

## **Cynulliad Cenedlaethol Cymru**

### **Adroddiad gan y Pwyllgor Llywodraeth Leol a Gwasanaethau Cyhoeddus**

#### **Mesur Llywodraeth Leol a Chynnwys y Cyhoedd mewn Iechyd**

##### **Cefndir**

1. Cafodd y *Mesur Llywodraeth Leol a Chynnwys y Cyhoedd mewn Iechyd*, a gyhoeddwyd yn araith y Frenhines i'r Senedd yr Hydref diwethaf, ei gyflwyno i'r Pwyllgor ar gyfer gwaith craffu gan Gynulliad Cenedlaethol Cymru, yn y cyfarfod llawn ar 28 Tachwedd 2006.
2. Disgrifiodd Llywodraeth y DU ei gweledigaeth ar ffurf a swyddogaeth Llywodraeth leol yn Lloegr yn y dyfodol yn y Papur Gwyn 'Strong and Prosperous Communities', a gyhoeddwyd yn Hydref 2006. Cyhoeddwyd yn y Papur Gwyn fwriad Llywodraeth y DU i gryfhau cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru ym maes llywodraeth leol.
3. Cyflwynwyd y *Mesur Llywodraeth Leol a Chynnwys y Cyhoedd mewn Iechyd* (y Mesur) i Dy'r Cyffredin ar 12 Rhagfyr 2006 ac mae'n ymwneud yn bennaf â Lloegr. Fodd bynnag, mae'n rhoi pwerau llunio Mesurau i Gynulliad Cenedlaethol Cymru mewn amryw o faterion ym maes Llywodraeth Leol. Mae hefyd yn rhoi rhai pwerau i Weinidogion Cymru. Derbyniodd y Mesur ei Ail Ddarlleniad yn Nhŷ'r Cyffredin ar 22 Ionawr 2007 a dechreuodd ar ei Gam Pwyllgor ar 30 Ionawr 2007.

##### **Ystyriaeth mewn Pwyllgor**

4. Bu'r Pwyllgor yn ystyried papur gan y Gweinidog dros Gyllid, Llywodraeth Leol a Gwasanaethau Cyhoeddus ar 18 Ionawr 2007 ar y darpariaethau Cymreig yn y Mesur. Nododd y Gweinidog fod y Mesur yn cydnabod y gwahaniaeth mawr ym mholisi llywodraeth leol rhwng Cymru a Lloegr ers datganoli.
5. Lle mae polisi llywodraeth leol yng Nghymru a Lloegr yn debyg mae darpariaethau perthnasol yn y Mesur i fod yr un mor gymwys i Gymru a Lloegr. Mewn achosion eraill, byddai darpariaethau newydd ond yn berthnasol i Loegr a chynigir newidiadau drafftio i'r deddfwriaeth bresennol fel y gall barhau i fod yn berthnasol yng Nghymru'n unig os bydd angen. Lle mae polisi a sefydlwyd neu bolisi sydd ar y gweill yng Nghymru yn wahanol i'r hyn a gynigir ar gyfer Lloegr, neu lle ystyrir nad yw'r newidiadau yn briodol i Gymru, mae Llywodraeth y Cynulliad wedi gofyn am i ddarpariaethau gael eu cynnwys yn y Mesur a fydd yn rhoi cymhwysedd deddfwriaethol newydd i'r Cynulliad.

6. Nododd y Pwyllgor fod Cymal 165 o'r Mesur yn rhoi effaith i Atodlen 14 o'r Mesur, a fydd yn rhoi pwerau newydd i'r Cynulliad ar y materion llywodraeth leol canlynol:

Mater 12.1 – Strwythur a ffiniau

Mater 12.2 – Is-ddeddfau

Mater 12.3 – Ymddygiad Aelodau

Mater 12.4 – Cynllunio cymunedol ac awdurdodau partner

Mater 12.5 – Gwerth gorau

7. Mae'r Mesur, fel y'i cyflwynwyd hefyd yn rhoi pwerau newydd i Weinidogion Cymru mewn perthynas â Chymru:

Cymal 102: Diddymu is-ddeddfau

Cymal 105: Canllawiau am ddyletswyddau gwerth gorau cyffredinol

Cymal 110: Pŵer Gweinidogion Cymru i addasu deddfiadau sy'n rhwystro gwerth gorau etc

Cymal 111: Grantiau i hyrwyddo neu hwyluso gallu awdurdodau gwerth gorau i arfer eu swyddogaethau

Cymal 150: Cyflog cynorthwyr gwleidyddol

8. Er mwyn helpu'r Pwyllgor i graffu ar y Mesur, gofynnwyd am ragor o fanylion gan y Gweinidog ynghylch a oedd Llywodraeth Cynulliad Cymru wedi dewis ceisio pwerau a drosglwyddwyd o dan bob cymal penodol o'r Mesur Llywodraeth Leol ai peidio, a'i resymau.

9. Cafodd manylion y pwerau a drosglwyddwyd y ceisir amdanynt eu hystyried yng nghyfarfod canlynol y Pwyllgor ar 15 Chwefror 2007.

10. Yn ôl yr adroddiad i'r Pwyllgor ar 18 Ionawr, mae Llywodraeth y Cynulliad yn ceisio cyflwyno i'r Mesur, trwy welliant, bwerau ychwanegol i'r Cynulliad mewn perthynas â llywodraethu (trefniadau ar gyfer rheolaeth wleidyddol), galwadau cymunedol am weithredu a chynghorau cymuned. Ni chyflwynwyd y gwelliannau hyn gan Lywodraeth y DU yn ystod cam Pwyllgor y Mesur Cyhoeddus, a ddaeth i ben ar 8 Mawrth, ond mae Llywodraeth Cynulliad Cymru'n ceisio eu hystyriaeth yn y Cam Adroddiad yn Nhy'r Cyffredin. Ar adeg cwblhau'r adroddiad hwn nid oedd dyddiad wedi'i gyhoeddi ar gyfer y cam Adroddiad. Roedd y Pwyllgor felly'n croesawu addewid y Gweinidog i roi gwybod i'r Aelodau am ddatblygiadau pellach yn hynt y Mesur yn y cyfnod yn arwain at etholiadau'r Cynulliad.

11. Ar 7 Mawrth bu'r Pwyllgor yn ystyried dau welliant Llywodraeth pellach i'r Mesur a fyddai'n rhoi pwerau newydd i Weinidogion Cymru sefydlu awdurdodau gwastraff ar y cyd, pe bai awdurdodau lleol yn gofyn iddynt, a gallu sicrhau bod dyddiadau etholiadau lleol ac etholiadau Ewropeaidd yn cyd-daro os oes angen.

## Canlyniadau

12. Roedd y Pwyllgor yn croesawu'r pwerau deddfwriaethol estynedig a roddwyd i'r Cynulliad gan y Mesur fel y'i diwygiwyd yn dilyn cam Pwyllgor y Mesur Cyhoeddus, gan gynnwys y gwelliannau mewn perthynas ag awdurdodau gwastraff ar y cyd a dyddiadau etholiadau lleol ac etholiadau Ewropeaidd.

13. Nid oedd yn bosibl i'r Pwyllgor roi sylwadau ar fanylion y gwelliannau yr oedd Llywodraeth Cynulliad Cymru'n eu ceisio mewn perthynas â llywodraethu, galwadau cymunedol am weithredu a chynghorau cymuned, gan na chyflwynwyd y rhain. Fodd bynnag, mae'r Pwyllgor yn nodi egwyddorion y cais am bwerau estynedig gan Lywodraeth y Cynulliad yn y meysydd uchod, fel y nodir yn Atodiad 1 Datganiad Polisi Llywodraeth Leol Cymru, "Rhannu Cyfrifoldeb" a gyhoeddwyd ar 8 Mawrth 2007. Nodwyd yn y ddogfen honno fod Llywodraeth Cynulliad Cymru'n ceisio'r canlynol:

### *Galwadau cymunedol am weithredu*

...Lle'r ydym am gymryd pwerau i ychwanegu at rôl cynghorwyr lleol i amddiffyn buddiannau eu hardaloedd lleol, os oes angen gwneud hynny, ar ôl cwblhau ymchwil sydd wedi'i chomisiynu ar rôl a swyddogaeth Aelodau etholedig.

### *Trefniadau ar gyfer Rheolaeth Wleidyddol*

... lle gallem ddymuno ystyried darpariaethau ar gyfer pwerau pwyllgorau craffu ynghylch aelodaeth, penodiadau a chyfethol, yn ogystal ag adolygu sut mae'r modelau llywodraethu presennol yn gweithio.

### *Cynghorau Cymuned*

...Lle'r ydym am wireddu'n hymrwymiad i sefydlu trefniadau i ddatblygu a chryfhau rôl y cynghorau cymunedol yng Nghymru, gan gynnwys eu galluogi i gyflwyno amrywiaeth ehangach o wasanaethau a gweithredoedd yn lleol, a chynyddu effeithiolrwydd eu rôl gynrychioli a'u gallu i weithio mewn partneriaeth â chyrrff eraill.

14. Mae trawsgrifiad o ystyriaeth y Pwyllgor o'r Mesur yn y cyfarfodydd uchod wedi'i atodi i'r adroddiad hwn.

**Ann Jones AC**  
**Cadeirydd**  
**Mawrth 2007**

## **Annex A – Committee transcript extracts**

**LGPS(2)-01-07 - Thursday 18 January 2007**

### **Local Government and Public Involvement in Health Bill: Welsh Provisions in the Bill**

[1] **Gwenda Thomas (Temporary Chair):** Welcome back to the second half of the meeting. Let us move to item 5. We may be joined by Margaret Adams, but I am advised that we can start without her. Minister, will you please introduce the paper?

[2] **Sue Essex:** Thank you. This is obviously an important piece of legislation for us, as it will enable us to get extra powers for Wales, as well as those in the education Bill. It comes only six months after the Government of Wales Act 2006 received Royal Assent, and I think that everyone would agree that it is good news that we have secured major provision in such an important Bill. Although I will not be here for the third Assembly, the extra powers that we will have will be enormously important in some of the progressive things that we want to do around community councils and the Beecham agenda. So, that is the thrust of it.

[3] There is a lot in the Bill, and Margaret is not here yet—

[4] **David Lloyd:** It is all right; Hugh is here.

[5] **Sue Essex:** Yes, Hugh is taking the stress of it. I am sure that he is fighting fit now to deal with the details. From my perspective, the Bill picks up on some of the things that we have been discussing this morning about enabling better collaborative working, certainly in local authorities' performance. It will strengthen local strategic planning, which will be welcomed by local government. There are always issues around discipline and regulation that we need to be up to date and au fait with, particularly around local authority members. It also allows us a form of greater collaborative working. I do not want this to be misinterpreted in any way, but it will allow us to consider proposals for merging local authorities, if that were to come forward in future. Do not let anyone interpret that as though this is what we are suggesting; it would just enable us to do it.

[6] This is quite a small thing, but it is also important as we will have more power around bye-laws in Wales. That is the kind of thing that everyone thinks that we have anyway, but we do not, and the Bill enables that. That is probably all that I need to say. It is a great opportunity for us to get these powers and to relate them to policy. As you know, we have a local government policy statement coming out fairly soon, so the timing is pretty good from that perspective.

[7] I will now hand over to my officials. I do not know whether you wish to add anything, Hugh.

[8] **Mr Rawlings:** Perhaps I will just say that I approach this Bill wearing two hats. The first is around the local government set of issues, and the second is in that this is probably the first big, important Bill—without disrespect to the Further Education and Training Bill 2006, which is also going through at present—to start implementing the structures that the Government of Wales Act 2006 brought into play.

[9] As the paper states in paragraphs 7 and 8, if the Secretary of State proposes to take powers in respect of England and we think that the Welsh Minister should have those powers, we have taken those. If we want to keep the existing legislation, but, in England, it is proposed for change, there are amendments in the Bill that allow the existing legislation to apply only to Wales. That applies at present to Best Value. However, thirdly, we have taken a range of Measure-making powers, including, for example, those in relation to Best Value, by which the Assembly can legislate in its own right to change the regime or make new provision for Wales. So, in a sense, Best Value is a good example, because even if the Assembly were not to exercise Measure-making powers in relation to Best Value, we would have two codes in future. The first would be a set of provisions contained in the Bill about Best Value for England, and the second would be the Welsh code, which, effectively, represents the existing legal regime but with the potential to make a Measure later to change the Best Value regime, should the Assembly so wish.

[10] The Minister has referred to the various matters on which the Assembly can make legislation, and those are all set out in Schedule 14 to the Local Government and Public Involvement in Health Bill. They are written in generous terms. The Minister has already drawn attention to matter 12.1; I will draw attention to matters 12.4 and 12.5.

[11] Matter 12.4 is relevant to the Beecham agenda, because it is about community planning and the role of local service boards. That is the one that would enable us, for example, if it was intended to do so, to provide for a duty of co-operation on a range of public authorities to involve themselves in local service boards. Matter 12.5, as I have said, allows us to revamp the Best Value regime, as well as to make changes to inspection regimes. So, there is quite a lot here.

[12] As has already been made public, we are also seeking additional powers in relation to governance, community councils, and community calls for action. On the assumption that we get those, that will give us a full set of powers to deal with local authority performance.

11.00 a.m.

[13] **Michael German:** I thank you and the Minister for that. As you have said, this is the first time that we have a Bill of great substance relating to the new powers. I have questions on paragraph 5 of appendix 1 to the paper, which is about how this has changed from the previous framework, or routes that we have had before. As I understand it—and I would be grateful for the views of the Minister or Hugh on this matter—the framework powers in

previous Bills will be converted into so-called 'Measure-making powers'. If you were in England, and you were the relevant Minister or Government, there would be Act-making powers contained within this document, related also to the face of the Bill. It says in paragraph 12 of your paper that,

[14] 'Where the Bill creates new functions in respect of a matter in which the Assembly already has a function and the new function is desirable for Wales, the opportunity has been taken to have that function exercised by Welsh Ministers in respect of Wales'.

[15] Unless I am wrong—and I do not know whether you want to test my understanding of this—with framework powers, it was the case that any legislative powers provided in any Bill in which Wales had a function would just have been given to the National Assembly for Wales. However, I wonder whether this is now a filter. The reference to the new function being 'desirable for Wales' implies a judgment, presumably by the Welsh Assembly Government, of which elements or parts of the Bill the Assembly should seek Measure-making powers for. In context, therefore, what powers are there in this Bill that are not being transferred to the National Assembly for Wales, but which could have been transferred had they been found to be desirable? In other words, where we have a function, by what means is that function determined as being desirable or not? I would be grateful for an explanation of how the word 'desirable' has been defined, as well.

[16] **Mr Rawlings:** If I may say so, that confuses about three different things, and I would like to unpack them, if I may. First of all, if you want examples of the powers that it is thought desirable to take for the Welsh Ministers, as distinct from the Assembly, those are set out in appendix 2, right at the back of the paper, headed 'Local Government and Public Involvement in Health Bill: Powers of Welsh Ministers'. In a sense, this relates to what I said earlier, namely that the Bill proposes that the Secretary of State should take certain executive powers in respect of England. We have looked at those and thought, 'Oh, that is a good idea; perhaps the Welsh Ministers should have those powers as well'. They are listed in the appendix.

[17] Secondly, when you look at many other parts of the Bill, the question then is whether we want those powers or provisions to apply to us. For example, the answer in relation to Best Value would be 'no'. We do not want to do what England is doing in relation to Best Value, because we want to maintain the existing legal regime that allows the Wales programme for improvement to operate. Therefore, we look at the existing provisions, and instruct for drafting modifications to the existing legislation to allow it, in future, to apply only to Wales, while the Best Value regime in England will move forward on the basis of the new provisions in the new Bill.

[18] However, thirdly, at some point in the future, it may be that the Welsh Ministers want to propose a different Best Value regime. Therefore, we take powers for the Assembly to make Measures, so allowing the Welsh Ministers to bring forward for the Assembly's approval a new Measure to make those changes. That is, in a sense, what paragraphs 6, 7 and 8 of the covering

paper refer to. When we want to do what is being done in England, we just follow suit. There will be further amendments in relation to joint waste authorities where we considered what the Department for Environment, Food and Rural Affairs proposed for England and thought, 'That looks like a good idea; we will have some of that', so the legislation for those provisions will be drafted on an England and Wales basis.

[19] On the other hand, to repeat the point, there may be changes that England wants while we are quite happy with the present position. Therefore, we have drafting amendments to ensure that the present position continues to apply in Wales, even though it will not apply in England, but we take Measure-making powers for the Assembly.

[20] **Michael German:** Therefore, if I read this correctly, there are proposals in this Bill for which, in some cases, Measure-making powers and executive authority have been taken by the Assembly or the Welsh Ministers, but there are others where that has not been done. Given that this method of getting powers will be applied fairly universally from now on, we should know clearly, in some form or other, which are being transferred and which are not, and for what reason.

[21] In scrutiny terms, that is an essential function for the National Assembly in the future. Unless you want to do a complete subtraction exercise, it is not clear which is which in these matters, so I would welcome a note to that effect. One could then scrutinise why things have been left and why things have not. My assumption is that you will have to apply through an Order in Council, or whatever, at a subsequent stage, if you have not bothered to take the powers—'bothered' being a pejorative word—or if you have not decided to take that Measure at this point in time. So, I think that my starting point was the same as my end question: which of these powers were not transferred to the Assembly and why? I do not know how extensive a list that would be, and I do not know whether it would be possible to tell me now or whether that would require a note.

[22] **Mr Rawlings:** It would not be extensive, but I will plunge in head first, if I may, and say that an example of the powers that it does not take are those relating to local government elections.

[23] **David Melding:** The same is true of England, in terms of systems.

[24] **Mr Rawlings:** The Bill deals with electoral matters in England, but we have not taken any powers in relation to electoral matters in Wales.

[25] **David Melding:** Yes, but it does not give councils authority to move to proportional representation systems and so on.

[26] **Mr Rawlings:** No, absolutely not.

[27] **David Melding:** So, it refers to electoral arrangements and not to the actual methods of election.

[28] **Mr Rawlings:** Indeed.

[29] **Michael German:** My interpretation is that, under this Bill, you could have sought those powers, because the Bill is appropriate to that.

[30] **Mr Rawlings:** To get provisions into a Bill, they need to be within the scope of the Bill. As this Bill has developed, it would have been within its scope, but there is then a policy decision to be made as to whether you would want to seek it. There is also the question of whether the UK department would be prepared to accept such a proposition in the Bill. We must remember that this is a UK department Bill and any UK department—and I am not speaking about one in particular—would be resistant to including in a Bill matters that were likely to complicate its parliamentary handling.

[31] **Michael German:** As a matter of principle, in terms of how we handle these issues—obviously, I hold a different view, but that is probably well understood—I have a reasonable request to make. This is a precedent for the whole of the National Assembly from now on, so can we have these matters laid out clearly before us so that we can scrutinise them properly?

11.10 a.m.

[32] Secondly, that should be within the Bill as proposed at such an early stage, because, as you say, there may be some things that you have chosen to transfer or not to transfer. There may also be scope within a Bill, as it is progressing, to add extra things, which, presumably, the Government is trying to do in some areas. The Assembly itself might seek those legislative powers and would need to have the opportunity to do so. In a sense, we are running in advance of May, because the Act is already in place. Therefore, this is a procedure that we ought at least to get to grips with at this time. That matter should come back to this committee in that framework, so that we can properly scrutinise it.

[33] **Mr Rawlings:** The answer is ‘Yes, one can add things to the Bill’; indeed, as the Minister has said, we are going to be adding additional Measure-making powers to the Bill in relation to political management structures and scrutiny, in relation to community councils and in relation to community calls for action. Without going into any further details—and I have probably gone into rather more detail than I should have done anyway, ahead of the Second Reading in Parliament next week—those are the sorts of areas for which we would expect additional Measure-making powers to be taken.

[34] **Michael German:** I am not making a critical point; it is a procedural point.

[35] **Gwenda Thomas:** Time has been allocated on the agenda of the next meeting to scrutinise the relevant part of the Bill in more detail, if the committee wishes to do so.



[36] **Sue Essex:** I appreciate entirely what Mike says. Obviously, we will provide a note. I have been involved in lots of pieces of legislation, and you are always making decisions about whether you want to be included in a clause. I remember very clearly the planning legislation; I sat up until 1 a.m. or 2 a.m. drawing stuff up. Although this is more significant, in that it is about our taking Measure-making powers, those decisions are always being taken, often within a short timescale. However, this is an important piece of legislation. As Hugh says, we are testing things out with this; it is a new experience for us. I take Mike's point, and I am sure that, in the next committee meeting, we will have a bit more knowledge and will be able to explain a bit more to you. As you know, Mike, because you have been a Minister, when these things are going on, it is changing all the time and we are making decisions.

[37] **David Melding:** There is a great deal in Schedule 14 that is to be welcomed, and it will be very beneficial for the Assembly to have these powers. I would particularly like to see a regime that is much more expansive in allowing local authorities to use bye-laws for many of the issues that they face. Flexibility on that would be welcome. I am not quite sure whether what Hugh said earlier refers to this point, but why are some things not being devolved to us? With regard to executive arrangements, I am not quite sure whether that comes into political structures. Is that what you meant?

[38] **Mr Rawlings:** Yes.

[39] **David Melding:** So, we could alter the way in which a referendum is conducted for an elected mayor or such matters, as listed in Part 3?

[40] **Mr Rawlings:** That is exactly right, yes. That is one of the amendments that we are seeking, which we hope and expect the Minister to flag up in the Second Reading on Monday.

[41] **David Melding:** I would welcome that. There may be a perfectly logical explanation, but, given that the Bill's title is the Local Government and Public Involvement in Health Bill, I am mystified as to why we have not tried to devolve some of the powers that will be used to increase patient and public involvement in health and social care, which seem to be key to the Beecham process. I know that there are a lot of different structures in England that I do not think any party would want to replicate here, but can you explain why this is absent?

[42] **Mr Rawlings:** We do not think that it is necessary because, if you look at matter 12.5(b) in Schedule 14, you will see that that allows for the Assembly to make a Measure in relation to,

[43] 'the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions'.

[44] **David Melding:** If I may, I will ask a specific question on that. These

powers exist to some extent in England, but, say that the Assembly wanted to make local authorities or groups of local authorities responsible for the scrutiny of acute healthcare, would you be able to do it under matter 12.5(b)?

[45] **Mr Rawlings:** No, that goes to a different issue. Matter 12.5(b) is about patient engagement, involving service users in service design and so on. If we are talking about scrutiny, that would be covered by the political management Measure, which I said that we were going to be adding later in the Bill process. What that political management Measure-making power covers is the whole subject matter of Part II of the Local Government Act 2000, which covers political management structures, executive arrangements, and the concomitant scrutiny structures associated with them. So, we will be able to make Measures in relation to scrutiny matters.

[46] **David Melding:** That could cover the health service, could it not?

[47] **Mr Rawlings:** I believe so.

[48] **David Melding:** That is interesting. Thank you.

[49] **Gwenda Thomas:** With reference to paragraph 10 of appendix 1, and the reference in it to the Assembly's Standing Orders—I am sure that Peter will be able to help here—having been a member of the Committee on Standing Orders, my understanding is that, although there will be debate on a Measure, Members will not be able to amend it. At that stage, it will be a vote either for or against.

[50] **Mr Rawlings:** No, Chair. I think that that confuses consideration of Measures in the Assembly with the consideration of legislative competence Orders.

[51] **Mr Jones:** That is, the Orders in Council. You cannot amend an Order in Council at the final stage, but the Measures will be amendable.

[52] **Gwenda Thomas:** That is a valuable point of clarification. Even at that point, there will be meaningful debate on a Measure.

[53] **Mr Rawlings:** Very much so, Chair. The point about the unamendable character of a legislative competence Order is that it is crucial, at the final stage, that the Assembly and Parliament both endorse exactly the same instrument. Once the legislative competence Order has been made, conferring powers on the Assembly, it is a matter for the Assembly to make Measures accordingly. They can be proposed by the Government, backbenchers or committees, but they will be subject to debate, scrutiny and amendment as appropriate.

[54] **Gwenda Thomas:** Thank you, that is helpful. Are there any other matters that arise on this item?

[55] **Michael German:** I am just teasing out this whole process. The

problem is that, although I have some idea as to what the new Standing Orders might look like, our current Standing Orders, before we get to next May, do not help us at the moment with how to deal with the transfer of functions in this Measure-making role. It is only for a few months more, so I am not suggesting that we should do anything dramatic, but the nature of the report that the Minister lays before the committee next time will be crucial. In terms of laying a pattern for this format and the two routes for getting Measure-making powers, we need to understand that. I am loath to ask for anything more extensive than that, but I think that it would be useful to have at least a pattern set by the way in which this comes before us.

11.20 a.m.

[56] The second issue relates to the way in which the Assembly as a whole will then take a decision on those issues. After all, in the new Assembly there is, presumably, a route for the bids to Parliament for Measure-making powers—I hope that there is a route for doing it in this way when a Bill is proposed in England and Measure-making powers sought within that Bill. In the interim, however, ought we in some way to be recommending to the party business managers or the Business Minister that they consider—it is probably only in relation to this and one other Bill, I would think, although there may be more—how the Assembly as a whole ought to deal with Measure-making transfers in advance of the National Assembly elections and the new Bill in May? I am looking at Hugh, because he has worn another hat in helping with Standing Orders, so he would know where we are in this matter.

[57] **Mr Rawlings:** It is quite difficult, really. With regard to the content of UK Government Bills, it is obviously for the UK Government to prepare legislation, after which intergovernmental exchange will take place between it and us as to what the coverage in Wales ought to be. That is what has happened here. It is, however, currently open to this committee, the Bill having been remitted to it, for you to report to the Assembly that you know and understand what the Government has put in, and you welcome it as far as it goes, but that you might—

[58] **Michael German:** That we might want A or B.

[59] **Mr Rawlings:** That is right. So, I do not think that we need a change in Standing Orders. In a sense, the fact that the Bill has been remitted to the committee means that you can report back to the Assembly, and it is then for the Assembly to take a view on the wisdom or otherwise of what the Assembly Government has put in the Bill. That procedure is available.

[60] **Michael German:** I wonder whether the clerk would prepare a note on what we could do in procedural terms, virtually to describe what Hugh has said, because that is really the clerk's role. Could we have that descriptive note before the next meeting?

[61] **Gwenda Thomas:** Yes. I suggest that we take advantage of the allocation of time in the next meeting for further scrutiny.

[62] **Michael German:** I think that it is important to do that. The paper that we will get from the Minister, together with the clerk's report of what we can do, will help us to reach a conclusion on any recommendation that we might want to make to the Assembly.

[63] **Gwenda Thomas:** Minister, would you like to say something?

[64] **Sue Essex:** That is fine, and I will also speak to the Business Minister about this, because there is that other piece of legislation going through.

[65] **Gwenda Thomas:** Thank you. Are Members content with that? I see that you are.

### **LGPS(2)-02-07 - Wednesday 15 February 2007**

#### **The Local Government and Public Involvement in Health Bill: Detailed Scrutiny of Welsh Provisions**

[1] **Ann Jones:** We are now joined at the table by Margaret Adams. Welcome, Margaret. Minister, do you want to introduce the paper?

[2] **Sue Essex:** No, we started this off at the last committee meeting. It is a very important piece of legislation, and I am glad that Margaret is dealing with it, because the speed at which these things go through means that it is important that we keep a close eye on it. I think that we will just take questions and comments, and I will rely very much on my trusty team here, which is dealing with the Bill, to help me to respond to any questions.

[3] **Ann Jones:** Okay. Now, why do I look straight over at Mike on this?  
[*Laughter.*]

[4] **Michael German:** I would like to start with some issues of principle, because this is a first for the Assembly and will set a pattern for what happens post May, so getting the procedure right seems to me to be appropriate.

[5] I read with care Hugh Rawlings's words at our last meeting, because they are, if you like, the Rawlings principles—the set of guidance notes that we all ought to bear in mind. As I understand it—and I hope that I am accurately repeating what he said—unlike the framework powers that were hitherto the method of procedure, from now on, with this sort of Bill, the decision as to which powers will be transferred to Wales will be taken by the Welsh Assembly Government, based upon its consideration of where there may be a need for separate Welsh legislation, or, in other words, when it feels that there is an issue that needs to be dealt with separately. If that is the case, in procedural terms, the starting point for scrutiny seems to be when the Assembly Government takes the decision as to which powers it wants devolved, and, more importantly, which powers contained in the Bill it does not want devolved, and why.

9.30 a.m.

[6] That is my starting point, because it is easy to see from the papers in front of us which powers the Welsh Assembly Government has taken and why, but unless you are prepared to go through and do a subtraction exercise—which may well be within the bounds of skilled people, but time is the real problem here—one thing that I suspect that future committees will need is that second half of it. While the Assembly Parliamentary Service’s paper is excellent, we do not have that section of it. Therefore, if I have understood the Rawlings ideas and principles correctly—

[7] **Mr Rawlings:** The first principles were not mine. [*Laughter.*]

[8] **Michael German:** I realise that, but keep it in the family. [*Laughter.*] If I have understood you correctly, which powers contained in this Bill has the Government not taken, and for what reasons?

[9] **Ann Jones:** Okay, who will answer that one?

[10] **Mr Rawlings:** I will. The paper that the Minister has put before you is designed to answer that question. Appendix 1 of the paper summarises the provisions in the Bill, and, in relation to each of the broad areas of policy that the Parts of the Bill cover, it explains what we have done for Wales. So, Part 1, structural and boundary change in England, clauses 1 to 30, all deal with England. The next paragraph of the paper notes that:

‘The Assembly Government is seeking to enhance the legislative competence of the Assembly in this area and Schedule 14 to the Bill, Matter 12.1, makes provision for that’.

[11] So, in respect of each broad area of the Bill—Parts 1, 2, 3, and so on—we work our way through the Bill, explaining what it is doing for England, and giving the provisions as they are made for Wales.

[12] Part 2 is on elections in England. The provisions in the Bill relating to elections deal with matters such as the frequency of elections, whole-council elections, and thirds elections. As you will see from the next paragraph, we have not sought any powers in relation to Part 2, because the changes and the broad subject matter of the Bill in relation to England are matters that we have already dealt with in the Local Government (Wales) Act 1994, where we prescribed for whole-council elections every four years.

[13] **David Melding:** I feel quite nostalgic. [*Laughter.*]

[14] **Mr Rawlings:** So do I—I worked on that, too.

[15] **David Lloyd:** You are still in your prime, Hugh. [*Laughter.*]

[16] **Mr Rawlings:** So, we have not taken any powers in Part 2.

[17] On Part 3, executive arrangements for England, we have not taken a power over executive arrangements, but, as you see in paragraphs 3 and 4 below that heading, the Assembly Government believes that it would be appropriate to do so. Parliamentary protocol means that we cannot speak too much about what will be in the Bill; however, we are fairly confident that the Bill will be amended in committee on 6 March to include appropriate provision about that. That will also cover scrutiny, because the Measure to which Margaret has given the broad heading 'governance', covers executive arrangements and—

[18] **Sue Essex:** The Margaret Adams principle. [*Laughter.*]

[19] **Mr Rawlings:** Yes, the Adams principle. It covers the political management arrangements and the consequential scrutiny arrangements.

[20] So, the purpose of the paper is to work our way through what the Bill says, and to explain what we are doing for Wales. So, briefly, on Part 4, parishes, we are hoping to get an amendment on communities on 6 March—again, fingers crossed. Matter 12.4 is to be inserted in relation to the powers in Part 5. Another matter, matter 12.2, will be inserted covering bye-laws, and so on.

[21] **Michael German:** That is very helpful. Perhaps the appropriate way—and I am seeking your guidance here, Chair—would be to take each Part of the Bill in turn and see how we wanted to ask questions. I have questions on Parts 2, 3 and 4, but I do not know how you want to proceed.

[22] **Ann Jones:** I was going to do it Part by Part, but I was letting you raise the question about the principle first. It would be easier to do that, given the way in which the report is to be presented. I am also conscious that Lara and Cath will have to scribble most of it down. It is therefore easier if we do not keep jumping back and forth. Gwenda, you had a point to raise on the general principle that we were talking about.

[23] **Gwenda Thomas:** Mine is separate. I want to ask about clause 102.

[24] **Ann Jones:** Okay. When we get as far as that, Gwenda, I will mark it down so that you are the first to ask about it.

[25] **Sue Essex:** Could I just add one point, relating to the Rawlings principle—or the Adams principle? I think that we would say that, for clarity, we are only taking powers when we have a purpose for taking them. As you see from the report, many of them relate to policies that we already have in place, such as Beecham. It is in place, and we know that we have a clear agenda for it in 'Delivering the Connections'. These powers will therefore enable us to develop that agenda in Wales. I just think that that is an important consideration as we go through.

[26] **Ann Jones:** Fine. We will now turn to appendix 1 of our paper in

relation to the Bill. So, Part 1 is the structural and boundary change in England, dealing with clauses 1 to 30.

‘The Assembly Government is seeking to enhance the legislative competence of the Assembly in this area and Schedule 14 to the Bill, Matter 12.1, makes provision for that.’

[27] Are there questions or points on that?

[28] **Michael German:** Yes. The Minister and, obviously, the Government have used the wording,

‘The Assembly Government is seeking to enhance the legislative competence of the Assembly in this area’.

[29] The word ‘enhance’ does not necessarily mean ‘all-inclusive’. I suppose that the only question that I have—and it will come up again throughout our discussion—is whether there are any powers within this Part of the Bill that have not been taken by the Assembly Government? I know that Schedule 14, matter 12.1, indicates the provision for transferring legislative competence, but is that all-inclusive of this Part of the Bill?

[30] **Mr Rawlings:** Yes.

[31] **Michael German:** That is fine. If the Rawlings principle says, ‘Yes’, that is fine, as that means that it is.

[32] **Ann Jones:** So, you are happy.

[33] **Michael German:** Yes.

[34] **Sue Essex:** So much power.

[35] **Ann Jones:** So, we are happy with Part 1, then, are we?

[36] **Mr Rawlings:** In the interests of clarity, I would just add that the provisions, obviously, give legislative authority to the Assembly. What the Assembly could do in making a Measure is confer new or additional powers on Welsh Ministers, so that, if there was a need for a Minister to have executive responsibilities as a result of any Measure about the constitution of new areas of principle and so on, the Measure could confer them. To give an entirely hypothetical example, if you had a situation in which two authorities came together to form a new, single authority, you may need to confer powers on the Welsh Ministers to be able to make Orders about the disposition of the two authorities’ staff, property and all that sort of thing—effectively, the implementation function. The power, therefore, is with the Assembly to make legislation. That can confer further functions on Welsh Ministers.

9.40 a.m.

[37] **Michael German:** My point was about the use of the word 'enhance'. For the purposes of clarity, it would be helpful to say that the Bill will transfer the powers into this section in completeness, as it were. 'Enhance' could mean everything, but it could also mean just some enhancement, so there is a lack of clarity. That is the point that I am making.

[38] **Mr Rawlings:** In Margaret's defence, the answer would be that there is an enhancement of the Assembly's powers. You have to look at the wording of the particular matter to see the scope of the enhancement. In this particular case, you will see that it is written in fairly broad terms.

[39] **David Melding:** The final paragraph talks about some local structural changes that may, in the future, be advantageous for local government boundaries. It is quite candid; it talks about 'voluntary or directed mergers of local authorities'. How comprehensive is this power? Would it permit, for instance, a complete restructuring of local government? Let me take an extreme example: what if we wanted to go back to county and district structures and have two tiers in local government? I know that that is not at all likely, but would the power allow us to do that? Is it that complete?

[40] **Mr Rawlings:** Yes.

[41] **Michael German:** It is quite broad.

[42] **Ann Jones:** Is everyone happy with Part 1? I see that you are. We will move on to Part 2, which takes in clauses 31 to 38 of the Bill. Would anyone like to comment on Part 2?

[43] **Michael German:** My question is on clauses 31 to 38 and the powers that transfer to us, which include things about timing. While there may or may not be a view with regard to whether elections by thirds are a good idea, there are some who feel that that produces a better form of local government. I do not know whether that is an argument that I would support, but it is worth a debate. However, by not seeking the powers here, we are not able, at a subsequent stage, to take that decision ourselves. Is that as I understand it to be?

[44] **Sue Essex:** Yes, it goes back to my point about the purpose of obtaining the powers: it is that you have the intention to use them. However, I have no intention of introducing thirds. I was in Bristol recently, which is a Liberal authority, and this system is in place there; it gives a degree of instability in decision-making that causes problems whatever your political allegiance. I have never heard anyone make that suggestion here and we certainly have no intention of changing the timing.

[45] **Michael German:** This is an issue of principle, not of content. Having the power means that, if at some subsequent stage you could use it, you would want it to be there, whereas you have taken the decision, as I understand it, because you do not want to use it.



[46] **Sue Essex:** I think that it goes back to our understanding of the purpose of taking this power. There are opportunities for Orders in Council, should a subsequent Government decide that it wants to do things differently. However, in the spirit of the Government of Wales Act 2006, we have taken that power. Going back to the last point, the issue was around the merger; on this one, there is certainly no intention to do that. It has not been discussed in committee and I do not think that, in the foreseeable future, there is any intention to change either the unitary status or the election timetable. So, we are keeping true to the spirit of the intention within the Government of Wales Act 2006. As I said, if a subsequent Government took a different view in terms of where it wanted to make change, then that is the beauty of Orders in Council; they give the opportunity to do that.

[47] **Michael German:** Would this be the same for single-member wards, for example?

[48] **Mr Rawlings:** No, the issue of single-member wards is different, because it will fall to whoever forms the administration after the elections, sometime towards the end of 2007, to issue directions to the Local Government Boundary Commission for Wales as to the principles on which it conducts the next set of electoral reviews. That is an executive decision, and there are existing powers that allow for directions about single-member wards, for example, as there are on powers for numbers of councillors.

[49] **Ann Jones:** Okay. Are we happy with Part 2 and the explanations given? I see that we are. Part 3 is clauses 39 to 53.

[50] **David Lloyd:** I have a few questions on what the Welsh Assembly Government may or may not have asked for, but always cognisant of that fourth paragraph that Mike has already alluded to as regards the fact that parliamentary protocol is such that the Assembly Government cannot comment on the detail of the amendment. As it is the Local Government and Public Involvement in Health Bill, before we get bogged down too much with the structures of local authorities, could there be an intention under the first bullet points and your response to the Beecham review to seek powers over pooled budgets, as regards local authorities and health bodies sharing budgets? Is that an amendment that could be sought, although under parliamentary protocol, you probably cannot or will not tell me whether it has been sought or not? That is the Rawlings principle type 2, presumably.

[51] Under the second bullet point at the bottom of the page, in terms of enhancing the role of local councillors in scrutiny, could there be an intention to use that to implement one of the recommendations of the review that this committee has carried out in the past as regards ensuring that the chairs of scrutiny committees come from opposition parties? Could that type of amendment be introduced under the legislation at this point? Has that been sought, or will you invoke the Rawlings principle type 2 and say that the parliamentary protocol kicks in?

[52] **Mr Rawlings:** I do not want the Rawlings principle type 2 to be a

defence against saying things—under parliamentary protocol, we are not supposed to say too much before the clauses of Bills are put before Parliament. In direct answer to your second question, the Measure-making power that we are seeking is drafted in the terms that we are seeking it, and we are confident that it will be sought. If a subsequent administration wanted to bring forward the type of thing that you are proposing, it could form part of a Measure.

[53] On the pooling of budgets, I am not sure that this particular Measure-making power would cover that aspect, but there are already extensive provisions in section 31 of the Health Act 1999 that allow for that to happen. It is a piece of legislation that has not been exploited to its full extent in Wales, so I do not think that we need to make legislative amendments to allow it to happen—it just has not happened as much as Beecham, for example, would have wanted it to happen.

[54] **Michael German:** It is not a reprise of the first question, but I will start by asking about parliamentary protocol, because it is a principle that will apply universally soon across many Bills that come forward in this way. I would have thought that this type of scrutiny would take place on Bills in the future, and they may well take place earlier on White Papers or earlier in the provision, in which case committees such as this, which will scrutinise Bills, may well come up with ideas and thoughts as to where amendments should take place. With separation after May, the Government may feel fettered by being at a committee at which it is answering questions about a Bill in terms of its ability to answer the questions, even though it may feel that is perfectly appropriate to ask for those powers, given that it would not be able to say that it would seek an amendment to a particular section of a Bill. It is just a matter of procedure as to whether parliamentary protocol helps us as an Assembly in this sort of pre-legislation scrutiny or a scrutinising role during the course of setting it out.

9.50 a.m.

[55] **Mr Rawlings:** In a way, we are making too much of it. We are trying to be helpful by telling the committee what is coming forward. If we were going to be absolutely rigorous about this, we could have said at our last meeting, 'Look, there are five matters in the Bill. There they are, what do you think of them?'. However, that would have been an incomplete statement of where we hope and expect to be at the end of March, knowing that you have to report on this. Therefore, while bearing in mind that Parliament does not like it if other people are told what will be in Bills before Parliament is told, we gave some broad hints about what we are expecting the Bill to contain later down the track. We cannot put the additional amendments before you before they are laid before Parliament. However, as soon as they come before Parliament, the committee can look at them and comment on them. That is all that it is.

[56] **Michael German:** You are a benevolent civil servant, so we are getting a more open approach. It could be, in the future, that that might or might not

happen, but it says that—

[57] **David Melding:** I hope that you are not describing Mr Palmer as malign.

[58] **Michael German:** No. [*Laughter.*]

[59] **Ann Jones:** It is a case of good cop and bad cop, is it?

[60] **Michael German:** There will clearly be timetabling issues, and if we are going to have amendments that we may wish to scrutinise, there is presumably a tight timeframe in which to get a comment in on those amendments, if the committee is going to make its view known to Parliament. We will need to get that timetable into our programme. That will be rolled into procedures after May, but for this particular Bill, it means that we will probably have to look at this fairly sharpish after 8 March.

[61] **Sue Essex:** Mike is raising some important points that need to be thought through, but you will be in different circumstances post May. This is an anomaly, as a Bill set within the new powers, while the Assembly has not yet formed itself in the new way. On the issue of what is in and what is out and what we have sought, we have, in fairness, taken the committee's views into account as well. So, within that framework, it is not just the Assembly Government's views, but what we have debated over previous years and what the committee has produced reports on. We have picked up the committee's intentions in our response. On this particular Bill, although the timing is difficult, we can assure you that we have sought powers in those areas on which we know there is common agreement. However, the timing is difficult, particularly with regard to the end of the Assembly period and the election. Post May, the same circumstances will not apply. The principle of trying to seek clarification of how legislation like this will be handled in the future is one that it would be useful to follow up, because committees will be fulfilling different functions to the ones that they are fulfilling now.

[62] **Michael German:** I presume that, post May, there would have to be a committee that had a role in scrutinising a Bill of this sort. Whether it was part of another committee or whether it was doing that exclusively is another matter. In that role, it would probably call a Minister or civil servants to give evidence and would, presumably, be told the sort of thing that we are being told this morning, which would mean that it would have to return to these matters when amendments were laid.

[63] I also want to get a feel for timescale here. If issues become more apparent to us by 6 March, what sort of timescale for meaningful scrutiny do we have before it is too late and it has gone through the parliamentary procedure?

[64] **Mr Rawlings:** The amendments that we are seeking will presumably be published in the last week of February, and would be looked at by the parliamentary committee on 6 March.

[65] **Michael German:** If we miss that boat, will we have missed the boat?

[66] **Mr Rawlings:** If the parliamentary committee agrees, they can become part of the Bill, but that is only the first house, as it were. There is presumably the possibility of influencing the Bill at a later stage.

[67] **Ann Jones:** We have done this with the Electoral Arrangements Bill, if you remember. We will do all that we can to look at getting the information to the committee and, if necessary, how we play that in the committee.

[68] **Gwenda Thomas:** Should the committee consider how the Standing Orders will assist the procedure post-May? The Committee on Standing Orders has considered, in some depth, the procedure that will be adopted if the Standing Orders are accepted.

[69] **Michael German:** They have been.

[70] **Gwenda Thomas:** Yes, by the Assembly, but I think that, during this discussion, we need to consider the effect of new Standing Orders on the next Assembly.

[71] **Ann Jones:** We are in a strange position, because we are still operating under our current Standing Orders, as has been explained by the Minister. However, as a committee, we will look at how we can feed in our report at the relevant time. It will not be a small piece of work, and if we are going to do it, we want people to read it and we want it to have some effect—you do not want it to just land on the doorstep. That would be like sending a Christmas card and it arriving in the new year; it would be no good. So, we have to look at the timetable on that.

[72] **David Melding:** I have a point on the research that has been commissioned on some important areas. Presumably, we would be in a position to mandate the number of councillors—1,000 or whatever—and the system used. There is a view that councils are too large and would benefit from a reduction in the number of councillors, or in future people may hold the diametrically opposite view and want to increase the number. I presume that that power now comes to us. If you look at the executive arrangements, they have become professionalised, in essence—councillors in executive positions in local government now can get the equivalent of a full salary. There is a body of opinion that smaller councils would give the scope for those not in executive roles to also receive the equivalent of a salary. Given the expansion of the community leadership role and general public services—all these things are now coming to councils—many people argue that the only way for that to be effective is to have more professional councillors. Would the Assembly be permitted to travel in that direction, if it so wished?

[73] **Mr Rawlings:** On numbers, I come back to what I said before: that will be an issue for directions to the Local Government Boundary Commission for its next round of electoral reviews. The existing directions, which go back to

1995, specify a minimum of 30 members per council and a maximum of 75. That explains why Cardiff has 75 and Merthyr Tydfil has 30, or whatever it is. It is open to a Minister to issue directions amending those figures, if he or she wanted. I cannot recall at the moment whether that is subject to approval by the Assembly or not, that is, whether that is subject to an affirmative or negative resolution procedure. I think that it may be an affirmative procedure, but I cannot be sure.

[74] On the question of salaries and that sort of thing, I would imagine that that ought to be covered by the new Measure-making power. So, I do not think that that is an issue.

[75] **Ann Jones:** If everyone is happy with Part 3, we will move on to Part 4. Are there any questions or comments?

10.00 a.m.

[76] **Gwenda Thomas:** I have a point of clarification relating to the second paragraph of the paper under Part 4, which states that:

‘In Wales community councils are the equivalent body to parishes in England.’

[77] I assume that that includes town councils?

[78] **Mr Rawlings:** Yes.

[79] **David Melding:** I notice that the English measures—although I may have misunderstood this—allow the equivalent of parishes or community councils to be established in urban areas. Is that the case? Are we looking for any analogous powers in our principal urban areas, which I suppose for us would be Cardiff and Swansea? Would we have that flexibility?

[80] **Mr Rawlings:** The Aberystwyth study recommended that the rules for establishment of community councils should be made more flexible than they are currently under the primary legislation. If we get the Measure-making power that we are seeking, we would be able to do that and make it easier to set up community councils. It would probably be a further step again to impose community councils. However, there would certainly be scope to make the arrangements for setting them up more flexible.

[81] **David Melding:** So, it would be possible to have those in an urban area?

[82] **Mr Rawlings:** Yes.

[83] **Sue Essex:** We do have community councils in urban areas.

[84] **Mr Rawlings:** They are possible now.

[85] **Sue Essex:** I think that it is has to be with the approval of the unitary

authority now. Is that not the condition? There are some issues about disbandment on votes, which were felt very keenly. However, if my memory serves me right, a community council can be set up only with the approval of the unitary authority, as it is now. However, there are some; there are several in my constituency. The thrust of the Aberystwyth report was that, if there is sound, demonstrated support in a community for setting up a community council, that should be able to go ahead. We are trying to get the powers to carry forward the recommendations from the report that, at the moment, we do not have the direct ability to act on.

[86] **Gwenda Thomas:** Following up on that, where the Assembly constituency and parliamentary boundaries of local authorities mean that there are different situations in different constituencies—in that one would have community councils and another would not—is there any power to deal with any double jeopardy situation that arises for the area with community councils? In other words, for example, if leisure or community hall facilities are provided in one authority by the local authority, the running of which the area with community councils contributes to via council tax, and it is then expected to raise local precepts to maintain and run its own community councils, is that situation dealt with by these regulations? Is there a procedure for dealing with that?

[87] **Mr Rawlings:** It is for each community to decide whether it wants a community council. If it decides that it does, we must ensure that the legislation enables those to be set up. That comes back to what I said before about making the arrangements more flexible. What functions the community council then takes on, such as managing local leisure facilities, would be a subject for discussion with the unitary authority. Quite apart from the issue of legislation, there is a fairly extensive programme of work ongoing with a view to establishing a charter on the appropriate relationship that ought to be struck between unitary authorities and community councils. This is a work stream coming out of the Aberystwyth study that has been ongoing for a couple of years and must be coming to fruition some time in the summer. John, do you know where we are on that?

[88] **Mr Palmer:** Yes. We pick up both of these issues, and double taxation, in the local government policy statement. We will be describing a general way forward in that. Before the end of the year, we want some guidance available for charter working.

[89] **Gwenda Thomas:** That was helpful.

[90] **Ann Jones:** Does anyone have any points to make on Part 5?

[91] **Michael German:** I am not certain that I have this in the right place, Chair, because Schedule 14 to the Bill is not quite clear to me. Matter 12.4 is the one that will be put into the Government of Wales Act 2006; that seems to be very broad and I think that that is wholly appropriate. Some very broadly written matters are being introduced into the Government of Wales Act. Is it now the principle of Government—this is a delicate question about

Whitehall—to automatically put in that sort of clause when it drafts a Bill? Is that a given these days or does it have to be highly negotiated and fought for, in order for it to reach the sort of breadth that you have here?

[92] **Mr Rawlings:** I think that it is neither of those things. It is not a given, in that, with all respect to Whitehall colleagues, it probably would not occur to them. That, in a way, explains why it is also not a line-by-line negotiation in many cases because, just as it would not have occurred to them, they are not awfully bothered about it.

[93] **Michael German:** That is a very helpful principle.

[94] **Ann Jones:** Is there anything else on Part 5? What about Part 6, 'Byelaws', clauses 97 to 103? Gwenda, I said that you would be first on clause 102.

[95] **Gwenda Thomas:** I think that it overlaps with clause 130, so I do not know if you would prefer it if I came in then.

[96] **Ann Jones:** No, go on, you may start now.

[97] **Gwenda Thomas:** I think that I may have confused the clause number, so I think that I would prefer to leave it until we come to Part 8.

[98] **Ann Jones:** Right, you shall be first on Part 8.

[99] **Gwenda Thomas:** Thank you.

[100] **Ann Jones:** Does anyone else wish to comment on Part 6?

[101] **Michael German:** Again, I do not know where this should go. I have gone back to Part 2, in a way, because—

[102] **Ann Jones:** We are going to do the Schedule separately, because that comes under Part 12. If you have anything on the Schedule, we will do that under Part 12, 'Powers of National Assembly for Wales'. We are therefore okay with Part 6. Are we happy with Part 7, 'Best Value', clauses 104 to 112? I see that we are. On Part 8, we have Gwenda.

[103] **Gwenda Thomas:** It is on the issue of transferring responsibility for benefit fraud investigation and assessment and the lifting of restrictions on sharing the information that comes to hand. Am I right in assuming that this will be restricted to housing benefit and council tax benefit fraud only? I can see that that would facilitate investigation in Wales, but I can also see that there would be, on many occasions, serious overlaps between fraud in relation to general benefits and fraud in relation to council tax and housing benefit. I read that negotiations are currently taking place between the Welsh Assembly Government, the Wales Office and the Department for Work and Pensions. I wonder whether we are trying to avoid a situation whereby lifting the restrictions would not cover sufficient information sharing. It can work both

ways and, during a fraud investigation, you could find out that a family was not benefiting adequately from council tax benefit. Would that work both ways? Would there also be a responsibility to report any other issues that might arise during a fraud investigation, such as a child protection issue, which has been known to arise?

10.10 a.m.

[104] How meaningful will the fraud investigation be, and should we grasp the opportunity of setting up a better system of investigation and assessment, if we do transfer it to the Wales Audit Office?

[105] **Mr Palmer:** I think that we need to prepare a note on that.

[106] **Mr Rawlings:** We need to prepare a note, but I think that there are two quite separate issues. One is the scope of the powers that are proposed to be transferred to the Auditor General for Wales. The second is quite different and is on information transfer between, for example, the Auditor General for Wales and other bodies, for example those with responsibility for child protection. This, in a way, takes us back to where we were before on smartcards, where the whole issue of the transfer of information within Government and between Government agencies is a matter of some sensitivity. However, we can give you a note about the issues of scope and information transfer.

[107] **Gwenda Thomas:** There is a reference to protecting whistleblowers, which is another important issue. Also, there is a reference to prescribed exceptions to the sharing of information, and perhaps it would be helpful to know when the restrictions will not be lifted and what those exceptional circumstances will be.

[108] **Ann Jones:** We will have a note of further information on that.

[109] **Ms Adams:** I think that it is better—[*Inaudible.*]—there is an overlap here of two quite different purposes. I will just clarify and give you the background to clause 130. That clause delivers on a long-standing UK Government commitment to remove any doubt about the disclosure of information by local government auditors, because there was a prescription of not disclosing as opposed to a voluntary disclosure being made. As I understand it, the test for that is that a local government audit officer cannot voluntarily disclose information should the audited body receive requests for information under the Freedom of Information Act 2000. So, that is the test. That is just the background to clause 130, but we need to provide you with a note on the two separate issues that you raised.

[110] **Ann Jones:** Is there anything else on Part 8? I see that there is not. Is there anything on Part 9?

[111] **Michael German:** The very last sentence, under 'Employees'—I asked this question yesterday, but I think that there is probably someone here today who can give me the right answer—states:



‘An order made under this clause will be subject to the negative resolution procedure of the Assembly.’.

[112] Who determines whether a procedure before the Assembly is negative or positive?

[113] **Mr Rawlings:** That takes you back to Schedule 11 of the Government of Wales Act 2006. The broad principle—and this is another Rawlings principle—[*Laughter.*] The broad principle is that where the Order-making power, which is conferred on the Welsh Minister, has an equivalent that is conferred on the Secretary of State with respect to England, and if the Secretary of State power is provided for as a negative resolution procedure or affirmative resolution procedure, that will equally apply in Wales. That is in relation to statutes that have been passed before 2007. Where there is no equivalent power in relation to England, for example arising from a Wales-only Act, such as the Children’s Commissioner for Wales Act 2001, Schedule 11 sets out at exhaustive length all the relevant powers that will transfer to the Welsh Ministers under the Wales-only legislation, and specifies what the appropriate procedure to be followed is. So, there is a great long set of tables, which I am sure that Peter will be able to explain far better than I can. In relation to powers—

[114] **Michael German:** Does this follow the English procedures?

[115] **Mr Rawlings:** In relation to powers conferred on Welsh Ministers by any Measures adopted by the Assembly—and I mentioned before that that is a possibility—it will be for the Assembly itself to specify whether the procedure should be negative or affirmative.

[116] **Michael German:** That would be for the new Business Committee?

[117] **Mr Rawlings:** It will be provided for in the draft Measure, and will be voted on by the Assembly. So if, for example, an administration proposed to take powers for the Welsh Ministers, and proposed that they should be subject to negative resolution procedure, it would be open to other parties to move that there should be an affirmative procedure.

[118] **Ann Jones:** Are you alright for now on that one?

[119] **Michael German:** Fine, though it adds another tier of complexity to the arrangements.

[120] **Ann Jones:** Does anyone want to comment on Parts 10 or 11? Part 12 concerns the powers of the National Assembly for Wales and includes Schedule 14. We may want to spend some time on this.

[121] **Michael German:** I have a question about paragraph 3—or whatever you call it; I do not know what you call a division of a Schedule—which relates to police areas. I note that an Assembly Measure cannot alter a police area

except with the approval of the Secretary of State. Where did that emanate from? Was it originally in the Bill, or was it part of the Schedule that the Welsh Assembly Government was seeking?

[122] **Mr Rawlings:** What is envisaged here is the sort of thing that happened in the reorganisation in 1994. If you remember, the boundary between Mid Glamorgan and Gwent was effectively obliterated—

[123] **Michael German:** Caerphilly came in.

[124] **Mr Rawlings:** Yes, or Islwyn and Caerphilly joined together. That had an effect on police authorities and police forces, and policing is a non-devolved matter. This provision says that, if the Assembly adopted a Measure about changing the pattern of local government in a particular area, and that had implications for police authorities, because policing is non-devolved, the consequential of amending police authority boundaries could only be done with the Secretary of State's consent. So it is consequential on the power to reorganise local authority boundaries, and it respects the existing devolution settlement; it does not attempt to change it.

[125] **Ann Jones:** Is there anything else on Part 11 or Schedule 14?

[126] **Michael German:** We may have to come back to this, but I wonder whether the amendments that are being sought by the Government will eventually emerge as alterations to the Schedule.

[127] **Mr Rawlings:** New matters will be inserted into Schedule 14, and I think that they will be re-ordered. So the matters will change numbers. Is that right, Margaret?

[128] **Ms Adams:** They will not just be tagged on; they will be re-ordered.

[129] **Michael German:** On a procedural issue, Chair, presumably when these things are printed, there is a whole new document, and we will have to have them rushed down so that we can have copies. Is it the intention that committee will have the next edition of this when it appears? It will have to be pretty pronto after it is published. I wonder what the timescale is between printing and publication in London.

[130] **Mr Rawlings:** The Bill will be published as amended by the committee around, I would guess, 12 March, so you will have it for your meeting on 22 March. By 15 March, we will have given the committee a paper summarising the amendments that have been made.

10.20 a.m.

[131] **Ann Jones:** Okay. I take it that there was nothing on Parts 13 and 14. On the handling of that, it was helpful to find out from Hugh that we will have a paper. We will endeavour to fit as much as possible of it into committee time, but some things may have to be circulated, perhaps just outside the time

limits, but we will ensure that we at least publish everything. However, we beg your indulgence on timings, because we will be struggling against time on the amendments too. We will write our report based on what we see from the amended Bill. Are there any other questions on this issue? I see that there are not. We will break now until 10.40 a.m..

## **LGPS(2)-03-07 - Thursday 7 March 2007**

### **Further Scrutiny of Amendments to the Local Government and Public Involvement in Health Bill**

[1] **Ann Jones:** It was agreed at the last meeting that Government amendments to the Bill that relate to Wales would be circulated. I think that we have all had those. This is about where we are going to go from here. We are joined by Margaret. We are grateful to you for coming along to give us the views and to steer us through this, Margaret. Minister, is there an oral update or anything that you want to say?

[2] **Sue Essex:** I just have a few changes to announce. We had assumed that the new powers that we had asked for, the amendments covering governance arrangements, community councils and community calls for action, would be put in at Committee Stage but we have now been told that they will be tabled for consideration at the Report Stage of the Bill. I do not think that that causes us undue concern, because we are confident that they will be inserted. However, the date for the report is not yet settled. The Report Stage could be before Easter or after Easter. Obviously I will do my best at the last meeting of this committee to update you on where we are. I think that that will be on 22 March, but people need to bear in mind that there will be things going on during the pre-election period.

10.00 a.m.

[3] Three other amendments have been tabled. Two are UK Government amendments, which will give new powers to Welsh Ministers. I think that those were considered by the Bill committee yesterday. Under the first amendment, Welsh Ministers will be able, if asked by local authorities, to establish joint waste authorities. This is a really important provision. It is happening on the other side of the border, and it would be very useful for our collaboration on the waste agenda. So, I hope that the committee will support that amendment. The second amendment concerns the issue of trying to make local and European elections coincide. You will remember that this was done last year or the year before last. In law, the local government election was in May, and the European election was in June, but we brought the two together. The mathematics of it say that that problem will not occur again until 2024. For those people who will be around then, the amendment will mean that they are able to bring the elections together again.

[4] The third amendment has gone down as the opposition amendment, proposing that the National Assembly have legislative competence in relation to local government election arrangements. The Bill committee will consider

that amendment in its final session, which is probably today—or is it tomorrow?

[5] **Ms Adams:** It is tomorrow.

[6] **Michael German:** I will not refer to my colleague's amendment to the electoral arrangements.

[7] **Sue Essex:** You mean that he has not told you? [*Laughter.*]

[8] **Michael German:** Clearly, I have spoken to him about it, but, at this stage, I will not seek to embarrass David Melding by trying to push to a vote on this matter.

[9] **David Melding:** You will not embarrass me.

[10] **Michael German:** Okay, then, I might ask for that and see where we get with it. I am teasing.

[11] I am finding this slightly difficult, as I do not have the papers from the last meeting. There were several proposals in those papers on which you said the Government would be seeking an amendment, but you said that you could not tell us because of the protocol. So far, three amendments have been tabled, proposing new clauses 19, 26 and 31. Was there anything else from the papers last month that has not yet been amended, but which you are expecting to come forward? Is it the case that there were areas on which you wanted amendments but which are not now going to be tabled? Without the two papers before me to do a subtraction exercise, it is difficult to work this out.

[12] **Ms Adams:** No. You have the full suite now. We did not alert you to the two UK Government amendments because they are UK-led policies on which we have piggybacked the same provision for Wales. It was therefore not appropriate for us to open up a dialogue on those until Parliament had been informed.

[13] **Michael German:** However, there were matters in the papers from the last meeting on which the Welsh Assembly Government was seeking amendments—

[14] **Sue Essex:** Other than the ones that we have detailed today?

[15] **Michael German:** Other than what has been tabled so far in Parliament, which I think you said may come in at the Report Stage. Which ones are those?

[16] **Sue Essex:** Those relating to community councils, community calls for action and the executive arrangements for internal governance. I do not know whether there is any more specific information on those.

[17] **Ms Adams:** We have termed them as political management arrangements or executive, overview and scrutiny arrangements. Those have been branded as 'governance' for the purposes of the Bill.

[18] **Michael German:** I see. So, those will be coming in at Report Stage?

[19] **Sue Essex:** To the best of my knowledge. We wanted all that to be included. As I said, we had hoped that those would go in at Committee Stage, but they are going in at Report Stage.

[20] **Ann Jones:** I see that Members have no further matters to raise. We are going to produce a report of the scrutiny of the Bill carried out by this committee. We will try to pull it all together very quickly. The committee may want to wait until the outstanding amendments have been tabled before we finalise a report, but we will then produce it as quickly as possible.

[21] **Michael German:** To be clear about where I stand, if you took all the powers in the Bill and the ones that you could have asked for—as far as I can judge before all the amendments have been tabled—the only power that I would still be concerned with relates to the frequency of elections and the number of Members. You could have asked for the power in relation to electoral arrangements, but you did not.

[22] **Sue Essex:** We will try to make a list for 22 March to make it easy for people to see that. I would just alert you to the fact that the Report Stage postdates 22 March. The real problem is that work will be going on when I am still Minister but when the committee no longer exists. It will be pure, not political, information, but I wondered whether I could keep everyone notified of what is happening in that pre-election period. However, the committee, as I understand it, ceases to exist at the end of this meeting, although Lara or Peter may know better than I do. So, I did not know whether there was an organisation through which I could keep people informed during April. I would still be here in my official capacity as a Minister, but it would not be political.

[23] **Michael German:** We are still technically Assembly Members.

[24] **Sue Essex:** Yes, so it would not be a political issue; it would be a matter of keeping people informed of what is happening with the Bill. I do not know, Peter, whether the committee still has a standing and membership during that pre-election period.

[25] **Mr Jones:** Everything continues; there is no dissolution of the Assembly. The new Assembly will be dissolved at the end of the four-year period.

[26] **Sue Essex:** So, Members would still exist?

[27] **Mr Jones:** The Assembly will technically be in recess. There is a purdah period, but it is not a legal concept.

[28] **Ann Jones:** Members are still Members until 2 May, are they not?

[29] **Mr Jones:** Yes.

[30] **Sue Essex:** So, if it proves helpful, we could keep all members of the committee updated through you and Lara.

[31] **Ann Jones:** That would be helpful, and I think that Members would appreciate that. So, we will write as much of the report as we can and we will send it out by the deadline, so that people know what we have been doing about that. That is fine, thank you.

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