the authority for doing so.

60. **We want there to be no doubt whatsoever that this is a precedent that future governments should be firmly deterred from using, except in extremis.**

Amendments Tabled

61. Whatever our views, the fact is that the amendments were agreed in Stage 2 Committee and there is, therefore, every chance that they will, either in their current form or following further amendments at Stage 3, form part of the Measure if passed.

62. In the light of this, we have considered whether, if this proves to be the case, how the powers agreed at Stage 2 Committee might be improved to allay some of the concerns about the amendments.

Power to make Amalgamation Orders

Geographic Limitation

63. One of the matters that can encourage a suspicion that the power to amalgamate may be used to re-organise local government more generally by the 'back door' than the current Minister intends is the absence of a geographic limitation on the words "effective local government". The addition of words such as "in the area concerned" or words of similar effect would help to dispel concerns that the meaning is really 'effective local government (in Wales)'.

Recommendation 5 - We recommend that the proposed Measure is amended so that words to the effect of "in the area concerned" are added to amendment 91(1).

Meaning of "effective local government"

64. In our view, the key part of amendment 91 is subsection (2), which specifies that before making an amalgamation order, Ministers have to be satisfied that "…effective local government is not likely to be achieved in a local government area…" through the use of Ministers' powers under sections 28, 29, 30 or 31 of the Local Government (Wales) Measure 2009 (or by local authorities using their powers under section 9 of that Measure).

65. The Minister told us that the term "effective local government" is a standard one used in local government legislation dating back to the Local Government Act 1972. What he was unable to tell us is precisely what is meant by this term or what criteria will be used to judge whether an authority is providing "effective local government" or not. We were, however, pleased to note that the Minister appeared willing to consider changes in this area to clarify the meaning.

66. Given the rather draconian nature of the powers that would be used if a council is deemed to be ineffective, it is in our view also essential that a statement of principles or criteria against which "effectiveness" will be judged is set out clearly on the face of the Measure.

Recommendation 6 - We recommend that the proposed Measure is amended so that the meaning of "effective local government" in amendment 91(2) is clearly defined on the face of the Measure and clearly restricted to the context of the power to amalgamate councils set out in the amendment.

Meaning of "not likely to be achieved"

67. We have similar concerns about the use of the phrase "not likely to be achieved", particularly when used alongside "effective local government". Again, we were pleased to note that the Minister is prepared to consider bringing forward amendments at stage 3 to clarify the meaning of "not likely" in this context.

68. Our preference would be for the Measure to be amended so that Ministers would have to be satisfied that "effective local government [however defined] has not been achieved" before they could make an amalgamation order. However, the key point for us it that at the least the very loose term "likely" needs to be further clarified on the face of the Measure.

Recommendation 7 - We recommend that the proposed Measure is amended so that the meaning of what has to be achieved in amendment 91(2) is clearly defined on the face of the Measure and also restricted to the context of the power to amalgamate councils set out in the amendment.

69. In our view the concerns of those who may see these powers as a mechanism for significant local government reorganisation would be considerably reduced if there was greater clarity around these two terms.

Effect on other local authorities

70. As currently drafted, there is no requirement for Ministers to consider what effect making an amalgamation order would have on the other councils involved in an amalgamation, which are not considered to be ineffective.

71. While the thinking behind these amendments may be that amalgamation would drive up standards or performance in the area covered by the former recalcitrant authority, there must be at least an equal chance that performance in the other, formerly effective, authorities would be dragged down. Less simplistically, the likelihood is that there would be an impact on performance in all the former authority areas, possibly in complex ways that may be difficult to predict. At the very least it could involve the diversion of valuable resources into the amalgamation process.

72. We are of the view therefore that the requirement for Ministers to be satisfied in relation to "a local government area" should be balanced by a requirement to have regard to the impact of an amalgamation on the local authorities that are not considered to be ineffective.

Recommendation 8 - We recommend that the proposed Measure is amended to include a requirement for Ministers to have regard to

the impact of a forced amalgamation on each local authority that is affected.

Consultation Requirements

Local Authorities Involved

73. Amendment 98(2) sets out the procedure that must be followed to make an amalgamation order, including consultation arrangements. The amendment says that "Ministers must consult such persons as appear to them to be representative of persons or interests affected by the proposals." This seems to leave a very considerable discretion to Ministers around who they should consult.

74. In our view, it is inconceivable that the Government would not consult the local authorities affected by a proposal to amalgamate, or community councils in those areas. However, we believe the consultation provisions would be strengthened considerably by a specific requirement on the face of the Measure to consult these bodies.

Recommendation 9 - We recommend that the Measure is amended to include a specific requirement to consult the local authorities that are subject to a proposed amalgamation order, as well as any community councils within their boundaries.

Community and Voluntary Bodies

75. We also believe that other community bodies, particularly in the voluntary sector, should be consulted and that there should be specific reference to this on the face of the Measure.

Recommendation 10 - We recommend that the Measure is amended to include a specific requirement to consult community bodies and voluntary sector organisations operating within the boundaries of the local authorities that it is proposed should be amalgamated.

Consultation with wider interests

76. Apart from the localities concerned, there are also likely to be impacts on a wider area. For instance, in relation to fire or police services, transport providers or where a local authority is sharing services or service delivery arrangements with bodies that are not part of the amalgamation proposal. To ensure that the consultation takes

account of these wider considerations, we believe the Measure should be amended to make consultation with these interests a specific requirement.

Recommendation 11 - We recommend that the Measure is amended to include a specific requirement to consult organisations or interests outside the areas immediately affected by the proposal to amalgamate.

Use of Super-affirmative Procedure

77. Amendment 98 sets out the procedure that will be followed if an amalgamation order is proposed. It is a super-affirmative procedure. This means that after initial consultations, the government must, if it wishes to proceed, lay a draft order and then allow a period of 60 days (when the Assembly is sitting) for further consultation. This would also allow time for Assembly Committees to consider the draft order.

78. The Government would then be obliged to consider representations it receives before laying final proposals. The final proposals may take account of any representations received and must be accompanied by details of these representations.

79. After a further 20 day period and an opportunity for the final draft order to be scrutinised by the Constitutional Affairs Committee, the order must be agreed by a vote of the whole Assembly, and this would usually be preceded by an Assembly debate on the order.

80. We accept that the super-affirmative procedure is a rigorous and time consuming one. While everyone appears to be agreed that this would not be the appropriate route to go down in dealing with urgent service breakdown or disastrous failure, it is the appropriate protective scrutiny procedure for the Government to follow in the case of amalgamation powers of the kind the Government is proposing.

81. However, the super-affirmative procedure should not be viewed as a panacea. The power to propose an order, to frame the consultation, analyse the responses and, if they wish, amend the order all rest with the Government. Once the Government has laid the final draft of an order there is no further opportunity for amendment and the amount of time allowed for debate is also wholly in Government hands.

Whether the order is then approved by the Assembly is at this stage on an unamendable 'all or nothing' basis.

Other matters

82. In addition to the matters we have dealt with specifically above, the amendments proposed by the Government include provisions about a range of other matters. These include matters that are far from trivial, such as electoral boundaries, numbers of councillors, cancellation of elections, staff and property transfers, the creation of shadow authorities and the possibility of referenda about whether there should be elected mayors. There are also consequential amendments to Acts of Parliament and we are conscious that there has been no information supplied or considered on the financial aspects of the amendments.

83. In the time available to us we have been unable to scrutinise any of these issues in detail. Although each amendment was considered by the Legislation Committee at Stage 2, the absence of any explanatory documentation from the Government, the inability of a Stage 2 Committee to consult outside bodies or take evidence from them, is likely to mean that consideration at Stage 2 was neither as informed by external challenge nor as deep a level of scrutiny as at Stage 1. We believe that these are further reasons why it would be better to give more considered scrutiny to these amendments than has been possible in this instance.

Legislating for future Governments

84. During the course of the evidence session with the Minister, it was put to us that part of the reason for introducing these amendments was:

> "…so that the next Assembly Government could use those powers if it wished rather than our creating a process that meant that no such amalgamation or mergers could take place until, probably, well into the next Assembly…"[19]

85. We have also had drawn to our attention a letter from the Minister to the Chair of the Finance Committee about the amendments. A copy of this letter is at Annexe H. The Minister appears to make the same underlying assumption when he says:

[19] See Annex E Para 22

> "To save money and protect frontline services, we need the tools to make this happen.
>
> The Local Government Measure provides us with a timely opportunity to secure powers which, it has become obvious, are necessary. If we did not take the opportunity to introduce the amendments at this stage, we would need to start the whole process of timetabling and introducing a new Measure following the elections in May. This is likely to take another 12 months– it is conceivable these powers may need to be used before then."

86. It should not be presumed either by Civil Servants or Ministers, just before an election, that a newly elected successor Government would necessarily wish to adopt the policies of its predecessors. It is perfectly possible for there to be carryover from one administration to the next, either because the same party or parties win a majority or because the issue is one involving a high degree of non-party non-controversial support but none of this can be assumed.

87. We wish to place on record our thanks to the Wales Governance Centre for preparing a paper for the Committee at extremely short notice and for attending our meeting on 3 February and answering our questions. We also wish to thank the Minister, Carl Sargeant, and his officials for attending our meeting on 10 February to answer questions and for his comprehensive answers to our written questions.

Annexe A – Amendments Tabled on 27 January

NOTICE OF AMENDMENTS

Tabled on 27 January 2011

Proposed Local Government (Wales) Measure

Carl Sargeant **91**

To insert a new Section—

'( ) Power to make amalgamation order

(1) The Welsh Ministers may, if they are satisfied that it is necessary to achieve effective local government, make an order ("an amalgamation order") for the constitution of a new local government area by amalgamating two or three local government areas.

(2) Before making an amalgamation order, the Welsh Ministers must be satisfied that effective local government is not likely to be achieved in a local government area to be amalgamated by the order by—

(a) the exercise by any of the local authorities concerned of their powers under section 9 (Powers to collaborate etc) of the Local Government (Wales) Measure 2009, or

(b) the exercise by the Welsh Ministers of their powers under—

(i) section 28 (Welsh Ministers: support for Welsh improvement authorities),

(ii) section 29 (Welsh Ministers: powers of direction etc),

(iii) section 30 (Powers of direction: collaboration arrangements), or

(iv) section 31 (Powers of Welsh Ministers to modify enactments and confer new powers)

of that Measure."

(3) An amalgamation order must provide for—

(a) whether the new local government area is to be a county or a county borough,

(b) the English name and Welsh name of the new local government area,

(c) the establishment of a local authority for the new local government area,

(d) whether the new local authority is to be a county council or county borough council,

(e) the English name and Welsh name of the new local authority,

(f) the abolition of the existing local government areas,

(g) the boundary of the new local government area, and

(h) the winding up and dissolution of the local authorities for the existing local government areas.

(4) Where the new local government area is to be a county, the amalgamation order must provide for the new local authority to have the name of the county with the addition—

(a) in the case of their English name, of the words "County Council" or the word "Council" (as in "Pembrokeshire County Council" or "Pembrokeshire Council"); and

(b) in the case of their Welsh name, of the word "Cyngor" (as in "Cyngor Sir Penfro").

(5) Where the new local government area is to be a county borough, the amalgamation order must provide for the new local authority to have the name of the county borough with the addition—

(a) in the case of their English name, of the words "County Borough Council" or the word "Council" (as in "Caerphilly County Borough Council" or "Caerphilly Council"); and

(b) in the case of their Welsh name, of the words "Cyngor Bwrdeistref Sirol" or the word "Cyngor" (as in "Cyngor Bwrdeistref Sirol Caerffili" or "Cyngor Caerffili").'.

Carl Sargeant **92**

To insert a new Section—

'( ) Electoral matters

The provision that may be made in an amalgamation order includes (but is not limited to) provision for or in respect of any of the following matters—

(a) the total number of members of any local authority ("councillors");

(b) the number and boundaries of electoral areas for the purposes of the election of councillors;

(c) the number of councillors to be returned by any electoral area;

(d) the name of any electoral area;

(e) the election of councillors for any electoral areas;

(f) the cancellation of elections of councillors for any electoral area;

(g) the election of community councillors for any community;

(h) the cancellation of community council elections;

(i) the election of a mayor of a local authority;

(j) the appointment by the Welsh Ministers of members of an existing local authority to be members of a shadow authority for a shadow period;

(k) the appointment for a shadow period of an executive of the shadow authority;

(l) the functions of a shadow authority, and the discharge of those functions, during a shadow period.'.

Carl Sargeant **93**

To insert a new Section—

'( ) Requirement to hold a referendum involving an elected mayor

(1) Where one or more of the existing local authorities is operating a mayor and cabinet executive, the amalgamation order must require the shadow authority to hold a referendum on whether the new local authority should operate a mayor and cabinet executive.

(2) Where subsection (1) applies, the provision which may be made in an amalgamation order includes (but is not limited to) provision—

(a) as to the date on which, or the time by which, a referendum must be held;

(b) as to the action which may, or may not or must be taken by a shadow authority before or in connection with a referendum;

(c) as to the action which may, or may not or must be taken by a shadow authority after a referendum;

(d) for or in connection with enabling the Welsh Ministers, in the event of any failure by the shadow authority to take any action permitted or required by virtue of the order, to take that action.

(3) The provision which may be made by virtue of subsection (2) includes provision which applies or reproduces (with or without modifications) any provisions of section 25, 27, 28, 29 or 33 of the Local Government Act 2000 or Part 4 of this Measure.'.

Carl Sargeant **94**

To insert a new Section—

'( ) Power to direct a referendum involving an elected mayor

(1) The Welsh Ministers may by regulations make provision for or in connection with enabling them, in such circumstances as may be prescribed in the regulations, to direct a shadow authority to hold a referendum on whether the new local authority should operate a mayor and cabinet executive.

(2) The provision which may be made by regulations under this section includes (but is not limited to) provision—

(a) as to the date on which, or the time by which, a referendum must be held;

(b) as to the action which may, or may not or must be taken by a shadow authority before or in connection with a referendum;

(c) as to the action which may, or may not or must be taken by a shadow authority after a referendum;

(d) for or in connection with enabling the Welsh Ministers, in the event of any failure by the shadow authority to take any action permitted or required by virtue of the regulations, to take that action.

(3) The provision which may be made by virtue of subsection (2) includes provision which applies or reproduces (with or without modifications) any provisions of section 25, 27, 28, 29 or 33 of the Local Government Act 2000 or Part 4 of this Measure.'.

Carl Sargeant **95**

To insert a new Section—

'( ) Supplementary, incidental, consequential, transitional and saving provision

(1) The provision that may be made in an amalgamation order includes (but is not limited to) supplementary, incidental, consequential, transitional and saving provision.

(2) The Welsh Ministers may by regulations of general application make supplementary, incidental, consequential, transitional and saving provision—

(a) for the purposes of or in consequence of amalgamation orders; or

(b) for giving full effect to amalgamation orders.

(3) Regulations under subsection (2) have effect subject to any provision included in an amalgamation order.

(4) In this section, references to supplementary, incidental, consequential, transitional, or saving provision include (but are not limited to) provision—

(a) for the transfer of property, rights or liabilities from an existing local authority to a new local authority;

(b) for legal proceedings commenced by or against an existing local authority to be continued by or against a new local authority;

(c) for the transfer of staff, compensation for loss of office, or with respect to pensions and other staffing matters;

(d) for treating a new local authority for some or all purposes as the same person in law as an existing local authority ;

(e) with respect to the management or custody of transferred property (real or personal);

(f) equivalent to any provision that could be contained in an agreement under section 68 of the Local Government Act 1972 (transitional agreements as to property and finance).

(5) The rights and liabilities which may be transferred in accordance with an order under this section include rights and liabilities in relation to a contract of employment.

(6) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) apply to a transfer made in accordance with an order under this section (whether or not the transfer is a relevant transfer for the purposes of those regulations).

(7) In subsection (1), the reference to supplementary, incidental, consequential, transitional or saving provision also includes (but is not limited to) provision with respect to—

(a) the establishment or membership of public bodies in any area affected by the amalgamation order and the election or appointment of members of such bodies;

(b) the abolition or establishment, or the restriction or extension, of the jurisdiction of any public body in or over any part of any area affected by the amalgamation order.

(8) Supplementary, incidental, consequential, transitional or saving provision in an amalgamation order or in regulations under this section may take the form of provision—

(a) modifying, excluding or applying (with or without modifications) any enactment; or

(b) repealing or revoking any enactment (with or without savings).'.

Carl Sargeant **96**

To insert a new Section—

'( ) Review of electoral arrangements

(1) The Welsh Ministers may direct the Welsh Commission to undertake a review of the electoral arrangements for a new local government area.

(2) The Welsh Commission may in consequence of such a review make proposals to the Welsh Ministers for effecting changes to the electoral arrangements as appear to the Welsh Commission to be desirable in the interests of effective and convenient local government.

(3) In considering the electoral arrangements for a new local government area for the purposes of this section, the Welsh Commission shall so far as reasonably practicable comply with the rules set out in Schedule 11 to the Local Government Act 1972.

(4) For the purposes of this section "electoral arrangements" has the same meaning as in section 78 of the Local Government Act 1972.'.

Carl Sargeant **97**

To insert a new Section—

'( ) Amendments to the Local Government Act 1972

(1) The Local Government Act 1972 is amended as follows.

(2) In section 58 (Commission's reports and their implementation), in subsection (1) (b) after "section 57 above" insert "or in accordance with a direction under section [ ] of the Local Government (Wales) Measure 2011".

(3) In section 59 (directions about reviews), in subsection (1) after "57 above" insert "or in accordance with a direction under section [ ] of the Local Government (Wales) Measure 2011".

(4) In section 60 (procedure for reviews), in subsection (1) after "this Act" insert "or in accordance with a direction under section [ ] of the Local Government (Wales) Measure 2011".

(5) In section 68 (transitional agreements as to property and finance), in subsection (1) after "this Act" insert "or by an order under section [ ] of the Local Government (Wales) Measure 2011".'.

Carl Sargeant **98**

To insert a new Section—

'( ) Procedure applicable to an amalgamation order

(1) The Welsh Ministers must comply with this section before making an amalgamation order to give effect to proposals to constitute a new local government area by amalgamating two or three existing local government areas ("the proposals").

(2) The Welsh Ministers must consult such persons as appear to them to be representative of persons or interests affected by the proposals.

(3) If, following that consultation, the Welsh Ministers wish to proceed with the proposals, they must lay before the National Assembly for Wales a document which—

(a) explains the proposals,

(b) sets them out in the form of a draft order, and

(c) gives details of the consultation under subsection (2).

(4) No draft of an amalgamation order to give effect to the proposals ("the final draft order") may be laid before the Assembly in accordance with section 165(2)(b) until after the expiry of the period of 60 days beginning with the day on which the document relating to the proposals was laid before the National Assembly for Wales under subsection (3).

(5) In calculating the period mentioned in subsection (4) no account shall be taken of any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.

(6) In preparing the final draft order, the Welsh Ministers must consider any representations made during the period mentioned in subsection (4).

(7) If the final draft order is laid before the National Assembly for Wales in accordance with section 165(2)(b), the order must be accompanied by a statement of the Welsh Ministers giving details of—

(a) any representations considered in accordance with subsection (6), and

(b) any changes to the proposals contained in the document laid before the National Assembly for Wales under subsection (3) which are given effect to in the final draft order.

(8) Nothing in this section applies to an order under section ( ) which is made only for the purpose of amending an earlier order under that section.'.

Carl Sargeant **99**

To insert a new Section—

'( ) Correction of orders

(1) Where—

(a) there is a mistake in an amalgamation order, and

(b) the mistake cannot be rectified by a subsequent order made under section ( ), the Welsh Ministers may, by order, rectify the mistake.

(2) For the purposes of this section, a "mistake" in an order includes a provision contained in or omitted from the order in reliance on inaccurate or incomplete information supplied by a community council or any other public body.'.

Carl Sargeant **100**

To insert a new Section—

'( ) Interpretation

In this Part—

"amalgamation order" ("*gorchymyn cyfuno"*) means an order under section ( );

"electoral area" ("ardal etholiadol") means any area for which councillors are elected to a local authority;

"existing local authority" ("awdurdod lleol presennol") means the local authority for an existing local government area;

"existing local government area" ("ardal llywodraeth leol bresennol") means a local government area abolished by an amalgamation order;

"local authority " ("awdurdod lleol") means a county or county borough council in Wales;

"local government area" ("ardal llywodraeth leol") means an area for which a local authority is established;

"member of a local authority" ("aelod o awdurdod lleol") includes an elected mayor within the meaning of section 39(1) of the Local Government Act 2000) or elected executive member (within the meaning of section 39(4) of that Act) of the authority;

"new local authority" ("awdurdod lleol newydd") means a local authority established by an amalgamation order;

"new local government area" ("ardal llywodraeth leol newydd") means a local government area constituted by an amalgamation order;

"public body" ("corf cyhoeddus") includes—

(a) a local authority;

(b) a joint board, or a joint committee, on which a local authority is represented;

"shadow authority" ("awdurdod cysgodol") means an authority which has been appointed or elected to carry out functions prescribed by an amalgamation order and will become a new local authority at the end of the shadow period;

"shadow period" ("cyfnod cysgodol") means a period before the coming into office of members of the new local authority;

"staff" ("staff") includes officers and employees;

"Welsh Commission" ("Comisiwn Cymru") means the Local Government Boundary Commission for Wales established by section 53 of the Local Government Act 1972;'.

Carl Sargeant **101**

Section 165, page 93, line 10, leave out 'or Part 2' and insert ', Part 2, Section 143, ( ) [*new Section to be inserted by amendment 91*] or ( ) [*new Section to be inserted by amendment 94*] '.

Carl Sargeant **102**

Section 165, page 93, line 11, leave out 'or 161' and insert '161 or ( ) [*new Section to be inserted by amendment 99*]'.

Carl Sargeant **103**

Section 165, page 93, after line 11, insert—

'( ) an order amending an order under Section ( ) [*new Section to be inserted by amendment 91*];'.

Annexe B – Paper from Wales Governance Centre

Proposed Local Government Measure, Amendments tabled by WAG on 27th January

Marie Navarro, Manon George, David Lambert, Legal Members of the Wales Governance Centre, Cardiff University.

Introduction.

The Assembly's Constitutional Affairs Committee has requested our comments on the amendments tabled by the Assembly Government on 27th January to the draft Local Government Measure which is currently being considered by an Assembly Legislation Committee.

The Committee is particularly interested in the following:

1. The proposal to exercise these powers by Order.

The Cabinet Office has published advice on the drafting of Government Bills[1] which we referred to in our supplementary evidence on the Drafting of Assembly Measures requested by the Assembly's Constitutional Affairs Committee in December 2010.

It suggests that some of the factors to consider in deciding whether powers are to be included in delegated legislation include:

- matters may need to be adjusted more often than it would be sensible for Parliament to legislate for by primary legislation,
- there may be some rules which are better legislated for after there has been experience of administering the new Act,
- there may be an uncontroversial precedent for having delegated legislation in the particular area,
- there may be transitional matters which are appropriate to be dealt with by delegated legislation and
- there may be technical matters which are appropriate to be dealt with by such legislation.

[1] http://umbr4.cabinetoffice.gov.uk/making-legislation-guide/drafting_the_bill.aspx, paragraph 9
36

They also suggest that matters which are controversial should best be set out on the face of the legislation so that Parliament can consider them once as a matter of principle rather than having to return to them each time when individual delegated legislation has to be considered.

We consider that the order making powers contained in the amendments tabled to the Proposed Local Government Measure should therefore be included on the face of the Measure for the reasons given by the Cabinet Office.

Furthermore the wide ranging order making powers given to Welsh Ministers in the proposed amendments are similar in their extent to the order making powers which Central Government Ministers are seeking with regard to the future of some 150 Quangos in the Public Bodies Bill currently before Parliament (though in the case of the Bill the powers were on the face of the Bill when introduced into Parliament). There has been considerable criticism of the fact that the powers sought in the Bill would be exercised by Order. In terms which we consider apply to the order making powers in the draft Measure, the House of Lords Committee on the Constitution (report published November 2010) considered that:

> (a) many of the public bodies in the Bill were created by statute. The Bill vastly extends Ministers' powers to amend primary legislation by Order. The Select Committee considers that such "Henry VIII powers" are pushing at the boundaries of the constitutional principle that only Parliament may amend or repeal primary legislation,
>
> (b) departures from this constitutional principle should be contemplated only where a full and clear explanation and justification is provided. Ministers have not made out a convincing case as to why statutory bodies affected by the Bill should be abolished or merged only by Ministerial Order, rather than by ordinary legislative amendment and debate in Parliament, and
>
> (c) the order making powers in the Bill are not required to be exercised, unlike the safeguards contained, for example, in section 3(2) of the Legislative and the Regulatory Reform Act 2006, by reference to:
>
> i. ensuring that the effect of the order is proportionate to any clearly stated policy objective,
>
> ii. the prevention against removing any necessary statutory protection, and
>
> iii. the striking of a fair balance between the public interest and the interests of any person or body adversely affected by it.

Like many of the 150 bodies in the Public Bodies Bill, the current Welsh local authorities were also created by statute, the Local Government (Wales) Act 1994. Like the Bill the amendments to the draft Measure considerably extend Ministers powers to amend primary legislation by order - subsection (8) of the clause entitled

"Supplementary, incidental, consequential […] provisions", reference 95, p.8 of the Notice of Amendments.

To our knowledge a full and clear explanation and justification has not been given as to why the abolition or merging of local authorities should be by Ministerial Order.

The order making powers contained in the amendments to the Proposed Measure appear to contain none of the above safeguards. The "effective local government" requirement in the draft Measure amendments is not considered to be a clearly stated policy objective for such purposes.

2. The Appropriateness of the Procedure to be used for making the Order

The order making powers reflect the super affirmative procedure for making subordinate legislation set out in the Assembly's Standing Order 25 as an Order Subject to Special Assembly Procedure. The House of Lords Committee on the Constitution in its report on the Public Services Bill considered that, if the Bill's order making procedure were made subject to Parliament's equivalent of the super affirmative procedure, this would reinforce the "fundamental constitutional requirement of detailed legislative scrutiny." However in our supplementary representations made last month to the Assembly's Constitutional Committee as part of its enquiry into the making of Measures, we referred to the comments of the House of Lords Committee on the Constitution. The Committee stated, in reference to the Digital Economy Bill, that no explanation had been given by the Government as to why primary legislation, if necessary fast track primary legislation, could not be used instead of relying on Ministerial powers to alter the statute book. The Assembly's Standing Orders provide a fast track legislation procedure should the need arise: Government Proposed Emergency Measures Standing Order 23.107.

With such comments in mind, we do not consider that the super affirmative procedure gives as much opportunity to the Assembly and its Committees to fully assess the implications of Ministers' proposals as do the extensive scrutiny procedures applied by GOWA 2006 and the Assembly's Standing Orders to the consideration of draft Measures.

3. Whether the Amendments provide enough detail about the circumstances in which an Order might be made.

The order making powers proposed to be introduced by these new amendments depend on the Welsh Ministers being satisfied that "it is necessary to achieve effective local government". This phrase is not defined in the tabled amendments. Does it mean effective by reference to the cost of running the local authorities, the quality of services produced, the standards of education of children or the number of staff involved, for example? The only matter to which the Ministers must first be satisfied before proposing an order that the powers listed in subsection (2) (Amendment 91 p.2, Clause "Power to make an amalgamation order") is that such powers are not *likely* to be effective. The matters in subsection (2) are defined by reference to the provisions of sections 9 and 28-31 of the Local Government Measure

2010 which only make one reference to "effectiveness". This is in the context of a local authority improving strategic effectiveness through the strategic objectives set out in its current community strategy for the local authority's area.

The provisions therefore appear to seek Ministerial order making powers which are very wide and do no depend on any clearly defined criteria in that they refer to matters which could all be fulfilled but which would not stop the Ministers from concluding that they are not LIKELY to achieve effective government. The lack of clarity arises from the use of the words 'likely' and 'effective local government'.

4. Whether the Amendments provide Sufficient Clarity about Practical Arrangements that might apply to any Amalgamation.

In the absence of detailed provisions as to the actual operation of the legislation on the face of the Public Bodies Bill, the House of Commons Public Administration Select Committee noted the equal absence of the publication by the Government of clear administrative guidance as to how the transition would be achieved between abolishing public bodies and merging them with other bodies.

While there are consultation procedures and the laying of the draft Order before the Assembly provided in the draft amendments, there are no detailed provisions as to the matters which the Assembly Government would take into account when exercising the wide enabling powers. Again the only criteria is that of 'effective local government' which is not defined or explained anywhere on the face of the Proposed Measure. As far as is known, there is no guidance which has been published in association with the tabling of the amendments to the current Measure. How can the Assembly's Legislation Committee and the Plenary Assembly properly consider the proposals in the context of how they would operate without such detailed explanations either in the amendments or in parallel published administrative guidance?

In our supplementary representations to the Assembly's Constitutional Committee we endorsed the emphasis of Mr. Daniel Greenberg in his evidence to the Committee on the need for the Government to always give an explanation of the occasions when it might be necessary to use delegated legislative powers granted by primary legislation. However first of all Mr Greenberg emphasised the need for new primary legislation to be justified. If there were administrative arrangements in existence which could achieve the policy objectives then new powers should not be sought. So far the Assembly Government appears to have failed to explain *why* the provisions in sections 9 and 28-31 of the Local Government (Wales) Measure 2010 could not achieve the same objectives as the proposed amendments.

An explanation of the occasions when delegated legislative powers might be used should always be given. Where there is a need for primary legislation even though at the time of the draft primary legislation being considered by the legislature, it was not possible to foresee whether or in what circumstances the power might be used.

We noted that the Cabinet Office recommends the giving of such information and in our supplementary memorandum we illustrated this by setting out examples from the Explanatory memorandum accompanying the Welfare Reform Bill of 2008. We also noted the comments of the House of Lords Committee on the Constitution which was

strongly of the view that it is not acceptable for the legislature to be told that as the Government has no current plans to use the delegated legislative powers it was seeking, that it was unable or unwilling, as the legislation was proceeding through Parliament to assess the extent of such powers.

We are not aware of any such explanation having been issued by the Assembly Government in the case of the current amendments.

5. <u>The relatively late Stage at which the Government is introducing, what appear to be, quite substantial and substantive amendments.</u>

In this respect the current advice issued by the Cabinet Office on the presentation of Government Bills to Parliament is helpful. It is entitled "Handling of Amendments in the Commons and the Lords"[2].

It makes the following points:

(1) The Government's Future Legislation Committee which clears Bills for presentation to Parliament has to be satisfied that the Bill is fully ready to be introduced. If the Committee is not so satisfied and considers that "there is still policy development which may result in Government amendments after the Bill's introduction, the Committee can and does refuse clearance". This raises the question as to whether there is a similar system operating in the Assembly Government and, if so what happened in this case?

(2) Once a Bill has been introduced to Parliament, proposed amendments to the Bill must be classified by the Government Department concerned into one of 4 types:

(a) Minor and Technical- those which do not impact on the substance of the Bill and will therefore not take up time in debate.

(b) Concessionary- those which ease the handling of the Bill because they have been suggested by Select Committees or by Members .

(c) Essential- to correct unforeseen circumstances that have arisen since the introduction of the Bill which have lead to the pressing need for the amendment, e.g. correcting a major error in the Bill which would cause major problems in the operation of the legislation if the Bill went through unamended.

(d) Desirable- any new area of policy, even where the scope of the Bill's scope is not widened.

The Cabinet Office states that (a)-(c) amendments would usually be permitted to be tabled. Amendments within (d) would not unless it can be clearly shown that there are exceptional circumstances. Otherwise " no purely desirable amendments will be

[2] see footnote 1

cleared by the Cabinet Office at any stage of the Bill's passage through parliament. Desirable amendments must wait for a separate legislative opportunity".

In commenting on amendments which apparently came within the "essential" (c) category in the current Bill before the House to amend the Parliamentary voting system, the House of Lords Committee on the Constitution adversely commented that the effect of such amendments is that because they raised a number of constitutional concerns, it had been impossible to adequately explore the reasons and effect of the amendments "due to lack of time made available for the scrutiny of this Bill."

In relation to the amendments proposed to the current Local Government Measure, questions arise as to:

(1) Does the Assembly Government operate a classification system similar to the convention operated by the Cabinet Office? If not, why? If so under what classification were the amendments placed? Were they considered to be urgent and, if so, what are the reasons for this?

(2) How does the Government propose with these amendments to overcome the criticism made by the Lords' Constitution Committee that major amendments to legislation cannot be properly scrutinised? Will the Government subject the amendments to the same consultation procedures to which a draft Measure is subject before it is introduced to the Assembly - for example consultation and debate in a pre-legislative committee? If not, and in the absence of any apparent pressing need for the amendments, will the Government follow the conventions of the Cabinet Office and withdraw them and place them in a later Measure?

Marie Navarro, Manon George, David Lambert.

Annexe C – Extract from the Record of Proceedings: Constitutional Affairs Committee - 3 February 2011

9.43 a.m.

Ystyried y Mesur Arfaethedig ynghylch Llywodraeth Leol (Cymru)— Canolfan Llywodraethiant Cymru, Ysgol y Gyfraith, Caerdydd
Consideration of the Proposed Local Government (Wales) Measure— Wales Governance Centre, Cardiff Law School

[52] **Janet Ryder:** Steve has alluded already to the fact that our agenda and the timings of this morning's meeting have changed considerably this week. I want to thank the members of the committee for their help in arriving at this stage. We will now deal with the issue of the amendments that have been laid to the Proposed Local Government (Wales) Measure by the Government. This is a long scenario. I will read through the chronology that I have in front of me. On 6 July 2010, the proposed Measure was referred to Legislation Committee No. 3 by the Business Committee. On 12 July 2010, the Minister for Social Justice and Local Government introduced the proposed Measure and explanatory memorandum, which states:

[53] 'The proposed Local Government Measure will make changes intended to strengthen the structures and working of local government in Wales at all levels and to ensure that local councils reach out to and engage with all sectors of the communities they serve.'

[54] On 13 July, the Minister made a legislative statement in Plenary and, between July and October, Legislation Committee No. 3's consultation period on the proposed Measure was held. On 23 September, the Minister gave oral evidence to Legislation Committee No. 3. On 13 October, this committee took evidence from the Minister. On 15 December, our committee laid its report before the Assembly. On 27 January, last week, we discussed in private the amendments proposed by the Welsh Government, which would allow the Government to amalgamate local authorities. It was at that point that we raised concerns about the extent of those amendments, given that we had had no notice or consultation. We felt that they were introducing major policy changes that had not been subject to any previous consideration in the Assembly or by Assembly committees.

[55] In light of that discussion last week, I wrote to the Minister inviting him to attend today's meeting. I am sure that committee members will appreciate that this is on a very tight timescale now. Legislation Committee No. 3 is now looking at this proposed Measure at stage 2 and is dealing with these amendments. We invited the Minister in today to give evidence, but, unfortunately, he has not been able to attend. You will have received, I hope, the Minister's response. It is a very short letter, explaining that he has previous commitments, and cannot attend today. However, he says

[56] 'I would however be able to attend the Constitutional Affairs Committee to discuss these matters on 10 February'.

[57] That is next Thursday, and he suggests a time slot between 9 a.m. and 9.45 a.m., so that is 45 minutes for the consideration of what could be some fundamental changes to this proposed Measure. My initial feeling is that, perhaps, after today's session, we may wish to extend that time slightly. As we cannot, it seems, extend it beyond 9.45 a.m., we may have the option of extending it before 9 a.m., but I would suggest to committee that we take

today's evidence and then return to this matter afterwards.

[58] I am thankful to the witnesses for coming in at short notice. I requested that the Wales Governance Centre look at the amendments and prepare a paper for us. It is unusual for us to go back and look at these amendments, but they are a significant move away from the original intent of the proposed Measure. The Wales Governance Centre has prepared a paper for us and it has been circulated to members of the committee, who have been able to look at it. We asked David Lambert and Marie Navarro to come in at very short notice, and they have agreed. If Members are content, I will now invite them in, and we can take evidence on their paper.

[59] I will give our witnesses some time to settle in, but while they are doing so, I thank them very much indeed for submitting a paper at short notice, and for making themselves available to come in this morning. I am, as Chair of this committee, very grateful for that. These amendments have raised a number of points of discussion. It is not usual practice for this committee to return to a piece of legislation once we have signed it off, but we felt, after last week's discussion, that this may prove a significant development, and there is no other opportunity to take evidence on these amendments. I am grateful to you both for coming in—you have been to committee on a number of occasions now. Please introduce yourselves for the record, and if you have any introductory remarks, feel free to make them at this point.

9.50 a.m.

[60] **Ms Navarro:** Bore da. My name is Marie Navarro and I have been working with David Lambert on Wales Legislation Online in Cardiff Law School for the past 12 years.

[61] **Mr Lambert:** I am David Lambert, and I have been working with Marie for the past 12 years on Wales Legislation Online. We are both members of the Wales Governance Centre, and I am also a lecturer and tutor in public law at Cardiff Law School.

[62] **Janet Ryder:** Thank you for that. One of the reasons why we came to you is because you have, for many years now, observed how legislation has been developed in the Assembly. We are looking forward to the evidence that you are going to give us today. The paper has certainly raised a considerable number of questions, so if it is okay with you, we will go straight into those questions.

[63] I will start on the exercise of powers that the amendments refer to. Your paper refers to the Cabinet's Office guidance that states that

[64] 'matters which are controversial should best be set out on the face of the legislation so that Parliament can consider them once as a matter of principle rather than having to return to them each time when individual delegated legislation has to be considered'.

[65] You further state in your paper that you consider that

[66] 'the order making powers contained in the amendments tabled to the Proposed Local Government Measure should therefore be included on the face of the Measure for the reasons given by the Cabinet Office'.

[67] You also outline the reasons why the Cabinet Office at Westminster would put issues on the face of a Bill. Can you explain why these amendments should be placed on the face of the proposed Measure, on the basis of that Cabinet Office guidance?

[68] **Mr Lambert.** We see a parallel between these amendments and the provisions of the Public Bodies Bill, which is going through Parliament and which will abolish something like

160 bodies. Most of these bodies are established by Acts of Parliament, and they will be abolished by Order. The House of Lords Constitution Committee's criticism is that if bodies are created by statute, they should be abolished by statute. In other words, you should take each individual body on its own, and decide whether, as a matter of a new Act of Parliament, that body is to be abolished or not, based on the facts relating to that body.

[69] It seems to us that it is the same situation with local authorities in Wales, which were established by an Act of Parliament, namely the Local Government (Wales) Act 1994. If there is to be any merging or abolition of any of those local authorities, then they, too, should be the subject of separate Measures, because they were established by an Act of Parliament. You should not therefore have an Order that can merge or abolish 22 authorities and end up with seven. In other words, if something is established by statute, you should abolish or merge by statute; you should not do it by Order. That is the criticism of the House of Lords Constitution Committee.

[70] **Janet Ryder:** We are a different body to Westminster. The Assembly has always set out to work in a way that is right for Wales. However, would you expect a Government to be operating along similar guidance lines as those issued by the Cabinet Office when considering what amendments to bring forward?

[71] **Mr Lambert:** We would, because these comments do not come from the Cabinet Office but from the Constitution Committee of the House of Lords, which has a tremendous standing. To us, it is looking at it from a fundamental constitutional point of view, in that, if something is established by primary legislation, then it should be merged or abolished by primary legislation, not by Order, so that your Parliament—the Assembly—just like the UK Parliament, has the opportunity of carefully considering the proposals in relation to a particular body on the facts of that particular body at the time. For us, you can only consider that by the usual process of looking at a Measure or, in Parliament, an Act, not by Order.

[72] **Janet Ryder:** One defence that the Government seems to be giving for tabling the amendments is that it is not its intention to reshape the whole of local government, as the power would be used on an individual basis in which up to three councils could be merged at one time. You said that that could give it the ability to reduce the number of local authorities to seven. Technically, it would, but the defence that we may hear from the Government is that it would be used on a case-by-case basis. In that case, would the arguments that you have put forward still stand?

[73] **Mr Lambert:** Yes, I think that they would, because that is the argument in relation to the Public Bodies Bill. The Government says, 'We don't intend to abolish all these bodies; we'll pick and choose'. The Constitution Committee's response is still, 'All right, you pick and choose and make your proposals individually by means of primary legislation'. If you have no particular plans, you will do it bit by bit, and you will have the opportunity to do it in that way by primary legislation. You do not need an Order in any case, because there is no emergency.

[74] **Alun Davies:** You seem to be saying that your objections to the amendments are on a point of principle in relation to where the executive powers of a Minister and where the powers of the legislature should rest. So, you would object to the powers being used by a Minister, whichever way they were introduced.

[75] **Mr Lambert:** By Order.

[76] **Alun Davies:** So, for you, the amendments are an issue, but not the defining one.

[77] **Mr Lambert:** Yes.

[78] **Alun Davies:** On the range of powers that are available to a Minister, the Minister made it clear that the power would be used only in extreme circumstances, and that it is a power that he seeks to hold as a backstop power in order to encourage local authorities to collaborate and improve. Where a local authority has not improved, the backstop power is there to force improvement. I understand that a similar power exists in England, in that the relevant UK Minister can make amalgamation Orders. Would you object to the use of that in England as well?

[79] **Mr Lambert:** Yes, I would, on the basis of the criticism by the House of Lords Constitution Committee. It said that, if there is an emergency, we have a fast-track system of looking at new primary legislation. The Assembly also has a fast-track system.

[80] **Alun Davies:** Therefore, you simply do not think that the power should exist at ministerial level.

[81] **Mr Lambert:** Indeed, because of the advice of the Constitution Committee.

[82] **Alun Davies:** Even if it is a backstop power that would be used once in a lifetime.

[83] **Mr Lambert:** Yes.

[84] **Rhodri Morgan:** If I were the Minister, I think that I would be saying to you, 'Look, the Public Bodies Bill has a clear stated intent: it is the bonfire of the quangos Bill in posh legal language'. The Minister would say that the proposed Measure, however, is not a bonfire of local government Measure at all. As Alun put it, it is a wish to have an adjunct power to abolish a group of local authorities by merger. However, that is not the intent of the proposed Measure; the power is an adjunct to the other powers in it to compel or oblige local authorities to improve or to seek continuous improvement in their performance. It will be adjoined to those powers, because, if that is the only way in which you can secure continuous improvement, you need it there as a backstop. That is quite different from the intent of the bonfire of the quangos Bill. How would you respond to that criticism? The whole basis of your argument is that they are not chalk and cheese, but the same circumstances as those addressed in the Bill in the other place.

[85] **Mr Lambert:** I would say that the Government has not made out a case for seeking this Order-making power, because it has no proposals in mind at the moment. It has not laid down any criteria, and we do not know the extent of the powers. Why, therefore, if there is no emergency or rush, does it not come to the Assembly with a proposal each time?

10.00 a.m.

[86] **Rhodri Morgan:** If I may just interrupt, you are now changing your ground, are you not? Your previous grounds were that this is pretty well identical to the public reform, bonfire of the quangos Bill. Therefore, the criticism to which that has been subjected by the House of Lords Constitution Committee also applies to this one. I put it to you that they are not, or the Minister would claim that the circumstances are entirely different, because the intent of the Bill is to abolish quangos, and the intent of this proposed Measure is not to abolish local government but to have a backstop power if nothing else can be done to achieve another purpose, which is not abolition but continuous improvement. You are changing your ground from the fact of the similarity between the two sets of circumstances before Westminster and us to something completely different now, are you not?

[87] **Mr Lambert:** No, it is still this problem that if a body has been created by an Act of Parliament, you have to show, to me, extreme reasons for taking a power by Order to abolish

that body. That is the problem with the Public Bodies Bill. It seems to me that it is the same problem with local authorities, which were established by an Act of Parliament. Why, suddenly, are you not following the constitutional principle of amending that Act of Parliament individually at the time that you want to merge that particular body? That also seems to be the criticism of the Public Bodies Bill. Why, suddenly, are you saying that it is not for the Assembly to decide how the Local Government Act 1994 will be changed, but for Ministers, who will just put an Order before the Assembly? You will be cutting out the normal procedures that you would have if this was a formal proposal by a new Measure to amend the 1994 Act. This also tends to happen in central Government. It is this whole principle of asking, if something is set up by an Act, why Ministers want to change it by Order. Why can you not change the Act bit by bit, when the need arises?

[88] **Rhodri Morgan:** By an amendable motion?

[89] **Mr Lambert:** Yes, by an amending this with a new Measure.

[90] **Rhodri Morgan:** By a motion that is, in itself, amendable by a vote in the Assembly?

[91] **Mr Lambert:** No, by a new Measure amending the Local Government Act 1994.

[92] **Rhodri Morgan:** Yes, but the difference between an Order and a Measure is that a Measure is amendable by debate, whereas an Order is not.

[93] **Mr Lambert:** Indeed. You have a whole different procedure for Measures. It is subject to greater consideration.

[94] **Janet Ryder:** I now call on Alun to speak very quickly, because Kirsty then wants to speak.

[95] **Alun Davies:** The key reason why we have these objections is to enable debate and proper scrutiny to take place, so that a Government cannot simply act without any heed to people's fears and concerns. If this is a particular power—a narrow power, if you like; although I accept that the legislation is written more widely than I feel comfortable about—to be used in extremis on a single, case-by-case basis, one would assume that because it is an extreme power to abolish a local authority, a process will have been followed before that power is invoked. The amendment does contain the circumstances in which a power can be used. The burden of my question is that this is not a power that will be used in isolation; it would be the culmination of a process that could take a year, 18 months, or a considerable period of time. It is not so much an Order that would be rushed through this place in an afternoon, but a consequence of a failure of process. Therefore, throughout that process, people would have the opportunity to scrutinise and to discuss, with the Government, the way forward. This is a power that will be used as consequence of a failure of process. Therefore, there would be an opportunity, because there would be quite a long process involved.

[96] **Mr Lambert:** Before Marie replies, how do you know that? There is nothing very much on the face of the legislation. That is what worries us. There is a vague thing about consultation, but how do you know whether it will be used in extremis; and how do you know that there will be tremendous consultation taking place for two years?

[97] **Ms Navarro:** There are so many different issues around the amendment that we have many different grounds on which we think that there could be discussion. First, we could not see any justification from the Government as to why the amendment was necessary in the first place. There is reference to several sections of the proposed Measure and an Act of Parliament, which would have been used beforehand, so we do not know why these powers are not good enough. Why do you have an extra weapon on an extra two lines of Government

spend? So, we do not have a justification for why you need the amendment or the legislation in the first place, or for why that need was only perceived as necessary after the proposed Measure was drafted. David and I believe that there should be some conventions with regard to the work of the Assembly and Assembly Government. We think that if there were documents equivalent to these Cabinet Office papers, which we refer to all the time, it would help the smooth running of everything, including the amendments and the contents of legislation in the first place.

[98] I know that the Assembly is different from Westminster and that you will come up with your own criteria and conventions, but Westminster's guidance on drafting amendments is such that such an amendment would never have been accepted, because it would be seen as something more than minor and technical, concessionary or desirable amendments, so it would not have been accepted. I know that it is for the Presiding Officer here to decide.

[99] So, one ground is that we do not know exactly why the powers are sought or when they would be used. That is where I come back to these criteria that we have found. David has read the text of the amendments, as we have not seen any explanatory memorandum, and you could not introduce an amendment in Westminster that contains a delegated power without a supplemental explanatory memorandum.

[100] **Janet Ryder:** I will bring in Kirsty in a moment, but I have a couple of quick follow-up questions. If this power had been sought in the original proposed Measure, the scrutiny of that proposed Measure would have allowed those arguments to have been satisfied—all of that would have come through. As it is coming through at this stage, are you saying that none of these stages have been satisfied and that this is a major diversion in the intent of the proposed Measure, in your opinion?

[101] **Mr Lambert:** Yes.

[102] **Kirsty Williams:** Thank you for your comments and for your paper. As we have heard, it seems that the Government is saying—as articulated by Rhodri Morgan and Alun—that this is a fall-back position and would be used only in absolutely terrible circumstances when everything else failed, and therefore would be an emergency power—I believe that Alun referred to it as a backstop power. I can understand why a Minister would want to have an ultimate sanction and to be able to act in an emergency. Could you explain how a Minister could act in an emergency to dissolve or amalgamate councils without having to resort to the amendments that have been brought forward? Is there another way that a Minister could act in such an emergency?

[103] **Ms Navarro:** We do not know exactly all the contents of the legislation, which is—

[104] **Kirsty Williams:** Forget this legislation. Are there mechanisms already available for a Minister to have a fast-track process to achieve this? Is there something already in existence within the Assembly's procedures that would allow the Minister to do this?

[105] **Mr Lambert:** There is an emergency Measure procedure, under Standing Order No. 23.107.

[106] **Kirsty Williams:** So, if a Minister felt that there was an extreme situation that needed to be dealt with, there are existing processes available to a Minister to do that, are there?

[107] **Mr Lambert:** There are indeed, yes.

[108] **Kirsty Williams:** What is your opinion, Mr Lambert, as to what extent the amendments tabled by the Minister to the proposed Measure could create a constitutional

precedent in Wales, so that other Ministers or other Governments could use this example in months and years to come to justify similar actions?

10.10 a.m.

[109] **Mr Lambert:** In the absence of any established principles—I am sorry to mention the UK Parliament again, but it has those principles, many of which are laid down by the Cabinet Office and the House of Lords Constitution Committee—it would set a precedent, and it would be difficult to argue against it, because there are no other existing principles. This is a new principle and the beginning of a new convention; you can change conventions afterwards, but it is always difficult to do so once something like this has been established.

[110] **Kirsty Williams:** So, in your view, there are issues beyond what is before us at the moment; if it was to go forward in this way, it would establish a principle that could be followed in other cases.

[111] **Mr Lambert:** Yes, I think so, in the absence of any other established principles.

[112] **Kirsty Williams:** As you said in your paper, and as you have reiterated this morning, to your knowledge a full and clear explanation and justification has not been given as to why abolishing or merging local authorities should be done by ministerial Order. Can you think of any reason why it would be justifiable to use a ministerial Order to abolish or merge local authorities?

[113] **Mr Lambert:** In the absence of any explanatory note, we cannot; we have not seen such a note. There may be very good reasons, such as the need for emergency provisions, but we have not seen them. Again, that goes against the established convention of the UK Parliament; at least the UK Parliament provides an explanatory note with the legislation.

[114] **Kirsty Williams:** Forgive me for not knowing the procedures in Westminster as well as I should, but if such amendments had been tabled there, would it have been a requirement that a further explanatory note should accompany them to give the back story?

[115] **Mr Lambert:** Yes. That is the advice of the Cabinet Office.

[116] **Ms Navarro:** It would go even go further than that; such amendments would not have been accepted. According to the Cabinet Office's documents, they are 'desirable amendments'—we have included the reference in the footnotes of our paper—and are defined as

[117] 'all new areas of policy, even if they do not widen the Bill's scope. Also any issues which are proposed to be added to a Bill which are not essential but merely a new policy idea where the Bill is being used as a vehicle'.

[118] **Mr Lambert:** Interestingly, the amendments would not have been accepted by the Government, as what Marie is reading is the Cabinet Office's advice.

[119] **Kirsty Williams:** As you will be aware, Mr Lambert, over the last 11 years, this institution has sometimes become a bit jumpy if told that it has to follow Westminster practice; in some ways, we have battled against that. Is there any reason why the practice in Westminster that you have described would not be considered best practice? I am trying to understand whether there is a good reason for doing it differently.

[120] **Mr Lambert:** We think that the best practice is not so much established by the Cabinet Office—the Government—but by a body such as the House of Lords Constitution

Committee; the latter represents Parliament, and is highly respected. It is interesting that the Cabinet Office seeks to reflect the advice of the House of Lords Constitution Committee. There is an equivalent Select Committee in the House of Commons, but it is the House of Lords Constitution Committee that is referenced; the Cabinet Office paper that we found refers constantly to the principles set out by the House of Lords Constitution Committee. The attitude of the Cabinet Office is, 'Why should we fight against those principles? They are very good principles.' They are coming from the Parliament, not the Executive.

[121] **Janet Ryder:** Given the nature of the questions that we have been asking, I am going to bring in William, because his questions are also on the process.

[122] **William Graham:** You do not consider that the superaffirmative procedure gives as much opportunity for the Assembly and its committees to assess fully the implications of the Minister's proposals as the extensive scrutiny procedures outlined in the Government of Wales Act 2006 and the Assembly's Standing Orders for the consideration of proposed Measures. Why does the superaffirmative procedure not offer much of an opportunity to assess the implications of the Minister's proposals in this instance?

[123] **Mr Lambert:** It seems to us that the superaffirmative procedure is under the control of the Government, whereas proposed Measures and their consideration are under the control of the Parliament. So here is a procedure that states that something happens within 60 days, the Government consults and so on. To us, that seems very different from following the Standing Orders and the principles that have already been established by the Assembly in relation to looking at proposed Measures. So, because this is subordinate legislation, we feel that it is a bit out of your control. The Government is in the driving seat.

[124] **Ms Navarro:** There are extra stages in dealing with a proposed Measure; Plenary is given much more weight than would be the case with the affirmative resolution procedure. So, that is another argument. It always comes back to the point of why should that power be exercised by Order and not by Measure. So, we are circling around the same idea all the time. If you take it from different angles, you always reach the same conclusion. However, we appreciate that the Government gave the Order-making powers the highest type of control in the superaffirmative procedure.

[125] **Mr Lambert:** It is only the second time that it has been used. I think the Local Government (Wales) Measure 2009 has it, does it not?

[126] **Ms Navarro:** Yes, it is the second time since the Assembly started under Part 3.

[127] **William Graham:** You have touched on my next question, which is about fast-track legislation. You have probably answered why you think the Minister's proposals are better addressed through an emergency Measure. You have clarified that.

[128] **Janet Ryder:** Are you going to ask that question? I had a supplementary question.

[129] **William Graham:** Well, the question has been posed already and the answer has been given.

[130] **Janet Ryder:** I will ask a supplementary question, then. We have talked about the fast-track Measure and the emergency procedure. In his question to you earlier, Alun Davies put forward the idea that perhaps the Minister would require this amendment to go through as part of this proposed Measure as a backstop. Can you explain to me whether there is any difference between having it as a backstop in this proposed Measure or having and using the emergency powers? Would the ability to use those powers to bring forward an emergency Measure to merge two or three local government areas not act in a similar way as a threat,

which is what Alun was alluding to? The Government might need this threat to make local government authorities merge. What is the difference between the two, if there is any?

[131] **Mr Lambert:** The difference is that you are in control of emergency Measures, it seems to us. You can decide whether it is an emergency and presumably the Government has to give reasons why it considers an emergency Measure to be required. You can say 'yes' or 'no'. You are not so much in control of the superaffirmative procedure. Once it is there, then the Government says, 'Great, we are going to do this'. Then it follows the procedures and there you are thinking, 'Gosh, we only have 60 days'. Some of those days might be holidays or something such as that, and it is not in your control. It is the Executive doing it and not the Parliament.

[132] **Ms Navarro:** You would not be able to vote on the general principles, as you would for a proposed Measure, either.

[133] **Janet Ryder:** So over and above whatever argument the Government has for bringing forward these amendments within this proposed Measure to make local government work, there is a much deeper argument emerging as to where power should rest: with the Executive or with the legislative body.

[134] **Mr Lambert:** Absolutely. That is what comes out in all of these comments by the House of Lords Constitution Committee.

[135] **Ms Navarro:** We heard that this would only be used in an absolute emergency and so on. In the amendment, we read that this is necessary for effective local government. We have no idea what 'effective' means, and to me, the worst bit is the word 'likely' that is used. It says that it would be used when all of the provisions that already exist on the statute books are 'likely' to fail. So, not only is there a problem of who should have the power, but of when should it be used. If it were in a separate proposed Measure, then you would have a full debate on the general principles of the proposed Measure, the circumstances, and so on, which you might not have with subordinate legislation.

[136] **William Graham:** So what you are saying, to paraphrase again, is that there is another procedure, and the emergency procedure would be quite effective and would probably be able to, on the face of that particular piece of legislation, spell out exactly what has gone wrong and why a remedy is required.

[137] **Mr Lambert:** If the Government convinces you, yes.

[138] **William Graham:** It would be for the Government to satisfy Plenary or this committee that its emergency Measure was necessary and immediate, and to specify the reasons that the failure had occurred.

10.20 a.m.

[139] **Ms Navarro:** You also fulfil the constitutional principle that only a legislature can change something that has been created by statute; it helps to fulfil all the requirements. Only a Parliament can undo what a Parliament has done; a Minister cannot do that.

[140] **Alun Davies:** To what extent are we dancing on the head of a pin here? You are right, and I have got no disagreement in principle with what you are saying about the need for primary legislation, but in terms of the process of scrutiny and involvement, to what extent, in real terms, do you believe that there is a significant difference between a superaffirmative procedure and an emergency Measure, which, given the circumstances, would be pushed through reasonably quickly? A superaffirmative process provides for a great deal of

consultation and discussion on different aspects of any proposed Order—that is why we call for it. It might well be that that process could allow a greater range of people to participate in consultation than simply a rushed parliamentary process that we might seek in order to provide for that legislative parliamentary scrutiny. That could have the impact of tightening or reducing the amount of space and time for real debate about what the Government seeks to do.

[141] **Ms Navarro:** You could have a normal Measure procedure. If there really was an emergency and a rush, you would go to the extreme, and use the emergency procedure, but if there was not such an emergency, you would just use a normal Measure procedure, with all the normal stages. So, you can go back to that. If you wanted to involve even more people, you could have it published in draft and invite a consultation on the draft Measure before it was introduced here.

[142] **Mr Lambert:** This is a classic requirement that we discuss with our public law undergraduates in year one at the university. The Minister is very much in the driving seat. Under this superaffirmative procedure, it is the Minister who decides who is consulted. There is no mention of the Assembly. That worries me. There are many considerations about whether it would be reasonable or unreasonable to consult. It is a classic problem question for undergraduates.

[143] **Alun Davies:** In real terms, when that genie gets out of the bottle, there is no question that there are enough people, even around this table, who would make sure that it was raised in the Assembly. While I recognise and share your concern about consultation issues, in real terms it would be done here. This amendment lists the circumstances in which the power can be exercised. Without seeking to read out all the different processes that would need to be followed by Ministers before making this Order, it lists a number of processes that must be followed beforehand. So, in terms of what Marie was saying about going through a traditional Measure-making process, that would already have happened. You would not seek to go down that route anyway. In fact, you would be seeking a fast termination of this process, because it would have already failed, given the safeguards that have been put in to the amendment by the Government.

[144] **Mr Lambert:** Again, constitutionally, should it not be you, rather than the Government, in charge of the process? You are not in the driving seat under the superaffirmative procedure.

[145] **Janet Ryder:** Surely, that begs a further question: if it was the Government's intention, when it drafted its proposed Measure, to have the power, as a last stop, to merge councils, should that not have been written in at that time?

[146] **Rhodri Morgan:** Can we try to work out the nature of your objections, and how easily they might be corrected by changing the wording and tightening up slightly subjective expressions? You mentioned that you do not like the word 'likely', and that it is not suitable for use in legislation, and that 'effective local government' is not defined. We all share your unease about this late addition—which is always going to create suspicion about what is going on and whether this is subsidiary to the overall purpose of the proposed Local Government (Wales) Measure, as we have previously understood it. Do you think that other words could be used to tighten up expressions such as 'likely' and 'effective local government' that would dampen your fears that this could be used to achieve purposes that do not fall under the umbrella of the proposed Measure?

[147] **Mr Lambert:** We accept the procedure, but there are no criteria at all. I do not know what 'effective local government' is. We have proposed a number of things. I am not in any way a politician, but does 'effective' mean that the local authority is not bankrupt, or that it

produces good social services?

[148] **Rhodri Morgan:** We have all read the paper, but if you were writing this legislation, and the Minister had said that what he needed was a backstop power within the overall umbrella of the proposed Measure so that it is the least subjective and the most objective that it can be, are there words that you could find to satisfy everybody that this was a subsidiary backstop power, to show local government that the Minister was serious about continuous improvement, which is the overall purpose of the proposed Measure? Could you put this in the legislation or amend the legislation and explanatory memorandum so that that is clear? Are you saying that that is impossible, or are you saying that, had it been done with a bit more attention to detail in amending the explanatory memorandum, it could have achieved the purpose of having a backstop power without creating the possibility of the reorganisation of local government by the back door?

[149] **Mr Lambert:** Purely as a lawyer—I have never taken part in the drafting of Bills—I would say that it is very difficult to define the word 'effective'. You can have criteria—

[150] **Rhodri Morgan:** Are you saying that this is impossible or is it just poor, inappropriate choice of language to use 'likely' or 'effective', because they are too open to subjective interpretation, not by this Minister, but by a successor Minister? If so, can you replace them with different words, or are you saying that it is a fundamental flaw, and that this is such a constitutional abortion that you will have to recommend to the committee that we recommend that the Minister withdraw it?

[151] **Mr Lambert:** It is not for us to draft—

[152] **Rhodri Morgan:** No, but are you saying that it is a fundamental flaw?

[153] **Mr Lambert:** I think that it is. I think that you have to set out the criteria individually.

[154] **Rhodri Morgan:** Where would you do that? Would that be in a resubmitted, amended explanatory memorandum? Are you saying that it could be done if you had an amended explanatory memorandum that set out the criteria?

[155] **Mr Lambert:** I think that it would have to go in the amendment itself.

[156] **Rhodri Morgan:** It would have to go in both. So, you do not think that it is impossible.

[157] **Mr Lambert:** It is not impossible.

[158] **Rhodri Morgan:** It is not a fundamental flaw; it is poor drafting.

[159] **Mr Lambert:** It is always possible, I think, to set out criteria.

[160] **Rhodri Morgan:** I have one last point to make. I am not an expert on procedure, but I have observed Henry VIII powers in use—not the original Henry VIII, but the Neil Hamilton Henry VIII power in the Deregulation and Contracting Out Bill of 1994—and they are interesting. However, the key point is that an Order is not amendable, but a Measure or a piece of law is amendable. Picture a backstop power being used to merge Rhondda Cynon Taf and Merthyr Tydfil, Torfaen, Caerphilly and Blaenau Gwent, Conwy and Denbighshire, or Anglesey and Gwynedd. Are you suggesting that that should be amendable?

10.30 a.m.

[161] In other words, if a piece of legislation is brought to the Assembly with the aim of merging two or three local authorities in the Valleys or north Wales, are you saying that that itself is amendable? You could put your hand up to seek to have a vote on creating a situation where, instead of having Torfaen, Blaenau Gwent and Caerphilly, you would delete Torfaen and put in Newport instead, or you could take Torfaen out so that you would have only two local authorities instead of three. That means that you would have an amendable motion to merge. Are you saying that that is the case, or do you accept that, once you reach that stage, it has to be an unamendable motion—in other words, an Order—that is either rejected or accepted? The Order-making procedure is normally unamendable. Are you saying that this has a primary legislative character, whereby the Assembly itself can amend it?

[162] **Mr Lambert:** Yes, indeed. A Measure can make exactly the same provisions as an Act of Parliament. Therefore, your proposed Measure can amend the Local Government Act—

[163] **Rhodri Morgan:** Is that appropriate for consideration of a motion to merge local authorities? If we get to that stage, do you think that the Assembly should consider amendments to add or delete the number of local authorities being merged?

[164] **Mr Lambert:** Yes, I think so. You cannot possibly say that the 1994 Act is in concrete. The Assembly must be able to amend Acts, as it is doing now as part of its Measures. In our view, due to the individual circumstances of particular proposals to merge, they should come to the Assembly individually by means of a Measure.

[165] **Rhodri Morgan:** You are referring to a Measure that would itself be amendable, are you not?

[166] **Mr Lambert:** Yes, indeed.

[167] **Rhodri Morgan:** Therefore, it would be possible to add a local authority or take one out, as well as to vote the Measure down altogether.

[168] **Mr Lambert:** Certainly.

[169] **Janet Ryder:** I have a question on the back of that. In your reading of the original piece of legislation, did you see any intent to merge local government areas? Alternatively, in your interpretation of the proposed Measure, was the intention to improve the performance of local government areas? Is there a connection between the two?

[170] **Mr Lambert:** We thought the latter, which is why we thought that this amendment fell within the final category relating to the Cabinet office: it was desirable, and it suddenly appeared to the Government to be so. According to the Cabinet office, unless there are emergency reasons for moving an amendment, on the basis that it is desirable and urgent, the Government does not accept it. It does not put the amendment forward; it leaves it for further legislation.

[171] **Janet Ryder:** In your interpretation, therefore, is this a step too far, and something that should come as separate legislation?

[172] **Mr Lambert:** It seems to be a desirable amendment, but there is no reason why it has been brought forward at this stage on the basis of urgency.

[173] **Ms Navarro:** Again, the problem is that we do not have the normal documentation that goes with such an amendment so that we can understand why it was brought up in the

first place, and why now. We can try to guess and assume, but if we had the necessary documentation, it would make things much easier, and we could have a better debate on this.

[174] **Janet Ryder:** We cannot gainsay what the Minister will say next week, and the reasons that he will give us for this, but, in looking at the evidence that has been brought forward, the only reason that I have been able to find so far comes from a report by Legislation Committee No. 3. The report says:

[175] 'Given the drive towards collaboration across public services generally, we believe that the proposed Measure needs to be strengthened to provide a more effective tool to compel collaboration in circumstances beyond the current limited powers in the 2009 Measure. We recommend that the Minister seeks ways of addressing this issue and strengthening the proposed Measure to look at other circumstances where the Minister may want to compel local authorities to collaborate.'

[176] I appreciate that you may not have seen the report, but it uses the word 'collaborate'. For my benefit, could you draw on your legal background to give me a definition of what you would term as 'collaborate', what you would term as 'merge' and what the difference between them might be?

[177] **Mr Lambert:** Off the top of my head, I would say that 'collaborate' is a kind of administrative statement, whereas 'merge' is very much a legal provision. The two seem to be very different. It is like having a gun in a bag—if you do not collaborate administratively, we will merge you.

[178] **Rhodri Morgan:** That is exactly the Minister's intention.

[179] **Mr Lambert:** However, there are no criteria. The only thing that you have is these provisions that they will look at four sections of last year's local government Measure, and if they do not think that they are sensible or something similar, in this particular case, they will order them to merge. However, what will they take into account in deciding that those sections are not working?

[180] **Ms Navarro:** That local government is not efficient.

[181] **Janet Ryder:** We will return to this in a minute.

[182] **William Graham:** As a member of that legislation committee, it is worth commenting that what was in my mind and in the mind of others was the collaboration part of it. I am thinking of twenty-first century schools, of which collaboration is a vital part, the Beecham recommendations for collaboration and, to go back to 1994, when it was suggested that there would not be, for the sake of argument, 22 directors of education authorities, but that they would be merged into representative bodies from those area councils. That never came about. We were concerned that the Ministers should have the power to compel, which is the word that was used, collaboration. It was not my intention that that should be used for amalgamation.

[183] **Rhodri Morgan:** This is the critical thing. We have explored the question of what happens if recalcitrant local authorities show no interest in collaboration. The Minister thinks that he is then like a one-legged man in an arse-kicking contest, because he cannot compel the local authorities to do what he wants them to do, but he might be able to do so had he this power in reserve. That is the issue. It is not about an emergency procedure to be used when a local authority is at the point of collapse. It is a backstop power. Can you see the difference between the need for an emergency power, when you would have to rush legislation through because a local authority was on the point of collapse, and the need for something different

due to a resolute refusal to collaborate in an exercise of continuous improvement, when it would be inappropriate to use an emergency Measure if what you want is a backstop Measure to oblige collaboration due to recalcitrance?

[184] **Janet Ryder:** Before you answer that, would you have expected the Minister and his officials, in drawing up the original proposed Measure, to have thought it right the way through, with all the subsequent eventualities and, therefore—it does not matter how desirable this may be to some Ministers—to have included it at that stage?

[185] **Mr Lambert:** I hesitate to offer the Cabinet Office advice again, but that is what the Cabinet Office advice is saying. You should first of all sit down, focus and work out the whole extent of a Bill and then present the Bill to Parliament. You do not put in desirable amendments halfway through the Bill process. You are under a duty to think it out at the beginning. That is why we and the Cabinet Office would not agree to desirable amendments going through afterwards.

[186] **Janet Ryder:** I know that Kirsty wants to come in, but I will bring William in because he sat on the committee.

[187] **William Graham:** Bearing in mind what you have said in evidence, why do you think that the subsequent amendments are so detailed? They give the power to the Ministers to give support for amalgamation in terms of community councils, the boundaries of authorities and the numbers of councillors and so on, which does not suggest that it is simply a collaborative agenda.

[188] **Mr Lambert:** It looks as if they were preparing this amendment at the same time as they were putting the proposed Measure forward. What seems to happen in Parliament, and this is against the advice of the Cabinet Office, is that Bills are put into Parliament as quickly as possible, particularly if you have a new Government with new thoughts and then, suddenly, as the Bill proceeds, they afterwards think, 'Ah, let's put an extra little bit in', or a large bit. They had not thought of it at the beginning, but as the Bill is going through, they are preparing the amendment and developing it. In central Government terms, I suppose you would have two Bill teams: one would be the original Bill team, steering through the original Bill, and the other would be a separate, supplementary Bill team filling in all the details of the supplementary part. Again, the Cabinet Office would say, 'That is really not on. By all means, the supplementary Bill team may prepare their proposals, but for another Bill, not for an amendment to this one'.

10.40 a.m.

[189] **Janet Ryder:** William, do I take it from the question that you just asked that it is your assumption that, because of the detailed nature of these amendments, they may have been thought through beforehand?

[190] **William Graham:** I am not convinced that it is about 'collaboration'. In my view, the amendments suggest amalgamation. If that is not the intention, why is there so much detail in the amendments? That is my view.

[191] **Janet Ryder:** Not that the amendments could have been drawn up beforehand.

[192] **William Graham:** Quite.

[193] **Rhodri Morgan:** I have one last question.

[194] **Janet Ryder:** Kirsty has been waiting some time to come in.

[195] **Kirsty Williams:** I guess that there has been a lot of speculation as to why the Minister has brought forward these amendments at this stage and, to be fair to the Government, I do not think that it is in the business of wholesale reform and the redrawing of local government boundaries—I do not think that that is what is in the Minister's mind, if I am being fair to him. There has been a lot of speculation that there is an individual issue that the Minister is seeking to address, and there is probably a legitimate debate to be had about that. However, is there another, more appropriate way, even at this late stage in this Assembly term—and we are approaching the end very quickly—for this Minister to deal with that issue, rather than asking the National Assembly via these procedures to hand over an ill-defined but significant amount of power? Is there another way that the Government or the Minister could achieve those goals rather than asking us for a wholesale handing over of power?

[196] **Mr Lambert:** Yes there is: a proposed Measure, setting out exactly how you would amalgamate two local authorities. You could set out on the face of the proposed Measure the number of councillors in the amalgamated authority, and the number of staff who might have to go, and the whole thing would be a composite document just for those two authorities.

[197] **Ms Navarro:** As a one-off.

[198] **Mr Lambert:** You would see it all on the face of the proposed Measure as it goes through. You see, there is nothing currently on the face of this proposed Measure as regards Orders; all it says is that you can decide the number of councillors, and the number of staff that will go. I think that you could have a self-contained proposed Measure to spell that out.

[199] **Kirsty Williams:** So, there is another way.

[200] **Mr Lambert:** Yes, there is another way.

[201] **Rhodri Morgan:** If you were working within this proposed Measure—despite the unease that we all share in relation to the late addition of these two amendments, and their possible use by a successor Minister to achieve local government reorganisation by the back door, without having to go through the usual White Paper and Measure-making procedure—how would you seek to reinforce the protection or improve the amendments, so that it would be far more difficult, if not impossible, for a successor Minister to abuse them to achieve local government reorganisation by the back door? Are there reinforced wordings or changes to the explanatory memorandum, or ministerial undertakings that could be given, which would throw a block against any future Minister seeking to abuse the power and to go from 22 local authorities to seven or eight without the need for primary legislation?

[202] **Mr Lambert:** What I would say to that—and I do not know if Marie has anything to add—is that you should set out the criteria. On page 2 of our paper, we quote the House of Lords Constitution Committee praising the criteria in section 3(2) of the Legislative and Regulatory Reform Act 2006 for ensuring that the effect of an Order is proportionate and that there is a method of preventing the removal of any necessary statutory protections. It strikes a fair balance between the public interest and the interests of all those who would be adversely affected by the decision. That is at least the beginning of the criteria. There is not any of that in the amendments.

[203] **Kirsty Williams:** Could you please repeat the page number?

[204] **Ms Navarro:** It is on page 2 of our evidence.

[205] **Rhodri Morgan:** Do you think that that is not of itself sufficient, but it is a good start as a reinforcement against any suspicion that a successor Minister could misuse the power in

order to achieve wholesale local government reorganisation, shall we say, as opposed to retail local government reorganisation, by the back door, and without it being a backstop power in relation to a refusal to collaborate on continuous improvement, but something that the Minister could just damn well do?

[206] **Mr Lambert:** Yes, we do.

[207] **Ms Navarro:** I would definitely provide for a definition on the face of the proposed Measure, so an amendment to your amendment, to define what is meant by 'efficient local government'. I would get rid of 'likely', because it is a totally subjective word, and provide robust guidance to the Assembly at the same time, in the form of an explanatory memorandum or administrative guidance, as to when and how the powers would be exercised. You should also, and I refer again to the Cabinet Office's document, give examples as to the precise times when the powers would be exercised or give examples of precedence in order to give a clear idea as to when it would be acceptable to use the power, so that the Minister has a clear understanding of the intention behind the legislation.

[208] **Rhodri Morgan:** To what extent is it useful for the Minister to give spoken undertakings that can be linked to definitions in a proposed Measure, where it is very difficult to find the right words? It is usually regarded as helpful these days that a Minister, speaking on his or her feet in the Assembly, actually names the circumstances in which the power could and could not be used. Is that not normally regarded as helpful reinforcement? It did not used to be, but I think that it is now.

[209] **Mr Lambert:** I would emphasise what you have said by saying that I would link any explanatory note to statutory criteria. I would not keep it all in explanatory notes. I would have statutory criteria and then expand it by a reference to the explanatory notes. Local authorities, the Assembly and anyone else would then be able to point to the statutory criteria and to the explanatory notes and say, 'Minister, what on earth are you doing? You are not following the statutory criteria and you are not following the explanations given by your predecessor.'

[210] **Rhodri Morgan:** The Minister would then be exposing him or herself to a judicial review threat, with a much higher likelihood of successful challenge because they have broken the guidance.

[211] **Mr Lambert:** Yes, absolutely. The guidance would be before the court.

[212] **Rhodri Morgan:** So, in that sense, you are saying that it is doable, with a lot of additional work, to reinforce the explanatory memorandum, to give guidance, to change some of these subjective words like 'likely' and 'effective local government' and to reinforce by ministerial undertaking the circumstances in which it would and would not be right to us the power and so on. So, it is doable to make it clear that this is subsidiary to the requirement to collaborate, it is a backstop power and cannot be used as a backdoor for local government reorganisation.

[213] **Mr Lambert:** We would prefer an amended proposed Measure.

[214] **Rhodri Morgan:** Yes, but you are saying that it is doable, if all of those things were done.

[215] **Mr Lambert:** Yes.

[216] **Ms Navarro:** We would also want a statement stating that this is not a precedent, so that it should not be treated as a precedent.

[217] **Rhodri Morgan:** So, you would want a ministerial statement to that effect.

[218] **Ms Navarro:** Yes.

[219] **Janet Ryder:** We have covered an awful lot of points there. I know that we have asked a lot of you already, but would it be possible for you to provide us with a note on these further things? If we could have something in writing before we have the Minister in, that would be exceptionally helpful.

[220] Kirsty, do you still want to come back on that?

[221] **Kirsty Williams:** I think the point has been made. It is clear that there are things that the Government could do to improve the procedure that it has used. Do you agree that the principle that a Parliament alone can undo something that a Parliament has done is ultimately the principle by which we should be governed? Although there is an opportunity here to address some people's concerns, what you have outlined is no substitute for that basic principle that it is the right of a Parliament to undo what a Parliament has done.

10.50 a.m.

[222] **Mr Lambert:** Yes.

[223] **Alun Davies:** Do you believe that the amendment as written gives the Government the legal powers for wholesale local government reorganisation in Wales?

[224] **Mr Lambert:** Yes.

[225] **Alun Davies:** You believe that the safeguards that have been built into it in sections 2(a) and 2(b) are irrelevant, essentially, and that the Government, by using these powers, could amalgamate all local authorities in Wales with others.

[226] **Mr Lambert:** We would say that they are procedural, and, fair enough, there are many procedures for consultation, but they are not substantive—there are no substantive criteria.

[227] **Rhodri Morgan:** They are open to abuse, is that what you are saying?

[228] **Mr Lambert:** They are open to a lot of interpretation. I am sure that Ministers will not want to abuse. When I was studying equity in Aberystwyth, we had a phrase that said that equity depended on the length of the Lord Chancellor's foot. So, the approach to equity depended on the shoe size of whoever was the Lord Chancellor at the time. In this case, it depends on whatever the Minister wants to do.

[229] **Alun Davies:** As Kirsty has pointed out, we are coming to the end of this Assembly, and, when a new Government is formed later in the year, a new Minister could take an entirely different view of the power and use it in a way that the current Minister would regard as unexpected, shall we say?

[230] **Mr Lambert:** Indeed. The new Minister could depart from any statements that his predecessor has given as part of the explanatory note. The Minister could say, 'I have looked at this matter again, and I am changing it.' That is how conventions change in Parliament; ministerial accountability changed almost overnight.

[231] **Ms Navarro:** That is why you need the criteria on the face of the proposed Measure.

[232] **Alun Davies:** Therefore, the only way to give us the safeguards that we want to see—and I think that there is wide agreement on that—is by further amendment to the proposed Measure.

[233] **Mr Lambert:** Yes.

[234] **Janet Ryder:** Fundamentally, this goes back to the point that Kirsty raised, which is that it is about whether we allow any future Minister to have the power, or whether we retain it in the hands of the Assembly and a Minister has to come and ask for that power as and when it is needed.

[235] **Mr Lambert:** Yes.

[236] **Janet Ryder:** Does anyone have any further questions? There are a number of questions that arise. For me, this issue has raised some fundamental points that go way beyond the proposed Measure. This raises fundamental constitutional questions, and it is a shame that we have reached it in the last few months of this Assembly. There are fundamental questions here about where power is held in Wales in the future, and whether it is handed over to a Government or whether it is held by the Assembly. I may well have overstepped the mark by saying that, but I cannot get away from a deep, deep feeling.

[237] **Alun Davies:** To be fair, Janet, I do not think that those remarks are representative of the committee as a whole. I would not want the record to show that I endorse that, because I do not. I wish that the Government had acted differently. I do not think that this is the best way in which to go about legislating, and it is not the best way of creating a new statutory framework for local government. However, I do not think that it is an abuse, and I do not believe that the Government is acting in blind faith. We need to differentiate between our own personal and political views about what the Government is seeking to do and what we are dealing with here, which is a particular point of principle with regard to legislation. I do not necessarily disagree with other things that have been said here, but we need to guard against over-interpretation.

[238] **Janet Ryder:** This is the Constitutional Affairs Committee. Politics has nothing to do with the committee; it looks at the constitutional handling of this matter. In your evidence, Mr Lambert, you referred to the evidence that was given by Daniel Greenberg. He said clearly—and you agreed with his statement—that a Government must make its intentions clear at the outset, and show clearly that its policy is thought through and that the aim of the proposed Measure could not be achieved in any other way.

[239] **Ms Navarro:** Any new idea should not be contained in the same piece of legislation. Any new idea arising after a Bill is introduced should go in another Bill.

[240] **Rhodri Morgan:** However, a new idea may be subsidiary to the overall purpose. I find myself acting as devil's advocate or Minister's advocate in a way here, but it seems to me that the Minister's case is that this is a late addition, and he apologises that it is a late addition, but that it is subsidiary to the need for a comprehensive ability to compel collaboration, and that it is not a separate or new idea—it is a subsidiary one. The issue is whether or not that objective to compel or oblige authorities to collaborate is subsidiary, and to be achieved through the amendment, or whether it is a new power, as you say, and a completely different animal. That is the issue.

[241] **Ms Navarro:** That is why we wish that there were established conventions—again, I come back to that point—so that Government, the Assembly and us outside would be clear about what is acceptable for the Assembly. Again, I appreciate that it can be different from

Westminster, and, in a way, I hope that it is, but very good practices have been established in Westminster over the centuries, so there are good ones to be kept, and new ones which you can come up with and some that can be changed. However, it would be useful for everyone if, in the new Assembly—with, hopefully, more powers—we would establish conventions and principles. A review of Standing Orders going on, and that may be an opportunity to include some of that there, or it could be kept for conventions, which are more flexible for the future.

[242] **Janet Ryder:** Thank you very much. If you could provide what you were saying about criteria and any further evidence in writing, that would be most welcome. Thank you very much for coming in this morning.

10.57 a.m.

Annexe D – Additional Paper from Wales Governance Centre

Supplementary Evidence on Proposed Local Government Measure, Amendments tabled by WAG on 27th January

Marie Navarro, David Lambert, Legal Members of the Wales Governance Centre, Cardiff University.

Introduction.

The Assembly's Constitutional Affairs Committee has requested our comments on the apparent lack of criteria and guidance that would assist in determining the circumstance when the Assembly Government might make an amalgamation order under the proposed amendments tabled by the Assembly Government on 27th January to the draft Local Government Measure.

In seeking to answer the Committee's request we would still draw attention to the evidence which we submitted to the Committee last Thursday. It is considered that provision would best be made by making specific provision for individual amalgamations in primary legislation in a draft Measure if and when the need arises in a particular case. In so doing we again wish to reflect the comments of the House of Lords Select Committee on the Constitution, a committee of a Parliament whose remit is similar to aspects of the remit of the Assembly's Constitutional Affairs Committee, both in respect of the Public Bodies Bill (to which we have previously referred) and also to the conclusions of the Committee on the Legislative and Regulatory Reform Bill (2005-6).
Paragraph 44 of the report states: '**We are unconvinced that delegating order-making powers to Ministers to change the statute book and the common law is the most constitutionally appropriate way forward'.**[1]

Criteria

As a result of the work of Select Committees in the House of Commons and in the House of Lords, provisions were added to the Legislative and Regulatory Reform Bill 2005 so that the powers contained in the Bill set out safeguards to which the House of

[1]HOUSE OF LORDS, Select Committee on the Constitution, 11th Report of Session 2005-06, **Legislative and Regulatory Reform Bill**
http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/194/194.pdf

Lords' Committee on the Constitution commented that there was now a better balance in the Bill even though the powers 'remain over-broad and vaguely drawn'[2].

In our report to the Assembly's Constitutional Affairs Committee we explained why we consider the amendments of the 27th January presented to the Assembly are over-broad and vaguely drawn. There is an apparent lack of safeguards other than the indistinct provisions of subsection (2) of the amendment 91 on page 2 of the Notice of Amendments together with procedural safeguards in amendment 98.

The Legislative and Regulatory Reform Act 2006 has three types of substantive safeguards as well as procedural safeguards:

1) The order making power in the Act relates to the 'removing or reducing any burden' s.1(2). S.1(3) defines what is meant by 'burden'. There is no definition in the amendments to the proposed Measure of what is 'effective local government'.

2) S.3(2) of the 2006 Act contains pre-conditions to the making of an order. A number of those conditions could usefully be considered for inclusion in the proposed Measure amendments. In particular we would draw the Committee's attention to the following section 3(2) of the 2006 Act.

> 3 Preconditions
>
> 1. (1)A Minister may not make provision under section 1(1) or 2(1), other than provision which merely restates an enactment, unless he considers that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.
>
> 2. (2)Those conditions are that—
>
> **3. (a)the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means;**
>
> **4. (b)the effect of the provision is proportionate to the policy objective;**
>
> **5. (c)the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;**
>
> 6. (d)the provision does not remove any necessary protection;
>
> 7. (e)the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
>
> 8. (f)the provision is not of constitutional significance.

Associated with these pre-conditions is the requirement in section 14(2)(c) that in laying any draft order before Parliament the Minister must explain why it is considered that the relevant section 3(2) conditions are satisfied in the particular case. The proposed requirement in amendment 98(3)(a) to the proposed Measure

[2] Ibid, Paragraph 5

is only a requirement that the proposals are explained not that any additional pre-conditions have been fulfilled.

3) Finally section 21 of the 2006 Act provides that if it is considered that relevant section 3(2) pre-conditions are fulfilled, any order made under the Act must have regard to the 5 principles set in section 21 before an order can be made.

> 21Principles
>
> (1)Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function.
>
> (2)Those principles are that—
>
> (a)regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
>
> (b)regulatory activities should be targeted only at cases in which action is needed.
>
> (3)The duty in subsection (1) is subject to any other requirement affecting the exercise of the regulatory function.

There are no such principles in the amendments to the proposed Measure.

The necessary new principles and pre-conditions which might apply to the amendments to this proposed Measure are a matter for the Assembly Government to decide upon and to draft before presenting them to the Assembly for its consideration. We only wish to draw the Committee's attention to examples of what such pre-conditions, principles and definitions might look like.

Explanatory Documents:

1) Accompanying the 2006 Act as it proceeded through Parliament was a detailed explanatory note setting out not only a summary of the proposed legislative provisions but also in what circumstances the powers might be used (this is a matter referred to in the Annex to the Constitutional Affairs recently published **Drafting Welsh Government Measures: Lessons from the first three years**[3]**).**

In addition the Explanatory Notes to the 2006 Bill/Act reflect statements explaining how the legislation would be used made by Ministers as the Bill went through Parliament. Thus paragraph 6 of the Explanatory Notes refers that a Minister gave "a clear undertaking (…) that orders will not be used to implement highly controversial reforms" (Hansard, 9 Feb 2006: Column 1058-1059)."[4]

To our knowledge there is no Explanatory Notes accompanying the amendments to the Proposed Measure which set out the considerable information contained in the Notes accompanying the 2006 Bill/Act.

[3] http://www.assemblywales.org/cr-ld8393-e.pdf
[4] http://www.legislation.gov.uk/ukpga/2006/51/notes/division/2

2) A further document was issued by the Department responsible for the Bill, entitled 'Guidance for Officials'. This was issued either as the Bill was going through Parliament or soon afterwards and was certainly being prepared as the Bill proceeded. It is a very detailed and extremely useful document covering every aspect of the matters to be considered before an order under the 2006 Act could be presented to Parliament. It is on the relevant Department's website and was therefore publicly available. At the time it was the Department for Business, Enterprise and Regulatory Reform[5]. The document gives details as to when a Legislative Regulatory Order cannot be used as well as when it can be used. It also details the pre-conditions and principles applying to an order. It seems to us that a document like this is a necessity for Assembly Members local authorities, and the public in general to be fully informed as to how the proposed amendments would operate.

3) In addition Ministerial statements made during the passage of the legislation stating how the legislation would operate are very important and are often incorporated in the formal Explanatory Notes accompanying the draft and enacted legislation.

Conclusion:

The Assembly Constitutional Affairs Committee might wish to consider the nature of the provisions which were eventually included in the Legislative and Regulatory Reform Act 2006.

The definitions together with the accompanying explanatory notes reflect the principles laid down by Parliamentary Committees and in particular the House of Lords Constitution Committee. The Committee was adamant that without such Bill provisions and accompanying documents they would report against the Bill to Parliament. The Government accordingly adopted their recommendations which are fully reflected in the Guidance Note to Officials on the Act.

Marie Navarro and David Lambert.

[5] http://www.bis.gov.uk/assets/biscore/better-regulation/docs/10-774-legislative-reform-order-making-powers-guidance.pdf

Annexe E – Extract from the Record of Proceedings: Constitutional Affairs Committee - 10 February 2011

Ystyried y Mesur Arfaethedig ynghylch Llywodraeth Leol (Cymru): Sesiwn Dystiolaeth gyda Carl Sargeant AC, y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol
Consideration of the Proposed Local Government (Wales) Measure: Evidence Session with the Minister for Social Justice and Local Government, Carl Sargeant AM

[2] **Janet Ryder:** With Members' approval, I will move straight into our evidence session this morning. This is an important issue and I appreciate the Minister making time to come in to this early session. I welcome Carl Sargeant, the Minister for Social Justice and Local Government, who will give evidence today in relation to the Proposed Local Government (Wales) Measure, and specifically in relation to the amendments that have been tabled at this stage of the proceedings. Minister, would you introduce yourself and your officials for the record? You may then make any comments that you would like to make before we move on to questions.

[3] **The Minister for Social Justice and Local Government (Carl Sargeant):** Good morning. I am Carl Sargeant, the Minister for Social Justice and Local Government. With me is Frank Cuthbert—what is your proper title, Frank? I get it wrong all the time and Kirsty says things when I get it wrong.

[4] **Mr Cuthbert:** I am head of the local government democracy team.

[5] **Carl Sargeant:** Deborah is—

[6] **Ms Richards:** I am a member of the legal services team.

[7] **Carl Sargeant:** Would it be useful to frame where we are with the proposed Measure? Thank you for the invitation to come along this morning to answer your questions on the Proposed Local Government (Wales) Measure, particularly on the amendments. I have followed with interest the discussions that you have had in this committee and others, particularly those on the paper from the Wales Governance Centre, which was presented to you last week. I have no doubt that you will have drawn on that for questions to ask me this morning.

[8] Before we start the questions, I would like to make three quick, general points. The amalgamation power is important, but has not been brought forward without consideration of the implications. It would certainly be a big step to bring forward a proposal to amalgamate two or three authorities. However, this is a power that Welsh Ministers would not be able to use at random or on a whim. I am sure that your questions will touch on the procedures that will be put in place. The Government's amendments were accepted yesterday at Stage 2, and include a range of significant, built-in checks and balances around the proposed Measure. That is important for me and for other Ministers in future. That is where we are with that.

[9] My last point, and the main point, is that I have heard it said publicly and in the media and other circles that this is a precursor to reorganisation. I want to say categorically

that it is not. That is not my intention, and it would not be the intention of another Minister. I believe that procedures are built into the proposed Measure that would prevent a Minister from doing that in the future. I am happy to discuss that further. These are powers that are specific to an area of two or three councils and, quite frankly, if a Minister tried to use these powers as a tool for reorganisation, it would be extremely difficult because that Minister would have to take through eight or nine proposed Measures at once. Thank you, Chair; I am happy to take your questions.

[10] **Janet Ryder:** You have just outlined that this is quite a large step forward from the general thrust of the proposed Measure as it was introduced. The power to amalgamate is a much bigger step than a power to force collaboration. Why was this power not included in the original proposed Measure?

[11] **Carl Sargeant:** It is fair to say that the proposed Measure should be taken as a whole. We have had discussions in the past about where we are with the proposed Measure as a package, and the progress from the 2009 Measure, where we were seeking collaboration, recovery and so on. This is the tool for the end point in the process of managing local councils. Since the introduction of the proposed Measure, there have been a lot of live issues out there, and I would like to mention some of them, and explain why we have taken our view on this. An independent evidence session has shown that a merger of children's services at two authorities would provide significant cost savings, but the councils in question refused to act on that. I thought that was, at best, unreasonable, although we are still working on that. Another authority has been in special measures, which is no surprise to Members—everyone knows what I am talking about. Services were put at risk for the public, and the prospect of improving corporate capacity is still weak. That is another live issue. So, it is a question of the tools that we have in the box. This part of the box was empty; we did not have this tool for delivering the merger of authorities that fail to improve.

[12] **Janet Ryder:** If this part of the tool box was empty, why did your officers not spot that when you were drawing up the proposed Measure?

[13] **Carl Sargeant:** This has come from evidence given to several committees. The agenda was around collaboration. It was always possible to bring in a proposed Measure if there was a failing authority. That would be a process that we could consider. Committees have made recommendations on collaboration, which is great; trying to encourage councils to do things, to work differently and take that agenda forward. However, when they fail to do so, and fail to improve, what do you do then? We looked at that, and we did not have a tool unless there was complete failure.

[14] **Janet Ryder:** When did that become obvious to you, Minister?

[15] **Carl Sargeant:** During the process of questioning. We have some quotations. At the Health, Wellbeing and Local Government Committee meeting that I attended in June last year, I was asked if I would

[16] 'consider coming up with a model that might not be around full-scale reorganisation, but looking at some neighbouring councils that could share a big element of their education service, share senior directors and chief executives, and pool their resources'.

[17] I said that we would do some work around that. The recommendation from Legislation Committee No. 3 was that we needed more effective tools to compel collaboration. My interpretation of that was that we should look at the package we have, and see what is missing from the box of tools. We have the 2009 Measure, which is about the structure of driving through collaboration and recovery for an authority, but as for the endgame, when you have a failed council, or one that is failing to improve—what is the next

step? The next step is merger.

[18] **Janet Ryder:** I will allow myself one more question, and then I will bring in Alun and Kirsty. You are telling us that, as your officials were drawing up this proposed Measure, they had not foreseen a need for these amendments. It was not part of the original policy.

[19] **Carl Sargeant:** The issue for me was presenting the proposed Measure as it was introduced. We then had some questioning around, 'What next, if you cannot achieve collaboration or work effectively with councils?' When we looked at that, we did not have the necessary powers in the proposed Measure, other than through the introduction of an emergency Measure for a specific council. If we were to do that, there would be legislative process, time and cost implications for the Assembly. This proposed Measure lends itself to that process, which is why we have inserted it there. The evidence presented to us by the committee was that we should be able to do something. We are doing something through this proposed local government Measure.

8.40 a.m.

[20] **Alun Davies:** It is very curious, Minister, that this process of policy development seems to be going on at the same time as the Government seeking legislation. One would have anticipated that the process of policy development would have been completed by Government before it sought the legislative authority to put that policy into action. The points that we made in our earlier report on the process have been well made. It is curious, again, Minister, that this process is going on and that this amendment appears. I know that it is technically in time and so on, but it is certainly very late in the day in terms of enabling this place as a legislature to ensure effective scrutiny of the additional power that you are seeking.

[21] **Carl Sargeant:** Can Frank just come in on this point? Then I will be very happy to answer Alun's question.

[22] **Mr Cuthbert:** Perhaps I can comment—as the question has been raised—on why it was not included in the first draft of the proposed Measure. It is true that the proposed Measure grew out of two pieces of legislative competence, in the main: the Local Democracy, Economic Development and Construction Act 2009, which transferred competence for scrutiny and governance to the Assembly, and the legislative competence Order that transferred powers on widening participation on community councils and remuneration of councillors. However, even then, when we were making the initial draft, we saw the need to strengthen the provisions of the 2009 Measure by introducing a provision for the production of guidance on collaboration. We have been faced with a moveable feast. During the course of the past two years, we have seen increasing situations in which efficiencies and greater collaboration were required in local government. Certain weaknesses and failures along that road have led to the situation where it seemed timely to introduce the legislative competence that we have had since 2007 on the abolition and creation of local authorities so that the next Assembly Government could use those powers if it wished rather than our creating a process that meant that no such amalgamation or mergers could take place until, probably, well into the next Assembly, which might be very late given the situation that we face.

[23] **Alun Davies:** I am not entirely sure that I accept that, Mr Cuthbert. It has not been a moveable feast. As I understood it, the policy of the Government has been in place since the Beecham process, and the process of collaboration has been well known and well accepted. So, if policy development was taking place in Government in any coherent fashion, Government would understand that, if it was putting in place processes, there must be an end to those processes. It does not seem to be rocket science to be able to put that in place before seeking legislation. I understand the issue with competence and LCOs and so on. That is one work stream, but surely the policy development and establishing where the Government seeks

to be at the end of the legislative process should have happened some time ago.

[24] **Carl Sargeant:** I wish to respond with regard to process, in support of what Frank was saying. The collaboration element of this is built into the 2009 Measure, and we follow on. What has been identified through evidence sessions and understanding what is happening—and I think that Frank was suggesting that the process has been a moveable feast with regard to what is happening in local government, which has significantly changed the way that it operates over the past 12 months—is that, financially, there is a need to operate very differently. With respect, there are authorities that still have a silo mentality. I have been driving the collaboration agenda; Government has been driving the collaboration agenda. In some areas, we are seeing service failure and collaboration is not working. We must have the tools to ensure that, where we put in place recovery, support and so on under the 2009 Measure, we can address the problems if we still do not see improvement. It would be irresponsible of a Minister, whoever that might be, to let any authority continue. That is why we have put in place in this part of the proposed Measure a power to amalgamate, because that completes the toolkit. This is no more than the final tool for the process around the 2009 Measure.

[25] **Kirsty Williams:** Minister, I think that it is a bit of a leap to go from Legislation Committee No. 3's concerns about compelling collaboration to the position of being able to dissolve local authorities. There is a difference, is there not, between compelling a local authority to do one thing and simply getting rid of the local authority? Do you not already have the power to direct local authorities to collaborate under the 2009 Measure? If you can already direct local authorities, why are you taking this measure? Mr Cuthbert, I am very curious: is it now the Government's policy to legislate on behalf of future Assembly Governments? You just said that it was felt necessary to have this power in place for a future Assembly Government. That is very curious thing to do. Surely, it is the business of future Assembly Governments to decide what legislative powers they want and do not want. Frankly, I am amazed that it is now the policy to legislate on behalf of future Governments.

[26] **Janet Ryder:** In fairness, it should be the Minister who responds to this.

[27] **Carl Sargeant:** Absolutely. If Frank also wishes to comment, I would be happy for him to do so. First, Kirsty, you are absolutely right that we have the powers to compel authorities to collaborate under the 2009 Measure. Be under no illusions: the committee that was questioning me also understood that. Its concern was what you do if you have the powers to compel authorities to collaborate and it still does not work. I understood that line of questioning to lead to asking 'What is next?' I have come back with a process to allow the amalgamation of authorities. That was my interpretation of where the questioning led. It is not that the committee or I failed to understand that the 2009 Measure already included the power to compel collaboration. It knew that, I knew that, and it was asking me, 'What do we do next?' I have come back with the tool to do that job.

[28] To pick up on the point about legislating for future Governments, Frank will be able to clarify his comments, but what I believe Frank meant was that we are at the end of a term and legislation is a process at whatever point you are at in the term. Clearly, if this is passed, it will be legislation for the next Government. I do not think that that is any different to any other legislation. A new Government will use the legislation that has been created by the previous Government.

[29] **Janet Ryder:** However, Minister, other legislation that has been passed has gone through the full consultation and Measure process, unlike these amendments—

[30] **Carl Sargeant:** Chair—

[31] **Janet Ryder:** William wants to come in on this point.

[32] **Carl Sargeant:** Chair, may I respond to that point? That is an interesting point. That is an accusation that we have done something out of the ordinary here. Let me refer back to some amendments that were tabled in the past. Amendments to the Welsh Language (Wales) Measure 2011 were tabled by Alun Ffred Jones at Stage 3; amendments to the Social Care Charges (Wales) Measure 2010 were tabled by Gwenda Thomas at Stage 2; amendments to the Learner Travel (Wales) Measure 2008 were tabled by Ieuan Wyn Jones at Stage 3 on the back of Kirsty Williams asking for an amendment to be tabled. I have not done anything outside the Government of Wales Act 2006 or the Standing Orders of the Assembly—unless you are suggesting that I have.

[33] **Janet Ryder:** No one is suggesting that, Minister. What we would like to see, and what we are looking to hear from you today, is that the policy was thought through from the beginning. A number of the things that you have said today leave a number of questions to be asked. I believe that William has a question to ask on this point.

[34] **William Graham:** Minister, I am surprised at your contention arising from Legislation Committee No. 3's deliberations. As a member of that committee I can say that we never discussed amalgamation—nothing was further from our thoughts, in fact. What we were talking about, which is exactly what is in the minutes, was collaboration. We were thinking of twenty-first century schools and a whole lot of other things that are entirely dependent on collaboration. We were encouraging you to strengthen your toolbox in terms of collaboration, but we were certainly not talking about amalgamation. I am surprised that you came away with that view. Why was that?

8.50 a.m.

[35] **Carl Sargeant:** That was certainly the view that I felt the committee presented to me. With regard to the detail of the report from Legislation Committee No. 3, it referred to the need for the proposed Measure to be

[36] 'strengthened to provide a more effective tool to compel collaboration in circumstances beyond the current limited powers in the 2009 Measure'.

[37] My interpretation of that and the discussions that took place in committee—and I assume that you were signed up to that process—

[38] **William Graham:** We never mentioned amalgamation. We felt very strongly that there was a need for collaboration and the ability to compel authorities to collaborate, but amalgamation was never discussed.

[39] **Carl Sargeant:** I do not recognise that point, Chair.

[40] **Janet Ryder:** When were the drafters first given instructions to start working on these amendments?

[41] **Carl Sargeant:** With regard to the evidence that we were taking from the Health, Wellbeing and Local Government Committee, I said then that we should start work on understanding what powers we had and therefore work on the potential to—

[42] **Janet Ryder:** The Health, Wellbeing and Local Government Committee of when?

[43] **Carl Sargeant:** June 2010.

[44] **Janet Ryder:** Was anything made public at that point? Before the amendments were tabled, was anything ever made public to show that you were thinking that this would be part of your policy?

[45] **Carl Sargeant:** In terms of drafting, Chair, no, that would not be made public. Nor would the paperwork be for the public. That is something that would be looked at internally. I do not think that any suggestion has been made to me by local government that my message has not been clear. I have regular contact with John Davies, the leader of the Welsh Local Government Association, about proposals for collaboration and the steps for driving improvement in local authorities. That is the intention of this proposed Measure, Chair.

[46] **Janet Ryder:** Collaboration? Are you still talking about collaboration?

[47] **Carl Sargeant:** The improvement of local authorities. That is the whole package. The toolbox is about the improvement of local authorities.

[48] **Janet Ryder:** Through collaboration?

[49] **Carl Sargeant:** Through collaboration.

[50] **Rhodri Morgan:** That is the ideal point for me to come in. Is your case essentially that this is another arrow in the quiver of the collaboration agenda?

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

[52] **Rhodri Morgan:** In other words, your contention is that this is not a separate policy that could be described as local government reorganisation by the back door.

[53] **Carl Sargeant:** That is what I was trying to suggest at the very beginning of the meeting. This is a package of measures. It is in the amendments, and, if it helps, we can issue guidance to tighten what it says there so that people understand that this is part of a process, from the Local Government (Wales) Measure 2009 right the way through to the power to amalgamate authorities. You have got to consider and go through a whole raft of proposals and evidence before you get to this. This cannot be taken in isolation; this is a package.

[54] **Rhodri Morgan:** This is the absolute crux of the Constitutional Affairs Committee. We do not consider the merits of the proposed Measure. What we are looking at is the degree of close association between the Government's amendments and the overall intent of the proposed Measure, which is to enable collaboration for the purpose of service delivery improvement—that is a Government agenda—and the extent to which this power is subsidiary to the purpose of the proposed Measure. All we are considering is whether this can appropriately be fitted under that umbrella. Essentially, we are trying to establish whether that is the case or whether it is a separate thing that you have thought up rather late and which should really have been the subject of a completely different proposed Measure because, essentially, it is a different agenda. However, your contention is that this is subsidiary to and fits in with the agenda to have collaboration for the purpose of local government service delivery improvement and the Proposed Local Government (Wales) Measure.

[55] **Carl Sargeant:** Absolutely. That is why the Order refers to the exercise by any of the local authorities concerned of the powers under section 9 of the Local Government (Wales) Measure 2009. That is why we have made it very clear. I hope that you appreciate, Chair, that I am trying to be helpful with regard to how this is framed so that the public and future Ministers clearly understand that this tool is not about reorganisation. This tool for amalgamation completes the package of tools from the 2009 Measure for effective local government.

[56] **Rhodri Morgan:** If you could do anything to bind your hands for the remaining months that you are the Minister for local government and, subject to your reappointment, the hands of your successors in future, until there is another local government Measure some 10 years down the line, so that this power could not be used to achieve local government reorganisation by the back door, that would be highly appropriate and helpful to this committee, and to the wider public's understanding. Anything that you can do to stop it from being used by one of your successor Ministers to achieve local government reorganisation by the back door without going through the conventional White Paper and separate Measure route would be enormously helpful in order to clarify the purpose. I do not know whether you, your legal colleague, and Frank as your policy colleague can offer advice on the degree to which you can fit yourself into the corset that would mean that, not only could it not be used for local government reorganisation, it would be enormously difficult to try, because it would be subject to judicial review and legal challenges that are likely to be successful, because it would be clearly contrary to the intent of this Government and you as the current Minister.

[57] **Carl Sargeant:** That was our intention and that is what we believe we have framed here. However, if there are elements that need to be strengthened, then I am happy to listen and to make any necessary amendments as appropriate.

[58] **Rhodri Morgan:** That would apply to the wording. You will have seen the criticism of the use of subjective terms that cannot be put to any objective tests through the courts in judicial review challenges that might be held in the great blue yonder were this to go through—words such as 'likely' and 'effective'. The explanatory memorandum needs to be tightened, and any undertaking that you could give today, and when it returns to be debated by the Assembly as a whole, would be enormously useful, because that will affect whether any future Minister might think that it could be used for a completely different purpose from your intent.

[59] **Carl Sargeant:** I believe that I have tried to test that. If I woke up one morning feeling not too good and thinking, 'I'm not too fond of those two or three local authorities; they've got to go', what would be the test procedure for me or for any future Minister to go through? What are the hoops that you have to go through before you could do that? You might have a bad morning and think that you could implement such a reorganisation, but you cannot, because there are a number of hoops that you have to jump through in order to be able to do that.

[60] The tests set out in section 2 relate directly to the 2009 Measure and these would have to be fulfilled prior to any reorganisation. It is necessary to demonstrate that amalgamation is needed to achieve effective local government. Evidence would be needed for all of this and an Order would have to be drawn up and would have to proceed through the necessary stages in the Assembly according to the superaffirmative procedure. These powers are different to the powers possessed by English Ministers.

[61] **Rhodri Morgan:** I have two further questions. Frank Cuthbert referred to the cut-off point for when the Government could add particular points—even points that might prove to be slightly controversial in your relationship with this committee or, more importantly, the Welsh Local Government Association as the main stakeholders. Although, perhaps I should not have used the words 'more importantly'. You probably knew that, if you added an amendment of this nature, the WLGA would be up in arms about it, as might the Wales Governance Centre and this committee. Frank used the phrase 'moveable feast', but I think that you need to unpack that slightly.

9.00 a.m.

[62] We have heard Ron Davies's famous dictum about devolution being a process rather than an event, but you cannot say that legislation is a process and not an event. There is a cut-off point at which you say, 'Okay; that is the legislation', and you cannot change it subsequently every year to move the agenda on a bit because circumstances have changed. There has to be a cut-off point. You have mentioned that other Ministers have brought forward late amendments. We say 'late', but they are not out of order; they are within the cut-off point. However, we need to test the 'moveable feast' phrase. What I am trying to get into my mind is that, once you reach the cut-off point, whatever the appropriate cut-off point is, even though it will upset this committee, the Welsh Local Government Association and the other stakeholders, you then say, 'Okay, if we can get this legislation through, we probably will not have any more legislation on this front for a decade or more'; therefore, you have to make all of your changes up to the cut-off point, whatever that sensible cut-off point is, and that is it. You will not change it again. Then, for 10 years, local government knows where it is. Can we put the 'moveable feast' phrase that Frank Cuthbert used into that sort of idea, in that, once you reach the cut-off point, you have to finish and then produce no more legislation for 10 or 20 years?

[63] **Carl Sargeant:** From the introduction of the proposed Measure and through the committees, I have received scrutiny and evidence. I know that William and I perhaps disagree on our interpretation of that, but my interpretation of what was asked of me by committee was to bring forward additional tools to compel collaboration and beyond. My assessment of the tools that we have is that the 2009 Measure is limited in driving that collaboration. There is no next step. You can drive collaboration and you can remove functions, but you could still have a failing council at the end. There is nothing that you can do about that. Over the past 12 months, while this proposed Measure has been going through and while we have been taking evidence, I have seen local government in some areas responding really well to change. In some areas, authorities have not been responding as well, and, in other areas, the response has been appalling.

[64] **Rhodri Morgan:** Wriggling out of their obligations, would you say?

[65] **Carl Sargeant:** Yes; absolutely. I have made that very clear to them. I am not prepared to accept that as the Minister currently responsible. As we have seen in children's services and social services, we have seen poor service. Helen Mary made exactly this point yesterday: if we do not step in where authorities are failing, it would be irresponsible of us and, in certain areas, it could be fatal. I am not prepared to do that as the Minister for local government.

[66] **Janet Ryder:** I will just bring in Alun at this point, because I know that the time is pressing.

[67] **Alun Davies:** We have had half an hour of this now, and we have been discussing the policy development process in Government. I think that we are all familiar with the points that you want to make, Minister—we accept that. However, we are looking at a particular amendment to much wider legislation. Some concerns came out of our evidence last week. Perhaps, if we put those directly to the Minister, we could see how we will respond to those.

[68] **Janet Ryder:** I thought that your question was going to add on to Rhodri's point. It is not a supplementary question to the point that Rhodri was making. I am therefore going to allow Rhodri to finish his question.

[69] **Alun Davies:** I felt that it did follow on from Rhodri's question.

[70] **Janet Ryder:** We will come on to those issues.

[71] **Rhodri Morgan:** I have one last question in this particular group of questions—I am sorry, but I have been given an awful lot of questions this morning. Let us be clear about the word 'failure'. My understanding—possibly wrong—is that you already have the power to deal with a failed council, in that you can wind it up and, presumably, use emergency procedures to terminate its existence. To use Dalek language, you could collaborate, amalgamate, exterminate or whatever. Therefore, you are already able to exterminate a council when it becomes a failed council. Is that the case? I do not know. It may not be the case.

[72] **Carl Sargeant:** Subject to a Measure being introduced, and going through the same procedures—

[73] **Rhodri Morgan:** An emergency procedure, therefore.

[74] **Carl Sargeant:** Yes. We have live examples of that. We have been in Anglesey for 18 months going through a process of stabilising and rebuilding the council. This is not a precursor to what I could or will do, but if I were to say, 'Look, no more', then what would the procedure be? I would have to introduce an emergency Measure.

[75] **Rhodri Morgan:** So, what you are saying is, short of the use of emergency procedures to deal with a completely failed council, you want something else to deal with a council that is wriggling out of engagement with the service delivery improvement agenda. It is recalcitrance rather than failure. Is that the case?

[76] **Carl Sargeant:** No, we have to base it on failure to improve.

[77] **Rhodri Morgan:** 'Failure to improve' is different to 'failure', which would be across-the-board failure, where the council has to be wound up under emergency procedures.

[78] **Carl Sargeant:** If we have council collapse and are unable to recover the situation using the 2009 Measure, without these powers, we would need an emergency Measure to deal with that. What we are doing with this package of measures is looking at areas where the collaboration agenda is not being adhered to. I referred earlier to cost savings of £500,000 that were available to two local authorities, which they dismissed. Where do we go from there?

[79] **Rhodri Morgan:** So, that is a refusal to engage, and a wriggling out of obligations, but something short of the outright failure that would result in the justified use of an emergency procedure. Is that a fair description of the circumstances that you intend this amendment to cover?

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

[81] **Mr Cuthbert:** The existing legislative powers of the Assembly Government could enable the transfer of some or all of the functions of a local authority to someone else—to another local authority, or to another body of people—if that were felt to be the only reasonable solution. However, that has a temporary nature to it: you would not have a local authority existing for any length of time without any functions.

[82] **Rhodri Morgan:** Can we deal with the point about the Henry VIII power? This is a bit like that Australian television personality who used to take food out of alligators' mouths while holding them open with a stick, saying, 'He's getting very angry now'; the Wales Governance Centre is getting very angry now, it has to be said, about this proposed Measure. It says that you cannot wind up a body that has been formed by statute, other than by a separate statute; you should not be allowed to do it by Order. Could you or your legal adviser

give us a view about the use of the Henry VIII power to wind up a body created by statute—in this case, by the Local Government (Wales) Act 1994?

[83] **Carl Sargeant:** I will ask Deborah to deal with the detail and the legal-speak of that, if I may. However, Order-making powers to amalgamate councils were conferred on the Secretary of State in 2007 and they have been used to amalgamate several councils already, under the affirmative resolution of the Minister. I am not proposing that; I am proposing powers subject to the superaffirmative procedure. On the legal element of this, Deborah might be able to answer on that part of the Order, if that would be helpful, Chair.

[84] **Janet Ryder:** Thank you, but I think that we will return to that later. Do you want to come in now, Kirsty?

[85] **Kirsty Williams:** I would like to hear from Deborah first.

[86] **Ms Richards:** The thrust of the paper seems to suggest that guidance from Parliament states that it is not advisable to give Henry VIII powers to abolish bodies set up by statute. The conclusion drawn in David Lambert's paper is that somehow that is unconstitutional or a novel thing to do. We disagree. There is precedent for it. Not only have powers been conferred on the Secretary of State to amalgamate local government in England to create unitary authorities, but those powers were given to the Secretary of State by an Act of Parliament, without criteria, and the Order-making process was subject to the affirmative procedure.

9.10 a.m.

[87] The House of Lords Constitution Committee exists to scrutinise Bills to see whether there are any issues of constitutional concern. You have heard from David Lambert that the committee was concerned about the Public Bodies (Reform) Bill and that the committee reported on that Bill; however, it did not scrutinise the Local Government and Public Involvement in Health Act 2007 that conferred those powers on the Secretary of State.

[88] **Kirsty Williams:** Do you not agree that the 2007 Act and the powers conferred by that Act allow the Secretary of State to act on the basis of proposals put forward by a local authority? That is where the power lies. The Secretary of State can act to create a new body on the basis of proposals put forward by local authorities. I would argue that that is fundamentally different to the situation that we are in here, where the Minister will be able to act of his own volition, rather than in response to proposals put forward by local authorities, which is the fundamental essence of the power under the 2007 Act.

[89] **Ms Richards:** That is correct, but there is an additional element because, when proposals are put forward, the Secretary of State can direct the merger of local authorities under the 2007 Act.

[90] **Kirsty Williams:** However, it is done on the basis of proposals brought forward by local authorities. The fundamental difficulty that people have with this is that this power, which is conferred on the Minister with these amendments, allows the Minister to act of his own volition, not on the basis of recommendations that he may have received from local authorities, asking him to make an Order to amalgamate them. That is the fundamental difference.

[91] **Carl Sargeant:** Before Deborah responds to your points, I would just like to say that the powers are not identical: we will be using the superaffirmative procedure. Although it will be brought forward by the Minister, it will be ratified by the Assembly, not the Minister. This decision will ultimately be taken by the Assembly.

[92] **Kirsty Williams:** I am not claiming that they are identical. You seem to be using the existence of the 2007 Act—and I am in no doubt that you will also mention the 1992 Act—as a reason why you should have these powers. I am not claiming that they are the same, but you are using them as a precedent in asking for these powers. I did not say that they are the same.

[93] **Ms Richards:** To clarify, under the 2007 Act, if a local authority does not put forward proposals, the Secretary of State can require them to do so.

[94] **Carl Sargeant:** They can be required to do so without making a request for it.

[95] **Kirsty Williams:** However, proposals have to come forward—

[96] **Ms Richards:** That is subject to the affirmative procedure, whereas ours is subject to the superaffirmative procedure, for which there is more consultation.

[97] The other precedent that you should be aware of is that the National Assembly for Wales had powers conferred upon it under section 28 of the Government of Wales Act 1998 to be able to abolish statutory bodies that were set up by statute. Some of you may recall the Orders in relation to the Wales Tourist Board, the Welsh Development Agency and Education and Learning Wales. Those bodies were all abolished by Order and the powers to do so were conferred by an Act of Parliament. Those Orders have taken effect.

[98] **Alun Davies:** Would this process not be far less painful if the Government were to bring forward amendments that would clearly delineate the powers available under this legislation in the way that Rhodri suggested earlier? The suggestions were to include a better definition of the word ‘effective’ in the first part of amendment 91, a better qualification of the term ‘not likely to be achieved’ in the second part of the amendment and to provide a supplementary explanatory memorandum to define how those powers should be used in the future. I would suggest that that would mean that those powers would not be available to future Governments to use in the way that has been suggested.

[99] My view of the Government of Wales Act 1998 is that it was creating a democratic body and abolishing the post of Secretary of State, so it needed to include those powers to achieve that objective. I do not think that that is a fair precedent to use. It is clear that we need greater definition and delineation of these powers, and a clear statement from the Government about the process and to clarify that this is a power in extremis, and not a power that should be used in general.

[100] **Carl Sargeant:** As I said earlier, I would be happy to make amendments in order to strengthen the detail so that future Ministers fully understand the detail as to what these powers should be used for. On the terms ‘effective’ and ‘likely to’, ‘effective’ is a term that has been used in local government for many years, in many other Acts, such as the Local Government Act 1972; it is all there and laid out. If you are saying that our drafting needs to be tightened up—we believe that we are already there, but there seems to be a view that that is not the case—and if there is a way in which we can tighten that up so that it is clear to people that these procedures represent a package of tools from the Local Government (Wales) Measure 2009 through to the process of amalgamation, I am happy to look at that. As I said in Legislation Committee No. 3 yesterday—

[101] **Alun Davies:** I am sorry, but may I stop you there? Being happy to look at something and being happy to do something are two different things. I would prefer you to do the latter as well as the former. Will you give us that commitment?

[102] **Carl Sargeant:** Of course.

[103] **Alun Davies:** ‘Of course’ is a commitment—

[104] **Carl Sargeant:** As I said in committee yesterday, and I am more than happy to repeat it today, I would be happy to provide an explanatory memorandum to accompany this process. I would be happy to look at the wording in terms of ‘effective’ and ‘likely to’, and, if need be, I will bring amendments forward at Stage 3. I am not being obstructive in this process—I am trying to be constructive. I have been honest and open with you. My intention is to prevent future Ministers from instigating wholesale reorganisation. This is a process or tool around collaboration and effective governance and that is what I want to create legislation to do. If we need to tighten that up, I would be happy to do so.

[105] **William Graham:** On that point, Minister, you told Legislation Committee No. 3 that you would publish guidance on what collaboration would look like. Can you do that at Stage 3?

[106] **Carl Sargeant:** Guidance on what collaboration would look like—

[107] **William Graham:** That is what you said.

[108] **Carl Sargeant:** I need to look at in what context I said that.

[109] **William Graham:** You said to the committee that you would publish guidance. You said, first, that it would be published later in the year, and then you said that you would publish guidance on what collaboration would look like. In my view, that will provide great reassurance. When are you going to do it?

[110] **Mr Cuthbert:** I think that this is a reference to the section of the proposed Measure that provides for guidance on collaboration to be produced. Normally, that would not be produced until after the proposed Measure was made.

[111] **William Graham:** In terms of giving reassurance and in view of the questions at committee today and yesterday, do you not think that it would be appropriate to do it at Stage 3?

[112] **Carl Sargeant:** I will consider that.

[113] **Kirsty Williams:** How long do you anticipate that it would take you to get an Order through under these powers? You say that you need to have these tools if there were exceptional circumstances in which you had to act. How long would an Order take to go through the superaffirmative process?

[114] **Carl Sargeant:** If we were to enact—

[115] **Kirsty Williams:** If you enacted this, how long would it take to get an Order through the superaffirmative process?

[116] **Carl Sargeant:** There are several stages—

[117] **Kirsty Williams:** I know that there are several stages. How long would it take?

[118] **Carl Sargeant:** We will map it out. There is a 60-day consultation period for the superaffirmative procedure. I know that you laid amendments for discussion at yesterday’s legislation committee meeting to extend the period from 60 days to 365 days. We believe that 60 days is an appropriate consultation period to take evidence from interested parties on the

superaffirmative procedure. With regard to the whole timeline, there will be a full consultation over three months—Frank has the specific details on that—it will be laid before the Assembly for a two-month period, and there will be a minimum of six or seven months between the beginning and the end of the process.

9.20 a.m.

[119] **Kirsty Williams:** You say that the process would take six or seven months; Gwyn, how long would an emergency Measure take to get through?

[120] **Mr Griffiths:** Standing Orders provide for all of the stages to be taken in one day, if that is the wish of the Assembly.

[121] **Kirsty Williams:** So, what the Minister is proposing is a process that will take six or seven months, and you are saying that Standing Orders allow for an emergency Measure to be taken through in one day, if necessary. So, any Measure could certainly be taken through in six or seven months.

[122] **Carl Sargeant:** I must respond to that point. You are talking about consultation with people. I can take a Measure through in a day. That is quite right. That was a loaded question to Gwyn. The issue for me is whether we want to consult people and whether we want to take through a process of the 2009 Measure. This is a package, Chair. This is about trying to support councils that are failing to deliver good public services. That is not a bad position to be in. We are trying to help them to do that. When they fail, we go through a consultation period with the interested parties in terms of the Order process and making a Measure for the amalgamation of services. Is it not better that that is based on consultation? Is that not your argument—that we need to consult people?

[123] **Kirsty Williams:** I am just responding to your earlier argument. You used the issue of children's services and said that time would be of the essence and that, as Minister for local government, you were not willing to sit back and allow a local authority to fail children and that you would act. I am just establishing the fact that, should you need to do that, there are existing provisions under Standing Orders to allow you to act in a single day, rather than following the process that you are outlining today, which takes six to seven months. That is my point. I am just trying to test your evidence. You said that you need these powers to protect children in failing authorities and that you were not prepared to sit back and let that happen. I am just trying to establish what powers and timescales are already in place.

[124] **Carl Sargeant:** It is an interesting point, and you are absolutely right that the powers allow us to do that should that be needed. However, I would be horrified if we had a council in Wales where we did not see early signs of failure. That is why, under the 2009 Measure, where we see signs of failure, we can start to intervene, whether by offering support through the WLGA, recovery boards or beyond that. If, out of the blue, a Minister came to us and said, 'Crikey, nobody has caught this—not the auditor general, Estyn or anyone—and there are fundamental issues here' and the only option was to remove the council, you would have to introduce a Measure. You could not do that through this process. That is what I am saying. The checks and balances built into this proposed Measure are a whole process of taking a council from a failing position. I do not want to remove or amalgamate councils. I want them to function well. That is not a bad thing. The support mechanism in the 2009 Measure is to support them, but, if that does not work, what do we do next? If we cannot recover, where do we go? That is the process of consultation, through the Assembly, which is not my decision. The immediate decision is mine, but, ultimately, it would be a decision of the Assembly. Again, to go back to the issue of the Secretary of State for Wales, that is a very different power and a very different position to be in. This happens on the say-so of the Assembly, not on my say-so.

[125] **Janet Ryder:** Minister, I wish to take you back to something you said earlier. You said that you have regular meetings with the WLGA and that you have discussed this. You seemed to intimate that you have already discussed this issue with the WLGA and that it would be aware that this was coming forward. So, can you explain why the WLGA is now asking why this did not form part of the extensive 18-month policy debate and evidence-gathering sessions on the proposed Measure that have been undertaken within the Assembly and in which the WLGA was asked to give evidence? You have given us very clear evidence today that you have been thinking and considering this and drawing it up since June 2010. I am asking you to guess why the WLGA has said this. Is it wrong in saying this or has it misunderstood what you have said?

[126] **Carl Sargeant:** I think so. It is a turkeys-and-Christmas scenario. The media and, unfortunately, individual Members have said things that are perhaps not as accurate as they could be about what this actually is. People have been saying that the proposed Measure is one of reorganisation; it is not. It is a raft of measures with a tool at the end—namely, amalgamation—for improving local government services. I have given you examples today—and Rhodri alluded to them earlier—of authorities that are responding well to the message of collaboration, and some others that are not. With respect, the WLGA is the umbrella body for all of the organisations, and is very protective of its institutions, as it should be. However, I have had many conversations with the WLGA about how we deal with the improvement of authorities.

[127] **Janet Ryder:** So, to be absolutely certain about this, according to the timescale that you have given us, halfway through the consultation process on this proposed Measure, the WLGA, as the chief body concerned in this, was aware that this was your intention—to move from collaboration to amalgamation.

[128] **Carl Sargeant:** No, I have not said to the WLGA, 'I intend to introduce an Order to amalgamate councils'.

[129] **Janet Ryder:** You will be aware that this committee has always said that we expect a Minister, when he or she brings forward a piece of legislation, to have completely thought through the policy behind it. That is why this would seem to be a deviation from that process. You have already said that, at the beginning, you were not thinking about these amendments. At what point in the consultation period were you certain that you would change the process? You have told us that the drafters started at least in June last year, which seems to be halfway through that consultation phase. At what point was this made public, or were your partners in local government made aware of this?

[130] **Carl Sargeant:** Local government was made aware the same week as we laid the amendments.

[131] **Janet Ryder:** Within a month of this date.

[132] **Carl Sargeant:** Chair, I do not want to be rude, but I am very conscious of the time. I have another meeting to go to.

[133] **Janet Ryder:** There are a number of other issues arising from this that we would like to question you on, regarding how, if you were to use these powers, you would deal with the number of councillors, the council ward boundaries, subsidiary bodies, ownership of property, handing over of affairs, and so on. You say that this is not a reorganisation, but we are all aware of what has happened when we have had to go through a process of creating one council out of a number of others, and there is a raft of practical issues that we would like to question you on. Unfortunately, there does not seem to be an opportunity for that, as these

amendments have come forward so late in this process. How should we deal with that?

[134] **Carl Sargeant:** If you have a raft of questions, you could write to me and I would be more than happy to respond. If my answers raise any questions, then of course I would be happy to have that discussion with you on the way that we handle that. If there are questions around specifics details, I can certainly write back with a detailed response.

[135] **Janet Ryder:** We would be very grateful for that, but just as you are working to a timescale, so are we: we have to lay this committee report so that it can be considered at Stage 3. We would need to do so by 1 March at the latest. Given the intervening half-term recess, that would mean that, if we write to you today on this issue, we would need a very swift response.

[136] **Carl Sargeant:** You have my word that I will do my best to ensure that you have a response in time for Stage 3.

[137] **Janet Ryder:** There are a number of other issues, but does anyone have anything specific that they want to raise? We will certainly write to you today, Minister, following this meeting. Thank you for your time today, and for answering the questions. I hope that you will appreciate that it is, as you just said in answer to my last question, less than a month since this issue arose, and therefore there are a number of questions on which we have not had the opportunity to scrutinise you in public. We appreciate your time in coming in, and we will write to you today on this matter. We would be grateful for a quick response to that. As always, a transcript of the meeting will be sent to you so that you can check it for accuracy.

[138] **Carl Sargeant:** I would like to finish by thanking you for the opportunity to be here this morning. As I have explained, it is my intention that this part of the proposed Measure is part of a package of tools, and they are not to be seen in isolation. I would be happy to respond accordingly by letter to the questions that you raise with me.

9.30 a.m.

Annexe F – The Committee's written questions to the Minister

Y Pwyllgor Materion Cyfansoddiadol
Constitutional Affairs Committee

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National Assembly for Wales
Bae Caerdydd / Cardiff Bay
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Carl Sargeant AM
Minister for Social Justice and Local Government
Welsh Assembly Government
5th Floor
Ty Hywel
Cardiff Bay
CF99 1NA

10 February 2011

Dear Carl

Proposed Local Government (Wales) Measure – Further Questions

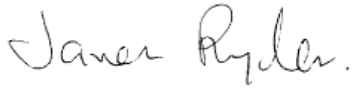
Thank you for attending the Committee's meeting this morning to answer questions on the Government amendments to the proposed Local Government (Wales) Measure that will give Ministers the power to amalgamate local authorities in certain circumstances.

In the limited time available this morning, Committee Members were unable to ask questions in many of the areas that we hoped to cover. However, I was grateful for your agreement to provide written answers to these questions. I was also grateful to you for agreeing to reply quickly. The Committee will be considering a draft report on this issue at its meeting on 17 February and, as the following week is a non-sitting week, I am sure the Committee would appreciate a response by close on 15 February at the latest.

I attach as an appendix to this letter a list of the questions that we would like you to address.

If your officials would like any further clarification, I would be grateful if they could speak to the Clerk to the Committee, Steve George, who can be contacted by telephone on 02920 898242 or by e-mail at stephen.george@wales.gov.uk.

Yours sincerely,



Janet Ryder AM
Chair, Constitutional Affairs Committee

Timing of the amendments

1. Why were the proposals for amalgamation of local authorities not included in the original Measure as introduced?

Have any specific issues arisen since the Stage 1 debate that has led to these proposals being brought forward.

2. No written justification or any supporting information has been published for introducing such significant amendments at this stage. Why was it not considered necessary to produce any written justification, or any explanatory document, to accompany the amendments?

3. Legislation Committee 3 recommended that the proposed Measure be "strengthened" in order to "look at other circumstances where the Minister may want to compel local authorities to collaborate." What consideration did the Minister give to strengthening his powers to compel collaboration short of amalgamation?

For example, the Minister already has powers to direct in respect of collaboration under section 29 of the Local Government (Wales) Measure 2009. Did the Minister consider strengthening these powers?

4. The Explanatory Memorandum provided art introduction states the Welsh Government has "already consulted on non-statutory guidance on collaboration" and the responses from local authorities and national partners were "overwhelmingly positive."

What discussions has the Minister had with local government about the new amendments? What was their response?

5. The WLGA said in relation to these proposals "…it does bring into question why this did not form part of the extensive eighteen month policy debate and evidence gathering sessions on the Measure that

have been undertaken within the Assembly on which the WLGA were asked to give evidence"

What explanation can the Minister offer to the WLGA on this point? Why did he not inform them of the amendments until the week they were published?

Principle of abolishing bodies by Order

6. The Wales Governance Centre expressed concerns that merging local authorities – which are created by statute – by Order contravened the principle that bodies created by statute should be abolished by statute. What is the Minister's response to this?

7. Can the Minister explain why he did not consider bringing forward these proposals in a separate Measure?

If the need is so that he can respond speedily, why has the Minister chosen to pursue a process that would take longer than the option already open to him of an emergency Measure?

8. Why does the Minister consider it appropriate that new local authorities can be created by subordinate legislation when previously the creation of new local authorities during local government reorganisation has been a matter for primary legislation?

9. The House of Lords Constitution Committee thinks that "where the further use of such powers[Henry VIII powers] is proposed in a Bill, we have argued that the powers must be clearly limited, exercisable only for specific purposes, and subject to adequate parliamentary oversight." Does the Minister consider that the amendments as drafted:

a) Clearly limit the powers of the Minister;

b) Make it clear that they can only be used for specific purposes;

c) Are subject to adequate oversight by the Assembly?

Power to make amalgamation orders

10. In amendment 91 (2), why do Welsh Ministers only have to be satisfied that "effective local government is not likely to be achieved…". Would the Minister consider amending this to "effective local government has not been achieved"?

11. Again under amendment 91(2), before they can use the power to amalgamate, Ministers must satisfy themselves that a number of other powers, that already exist, are not likely to achieve effective local government in an area. Does this mean that Ministers could make an amalgamation order without having relied on these powers if they think such reliance would be unsuccessful? Why is that?

12. The requirement in amendment 91 (2) is solely in relation to the use of powers. Why is there no requirement to be satisfied in relation to specific performance criteria? Why is there no definition of what constitutes "effective local government"?

What do you mean by "effective local government"?

Will you consider amendments to clarify the meaning of "effective"

Will you consider amendments to specify performance criteria that must be met?

13. The requirement in amendment 91 (2) also requires a Minister to be satisfied in relation to "a local government area". Why is there no requirement to have regard to the impact of a forced amalgamation on the local authorities that are not ineffective?

14. Why should one or two effective local authorities be "punished" for the failures of another local authority?

What consideration has the Minister given to the possibility that the "ineffective" authority will drag down the effectiveness of the other authorities and how does he propose to address this?

15. Why does the amendment specify that "two or three" local government areas may be amalgamated? What were the criteria for deciding that no more than three local government areas could be amalgamated?

16. The WLGA claims that progress is being made in integrating functions in big service areas and that "constant emphasis on local government boundaries in this context is meaningless". What is the Minister's response to this viewpoint?

If the Minister disagrees with the WLGA, and believes instead that local government boundaries are meaningful, why is has the Government left it until this stage to address the issue?

17. Is it the intention of the Minister to make use of these powers if and when they are secured? What is the earliest time they might be needed?

18. Given that the Minister has stated that his intention is not to conduct a "wholesale review" how does he propose spelling out his objective rationale and criteria for amalgamation so that individual proposals are not perceived as arbitrary?

Should these criteria be set out on the face of the Measure?

Procedures applicable to an amalgamation order

19. Why did the Minister feel that a super affirmative procedure was appropriate in this case? Is it a recognition that the power is a very considerable one to be exercised by Order?

20. Amendment 98(2) states that "Welsh Ministers must consult such persons as appear to them to be representative of persons or interests affected by the proposals. Would this include the population of the local authority areas in question?

21. In amendment 98(2), why is there no specific requirement to consult the local authorities that would be affected, and community councils within them?

Who else would be consulted and will the Minister consider setting out those to be consulted on the face of the Measure, particularly the local authorities concerned?

Electoral Matters

22. Would the Minister still proceed if there was strong opposition to a proposed amalgamation from the population of the local authority areas in question?

23. Can the Minister explain what powers he currently has in respect of electoral arrangements and the Local Government Boundary Commission for Wales ("the Commission")?

24. How do the amendments to the Local Government Act 1972, in amendment 97, affect the relationship between Ministers and the Commission?

Has the Commission been consulted on these proposals? What was its reaction?

25. Directions issued by Ministers in 2009 indicated that 30 councillors was the minimum appropriate size for a local authority and 75 the maximum. What is the basis for these figures and do the amendments enable Ministers to alter them?

How would the number of Members and ward boundaries of any new local authority, created by an amalgamation, be decided?

Transitional and Financial Issues

26. When local government was reorganised in the 1990s, the Local Government (Wales) Act 1994 contained statutory provisions for transition, including a residuary body.

Why do you think this is not needed under your proposals? Why is it appropriate for transitional issues to be dealt with by Regulations rather than on the face of the Measure?

27. What assessment has the Minister made of the costs of any amalgamations?

28. Would the Minister expect that any proposals for amalgamation placed before the Assembly should include an assessment of the costs arising from transition?

Would he consider bringing forward amendments to make this requirement more specific?

Annexe G – Minister's Response of 16 February

Carl Sargeant AC/AM
Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol
Minister for Social Justice and Local Government

Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref: LF/CS/026/11

Janet Ryder AM
Chair
Constitutional Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

15 February 2011

Dear Janet

Proposed Local Government (Wales) Measure

Thank you for your letter dated 10 February following my appearance before your Committee to discuss the Government amendments to the proposed Local Government (Wales) Measure that will give Ministers the power to amalgamate local authorities. You attached a list of questions which you asked me to address.

I and my officials answered several of the questions during the meeting on 10 February. I shall not repeat myself, but refer you and your staff to the official transcripts. The attached paper presents my comments on the questions we did not reach or cover sufficiently in the meeting.

Yours sincerely

Carl Sargeant

Carl Sargeant AM/AC

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Proposed Local Government (Wales) Measure

Constitutional Affairs Committee – follow-up questions

Addressed in the meeting on 10 February

Can the Minister explain why he did not consider bringing forward these proposals in a separate Measure? If the need is so that he can respond speedily, why has the Minister chosen to pursue a process that would take longer than the option already open to him of an emergency Measure?

Since introduction of the proposed Measure a number of issues have emerged which have demonstrated that local authorities are unwilling or failing to collaborate. We need to use the opportunity of this measure as it is conceivable, given the developments which I mentioned in the meeting, that the powers may need to be used before the new Assembly would be able to consider a new Measure.

Using a new measure to achieve what can be achieved through the current measure and has been ruled as in order would be costly and time consuming.

I chose this option over the emergency Measure procedure precisely because I wanted to give Assembly Members the opportunity and the time to consider and debate the proposals in some detail. The emergency measure process condenses all the stages into one day and so curtails the time for consideration and debate by Assembly Members. That may be appropriate in circumstances of great urgency – but that is not the case with these matters.

Why does the Minister consider it appropriate that new local authorities can be created by subordinate legislation when previously the creation of new local authorities during local government reorganisation has been a matter for primary legislation?

The precedents referred to involving primary legislation concerned the wholesale re-organisation of local government across the whole of Wales, namely the Local Government Act 1972 and the Local Government (Wales) Act 1994.

Wales has not had to contemplate more localised re-organisation of local government covering only a part of the country, so we have neither precedent nor mechanism. I consider that a measure would be appropriate for wholesale re-organisation, but would be a heavy-handed mechanism for a more localised re-organisation involving only two or three authorities.

I believe that an order, subject to super affirmative procedure is a more appropriate mechanism, offering high levels of consultation and Assembly scrutiny without pre-occupying the whole Assembly with an issue which is primarily of interest to one part of Wales.

The House of Lords Constitution Committee thinks that “where the further use
of such powers[Henry VIII powers] is proposed in a Bill, we have argued that the powers must be clearly limited, exercisable only for specific purposes, and subject to adequate parliamentary oversight.” Does the Minister consider that
the amendments as drafted:
a) Clearly limit the powers of the Minister;
b) Make it clear that they can only be used for specific purposes;
c) Are subject to adequate oversight by the Assembly?

I believe that the provisions fulfil these criteria. The circumstances in which the power may be used are set out clearly in subsection (2) of what was amendment 91; the Minister must demonstrate that he or she is satisfied that the tests introduced by that provision have been met. The power of the Minister is further limited by the power to amalgamate being limited to two or three local authorities per order. I believe that the super affirmative resolution procedure as set out in what was amendment 98 will give Assembly Members more than adequate oversight.

In amendment 91 (2), why do Welsh Ministers only have to be satisfied that “effective local government is not likely to be achieved…”. Would the Minister consider amending this to “effective local government has not been achieved”?

Again under amendment 91(2), before they can use the power to amalgamate, Ministers must satisfy themselves that a number of other powers, that already exist, are not likely to achieve effective local government in an area. Does this mean that Ministers could make an amalgamation order without having relied on these powers if they think such reliance would be unsuccessful? Why is that?

The requirement in amendment 91 (2) is solely in relation to the use of powers. Why is there no requirement to be satisfied in relation to specific performance criteria? Why is there no definition of what constitutes “effective local government”? What do you mean by “effective local government”? Will you consider amendments to clarify the meaning of “effective”. Will you consider amendments to specify performance criteria that must be met?

The Welsh Ministers will not be able to make an order for amalgamation at random or at whim. The Welsh Ministers must demonstrate that amalgamation is needed to achieve effective local government – and that this could not be achieved by exercising specified powers already available to them in the 2009 Local Government Measure.

The Welsh Ministers would have to show that they had applied the tests introduced by subsection (2) – in the document to be laid before the Assembly explaining the proposals which is required under the super affirmative resolution procedure.

The term “effective” has long been used in legislation relating to local government. The Local Government Act of 1972 enables the Welsh Commission (i.e. the Local Government Boundary Commission for Wales) to make recommendations in the “interests of *effective* and convenient local government”. Notwithstanding these criteria, in the 1972 Act there is no express definition of the term within the legislation. The Local Government Wales Measure 2009 provides that local authorities must secure continuous improvement in the exercise of its functions and this includes its “strategic effectiveness”.

The phrase “not likely to achieve” indicates that Welsh Ministers must make a judgement as to whether, on the means available to them, effective local government is not likely to be achieved. The Welsh Ministers will have to use their judgement; there is a test to be applied; this is a standard format in legislation when powers are given to Ministers and the terminology used is appropriate to the situation. The expression “likely to be achieved” which necessarily entails an element of judgement, is used in a number of contexts in legislation eg, section 99 of the Local Transport Act 2008.

The test for Welsh Ministers in deciding that it is necessary to make an amalgamation order in order to achieve effective local government is laid down in subsection (2) – the test is that Ministers must be satisfied that the other methods open to them laid out in that section are not likely to achieve effective local government.

The Welsh Ministers will have to spell out the rationale and how the test was met in the explanatory document accompanying a proposal to amalgamate which must be laid before the Assembly under the procedure set down in amendment 98

I am satisfied that the wording of what was amendment 91 is appropriate, but will consider whether any changes would clarify matters.

The requirement in amendment 91 (2) also requires a Minister to be satisfied in relation to “a local government area”. Why is there no requirement to have regard to the impact of a forced amalgamation on the local authorities that are not ineffective? Why should one or two effective local authorities be “punished” for the failures of another local authority? What consideration has the Minister given to the possibility that the “ineffective” authority will drag down the effectiveness of the other authorities and how does he propose to address this?

The questions seem to imply that amalgamation will be a knee-jerk reaction to circumstances where an authority had failed completely and that greater collaboration between authorities does not bring benefits and opportunities to all concerned. This is unrealistic – not least because it would be irresponsible

of the Welsh Ministers to knowingly wait until an authority had failed before proposing amalgamation.

I would expect that a proposal for amalgamation would follow a period of increasing collaboration between the authorities concerned. Application of the tests set out in subsection (2) require there to have been exploration of greater collaboration before amalgamation can be considered. It would not be a bolt from the blue – so the process of integration across many areas, to the advantage of both local authorities, would be already quite advanced.

The amalgamation provisions also allow for a process of transition from the old authorities to the new. The arrangements are based very much on those applied for the re-organisation which followed the 1994 Act, which worked very well and smoothly.

Why does the amendment specify that "two or three" local government areas may be amalgamated? What were the criteria for deciding that no more than three local government areas could be amalgamated?

That was my judgement as to what was appropriate in the context of a proposal for *localised* re-organisation of local government. I find it difficult to perceive of a circumstance where it would be effective to amalgamate four or more local authorities.

The WLGA claims that progress is being made in integrating functions in big service areas and that "constant emphasis on local government boundaries in this context is meaningless". What is the Minister's response to this viewpoint?
If the Minister disagrees with the WLGA, and believes instead that local government boundaries are meaningful, why is has the Government left it until this stage to address the issue?

I would agree that some progress is being made, but it is not enough. There have been several disappointments in recent months – which I mentioned in the meeting and already referred to in this note. If local authorities are reluctant to take action themselves, then I must do so.

Is it the intention of the Minister to make use of these powers if and when they are secured? What is the earliest time they might be needed?

These powers may be commenced by order no sooner than two months after the approval of the measure by Her Majesty. They would be available for use once commenced. I am not able to speculate as to when the Welsh Ministers might need to use them.

Given that the Minister has stated that his intention is not to conduct a "wholesale review" how does he propose spelling out his objective rationale and criteria for amalgamation so that individual proposals are not perceived as arbitrary?

Should these criteria be set out on the face of the Measure?

Each proposed amalgamation will be different as it will depend on the authorities concerned and will be conditioned by the circumstances in those authorities. The tests set out in subsection (2) to amendment 91 will provide the rationale and the criteria for each proposal – and these will have to be set out in the explanatory documents required of Ministers under the super affirmative procedure.

Why did the Minister feel that a super affirmative procedure was appropriate in this case? Is it a recognition that the power is a very considerable one to be exercised by Order?

Yes. The super affirmative procedure will provide for a high level of public consultation, allow the opportunity for Assembly scrutiny in plenary and committee and require approval of the final order by the Assembly itself.

Amendment 98(2) states that "Welsh Ministers must consult such persons as appear to them to be representative of persons or interests affected by the proposals. Would this include the population of the local authority areas in question?
In amendment 98(2), why is there no specific requirement to consult the local authorities that would be affected, and community councils within them?
Who else would be consulted and will the Minister consider setting out those to be consulted on the face of the Measure, particularly the local authorities concerned?

The wording imposes requirements which are phrased in broad terms, on the basis of which Ministers would have to consult the local authorities affected (including community councils), WLGA, local representative bodies and local people. Making the wording more specific could mean important interests were left out.

The super affirmative procedure will require Welsh Ministers to set out in the explanatory document the details of the required consultation. If the consultation was wanting in any way, it would be exposed at that point.

Would the Minister still proceed if there was strong opposition to a proposed amalgamation from the population of the local authority areas in question?

I am not prepared to speculate on how I or a future Minister might respond to the different reactions to any potential future proposal as each decision would have to be assessed in light of all the relevant circumstances of a particular case.

Can the Minister explain what powers he currently has in respect of electoral arrangements and the Local Government Boundary Commission for Wales ("the Commission")?

Section 59 of the Local Government Act 1972 enables Welsh Ministers to issue directions for the guidance of the Commission in conducting reviews, including reviews of electoral arrangements. These directions can include guidance in relation to the allocation of single or multi-member divisions, a target councillor to elector ratio and a timetable for completion of the review.

How do the amendments to the Local Government Act 1972, in amendment 97, affect the relationship between Ministers and the Commission?

They should not change them at all. Welsh Ministers already have powers to direct the Commission to review local government areas, including a review of electoral arrangements in consequence of proposals for changes in local government areas, under section 54 of the 1972 Act.

Has the Commission been consulted on these proposals? What was its reaction?

The Commission has not been consulted.

Directions issued by Ministers in 2009 indicated that 30 councillors was the minimum appropriate size for a local authority and 75 the maximum. What is the basis for these figures and do the amendments enable Ministers to alter them?

The minimum and maximum numbers of councillors were in the Directions issued by the then Secretary of State for Wales for the previous electoral reviews conducted by the Commission which began in 1996 and ended in 2001. There was no compelling policy or other reasons to alter them for this set of electoral reviews. Fresh directions could be issued to the Commission which need not replicate the figures in the 2009 directions.

How would the number of Members and ward boundaries of any new local authority, created by an amalgamation, be decided?

If there was not time for a review by the Commission before the first election to the new/shadow authority, Assembly Government officials would need to propose electoral divisions to Welsh Ministers. This was what happened in the 1994/96 reorganisation – but by Welsh Office officials – because the first elections were too soon for the Commission to conduct a review. They proceeded then to carry out a review following the elections. If there were time for a review before the first elections, the Commission would make proposals to Welsh Ministers on councillor numbers and their distribution.

When local government was reorganised in the 1990s, the Local Government (Wales) Act 1994 contained statutory provisions for transition, including a residuary body.
Why do you think this is not needed under your proposals? Why is it appropriate for transitional issues to be dealt with by Regulations rather than on the face of the Measure?

There is a proposed new section which provides for transitional provision – together with supplementary, incidental, consequential and saving provision. This provides a power to cover transitional issues, some of which are listed in the section. It might well be possible for transitional issues to be included in the amalgamation order and the proposed section provides for that, but the regulation-making power is considered prudent in case it is not possible to include everything in the order.

We do not believe a residuary body will be needed. An amalgamation between two or three unitary authorities is much more straightforward than what happened because of the 1994 Act. There will be only one "successor authority" covering the whole area of the abolished authorities whereas in 1994 each of the abolished counties might have three or more successors.

What assessment has the Minister made of the costs of any amalgamations?

Would the Minister expect that any proposals for amalgamation placed before the Assembly should include an assessment of the costs arising from transition?
Would he consider bringing forward amendments to make this requirement more specific?

This is an enabling power. It is not possible at this stage to make an assessment of the cost implications of using the power. These would depend on so many different factors depending on the authorities concerned.

I would expect each amalgamation to produce large-scale savings – arising from reductions in the number of councillors, staff of corporate services, procurement, economies of scale.

Estimates of costs, including transition costs, would be included in the proposals for amalgamation and would be included in the explanatory document which must be produced under the super affirmative procedure.

Annexe H – Minister's Letter of 11 February to the Chair of the Finance Committee

Carl Sargeant AC/AM
Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol
Minister for Social Justice and Local Government

Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref: LF/CS/024/11

Angela Burns AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

11 February 2011

Dear Angela

Proposed Local Government (Wales) Measure

Thank you for your letter dated 2 February about the Assembly Government's amendments tabled to the proposed Local Government (Wales) measure which would enable the Welsh Ministers to amalgamate local authorities in Wales.

You expressed your members' concern about such wide ranging amendments being introduced after Stage 1 scrutiny. The amendments are a response to increasing urgency of the need to provide effective tools to drive forward collaboration between local authorities. This was recognised by Legislation Committee 3 in their Stage 1 report which stated that:

"*given the drive towards collaboration across public services generally, we believe that the proposed Measure needs to be strengthened to provide a more effective tool to compel collaboration in circumstances beyond the current limited powers in the 2009 Measure."*

The proposed amendments would give the Welsh Ministers a power to amalgamate two or three local authorities (and no more). In the current financial climate, local authorities need to work together and collaborate much more closely with their neighbours. In the last year it has become clear that some local authorities are more willing to do this than others. To save money and protect frontline services, we need the tools to make this happen.

The Local Government Measure provides us with a timely opportunity to secure powers which, it has become obvious, are necessary. If we did not take the opportunity to introduce the amendments at this stage, we would need to start the whole process of timetabling and

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introducing a new Measure following the elections in May. This is likely to take another 12 months– it is conceivable these powers may need to be used before then.

This is an enabling power – it would enable Welsh Ministers to bring forward a proposal for amalgamation at some point in the future. It is not possible at this stage to make an assessment of the cost implications; these would depend entirely upon the circumstances of each proposed amalgamation. We would certainly anticipate each amalgamation producing large-scale savings arising from changes in corporate services, procurement savings and the economies of scale which would flow from the amalgamation of two or three authorities into one. The savings would depend on many different factors depending on the authorities concerned.

Looking to the future, the use of this power will be governed by the Assembly's super affirmative resolution procedure. This means that when proposing to use the power, Welsh Ministers must consult with the representatives of those affected before laying before the Assembly a document explaining the proposals, the results of the consultation and an initial draft order. Details of all the costings and projected savings would be included in the consultation proposals and in the explanatory document to be placed before the Assembly when the initial draft order is laid. It would be an opportunity for Assembly committees to "call in" the proposal during the 60 day period for detailed scrutiny.

I hope my explanation of the procedures has provided re-assurance about how we would use the power and the information we would examine and publicise.

Yours sincerely

Carl Sargeant AM/AC

Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at www.assemblywales.org

3 February 2010

David Lambert	Research Fellow, Wales Governance Centre
Marie Navarro	Research Associate, Wales Governance Centre

10 February 2010

Carl Sargeant AM	Minister for Social Justice and Local Government
Frank Cuthbert	Head of Local Government Democracy Team, Welsh Government
Deborah Richards	Legal Adviser, Welsh Government

List of written evidence

The Committee considered the following written evidence. All written evidence can be viewed in full at www.assemblywales.org

Document	*Reference*
Letter from the Committee Chair to the Minister for Social Justice and Local Government Carl Sargeant AM-	CA(3)-03-11(p1)
The Minister's response	CA(3)-03-11(p2)
Proposed Local Government Measure. Paper prepared by The Wales Governance Centre, Cardiff Law School	CA(3)-03-11(p3)
Additional information from the Wales Governance Centre, Cardiff University	CA(3)-04-11(p1)
Additional information from the Minister for Social Justice and Local Government Carl Sargeant AM	CA(3)-05-11(p2)