



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

**Y Pwyllgor ar y Mesur Arfaethedig ynghylch Teithio
gan Ddysgwyr
The Proposed Learner Travel Measure Committee**

**Cyfnod 2
Stage 2**

**Dydd Iau, 3 July 2008
Thursday, 3 Gorffennaf 2008**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Lorraine Barrett	Llafur Labour
Alun Cairns	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Jeff Cuthbert	Llafur (yn dirprwyo ar ran Ann Jones) Labour (substitute for Ann Jones)
Ieuan Wyn Jones	Plaid Cymru (Y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth) The Party of Wales (The Deputy First Minister and Minister for the Economy and Transport)
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Mike Clancy	Pennaeth, Tîm y Mesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru), Llywodraeth Cynulliad Cymru Head, Proposed Learner Travel (Wales) Measure Team, Welsh Assembly Government
Iwan Roberts	Cyfreithiwr, Llywodraeth Cynulliad Cymru Lawyer, Welsh Assembly Government

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

Gwyn Griffiths	Cynghorydd Cyfreithiol y Pwyllgor Legal Adviser to the Committee
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 9.01 a.m.
The meeting began at 9.01 a.m.

Cyflwyniad, Ymddiheuriadau, a Dirprwyon
Introduction, Apologies, and Substitutions

[1] **Alun Cairns:** I call this meeting of the Proposed Learner Travel Measure Committee to order. We are considering the amendments that have been tabled in relation to the proposal from the Welsh Assembly Government in relation to learner travel. Apologies have been received from Ann Jones, and Jeff Cuthbert is substituting for her. The usual Standing Orders apply, as does the advice about fire alarms, mobile phones, and so on; I do not particularly want to repeat those instructions at this stage.

9.02 a.m.

Y Mesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru)—Cyfnod 2:
Ystyried Gwelliannau

Proposed Learner Travel (Wales) Measure—Stage 2: Consideration of Amendments

[2] **Alun Cairns:** The second item is the consideration of amendments. First, we will consider sections 8 to 25, followed by Schedule 1, then section 26, followed by Schedule 2, then sections 27 to 29, and finally new sections proposed. We need to get through all of the amendments today, because the window that has been given to us by the Business Committee effectively closes at the end of this meeting.

[3] As before, amendments have been grouped to facilitate debate, but the order in which they are called and proposed for a decision is dictated by the marshalled list. Members will need to follow the marshalled list and grouping paper jointly, although I will advise Members when I call them whether they are being called to speak in the debate or to propose their amendments for a decision. I intend to ask that all votes be recorded, so that the names of those voting for, those voting against, and those who abstain will be recorded in the minutes. I propose to adjourn the meeting for 15 minutes halfway through, unless any Member calls for a five-minute break to clear their heads after the detailed intricacy of some of the debates that we will have. However, the total of any breaks will not be longer than 15 minutes.

[4] I would now like to move to the consideration of amendments, unless there are any questions. I see that there are none. Therefore, we will move on to the marshalled list and to the groupings. We will start this morning with a grouping of amendments about promoting access to education and training.

Hybu Mynediad i Addysg a Hyfforddiant (Adran 10) Promoting Access to Education and Training (Section 10)

[5] **Alun Cairns:** I call amendment 32 in my name, which is grouped with amendments 33 and 34.

[6] I propose amendment 32.

*Cafodd gwelliannau 32, 33, a 34 eu grwpio ar gyfer y drafodaeth.
Amendments 32, 33 and 34 grouped for debate.*

[7] Much of the debate on amendments 32, 33, and 34 was held last time, because we had a debate regarding schools of religious character and access to Welsh-medium education. These amendments generally relate to section 10. The purpose of the amendments is to strengthen section 10 in two ways. The first is to extend section 10 to include faith-based schools or schools of a religious character—and we all remember the amendments that were carried in favour of that at the last meeting; the right for pupils to have access to faith-based schools was recognised. Amendment 34 makes section 10 far more purposeful. It, effectively, allows for directions in relation to section 10 to be put on local authorities by the Minister, in relation to Welsh-medium schools, or schools of a religious character.

[8] I do not want to labour the point, other than to underline the points that were made at the last occasion, that the principle was agreed, certainly in relation to schools of a religious character. I would hope that we can strengthen the part that relates to Welsh-medium education, because I have serious concerns about the ambiguity of section 10 as it currently stands. I feel that section 10 is a weak element of the proposed draft, where such ambiguity would only lead to court action. In reality, given the financial resources available to parents, that would raise the question as to whether they really want to go through the courts or accept what the local authority is imposing on them. I want to give them the absolute right to have access to transport to a faith-based school or to a Welsh-medium school. Section 10 currently relates to Welsh-medium schools, but I want to make it far more purposeful in that respect, so

that there can be directions from the Minister in relation to the implementation of section 10.

[9] I now call on Kirsty Williams, as a supporter of these amendments, to speak to them. I will then call Lorraine Barrett.

[10] **The Deputy First Minister:** Should there not be a flow across the table? The normal rules of debate would mean that you would have the proposer of the amendment, then an opposition Member, then the Government, and then back.

[11] **Kirsty Williams:** That is not true in this case. I am a formal supporter of the amendment, so it does not work like that.

[12] **Alun Cairns:** This is the order that we followed last time, and no question was raised about it then. Of course, interventions can be made, which would allow for that flow. However, at the last meeting, no concerns or questions were raised about the order.

[13] **The Deputy First Minister:** I accept your ruling, Chair.

[14] **Alun Cairns:** I therefore call on Kirsty Williams, as a supporter of the amendment.

[15] **Kirsty Williams:** I do not wish to labour the point either. However, I believe that these amendments, especially with regard to religious education and schools of a religious character, build on the amendments that were discussed at the previous meeting, which were successful. Since then, with the help of some legal advice, I have been able to establish that, under section 84 of the Education and Inspections Act 2006, there are similar provisions, which allow for schools of a religious character to be taken into consideration when making travel arrangements in England. There is no corresponding provision for Wales. Therefore, the legal advice that I have received is that, presumably, there was a request by the Welsh Assembly Government, before the last Assembly elections, for that provision to be limited to England.

[16] I believe that parents making those choices on this side of the border should have the same opportunities as parents making those choices in England. As I have said previously, most local authorities are mindful of this when making their travel arrangements, and I would like to see these amendments passed so that there is equality in the situation. As I said, most local authorities are already doing it, so I do not anticipate that a significant additional cost would be placed on local authorities in honouring parental choice where parents feel strongly that their children should receive their education through a school of a religious character.

[17] **Lorraine Barrett:** I am afraid that I feel exactly the same as I did last week with regard to this general principle. You said that this would strengthen section 10, Chair. However, it does not just strengthen it; it changes the whole policy and the whole principle. The Assembly Government does not have a policy to promote faith schools—the situation is different from that in England. It is not for us, dealing with a Measure to do with school transport, to change a whole Government policy, almost on a whim, among four or five of us when the Government of Wales does not have a policy to promote access to faith schools whereas it does have a policy on Welsh-language education, so, for that reason, I will oppose all these amendments.

9.10 a.m.

[18] **Jeff Cuthbert:** I concur with Lorraine.

[19] **The Deputy First Minister:** First, I will deal with amendment 34, which, should amendments 32 and 33 be carried, will give powers of direction specifically in relation to the

provisions of amended section 10. We do not need those extra powers because they are already contained in the Measure. They are also contained in the Education Act 1996, whereby the Government has power to direct a local authority that is failing to discharge its functions or that is acting unreasonably. So, the addition of amendment 34 is superfluous in the sense that we already have those powers. I want to make it clear that in the provision of section 10, as it currently stands without the amendments, then I would be perfectly happy to use my power of direction if I thought that local authorities were not promoting section 10 as it is or were perfectly happy to rest on the powers that we have.

[20] On the substantive response to amendments 34, 32 and 33, I ask the committee to reflect on the precise wording of amendment 33—and Lorraine touched on this in her contribution—which states,

[21] ‘Each local authority and the Welsh Ministers must promote access to education and training by schools of a religious character’.

[22] So that imposes on the Government a policy that it currently does not have. Kirsty was right when she said that there is no responsibility or legal duty on Welsh Ministers or local authorities in Wales to bear in mind travelling arrangements to schools with a religious character. That is a Government policy. We can disagree about the policy, as we clearly do, but we cannot have by means of a Measure a policy imposed on the Government that it does not have, because there would then be a legal requirement. Imagine what that would mean. The Government has a policy to promote access to Welsh-medium education, so that is fine, but if we were then to extend that to say that we would have to promote access to education in schools of a religious character, then the Government would have to do something active and the Government is not prepared to amend its policy. Under those circumstances, we are asking the committee to reject the amendment.

[23] **Alun Cairns:** I will now reply to the debate as the proposer of the amendment. This debate, and even the last one, effectively, came down to section 10 of the proposed Measure and the ambiguity and weakness of section 10 and comments that have been made outside in relation to section 10. So, there are two elements: the first is to extend provision to faith-based schools, and there is quite obviously a difference of view in terms of policy. That is on the table and no doubt the public will judge the Government and opposition parties on that, so there is little point in repeating it. However, I would like to refer specifically to amendment 34 at this stage, because the Minister made the point that he already has those powers in the Education Act 1996 and that he can direct local authorities if they are not fulfilling their duties, but section 10 is what will create the duty in relation to this proposed Measure.

[24] **The Deputy First Minister:** I said that I had two powers of direction: the powers of direction under the Education Act 1996 and the existing powers of direction that I have in the Measure.

[25] **Alun Cairns:** I am grateful for that intervention—that is precisely the point that I want to make, namely that section 10, in its ambiguous state, has loopholes that will, effectively, allow local authorities to get around this. For example, as I suggested in the last meeting, internet-based learning through the medium of Welsh at an English-medium school could satisfy that requirement. Do we want to force parents to be in a position whereby they would have to make a challenge through the courts to seek powers? The Minister may well argue that he has powers to direct that that is unreasonable, but as far as the law is concerned in respect of section 10, the local authorities will have the right to defend it. There is obviously a difference in agreement, but I feel that section 10, as it is written—

[26] **The Deputy First Minister:** May I intervene? If you look at the supplementary powers in section 15 of the proposed Measure, it states that:

[27] ‘Directions under this section may be given to one or more local authorities or local authorities generally.’

[28] which means that I have the powers in any case.

[29] **Alun Cairns:** You have powers as far as section 10 goes. Given the ambiguity of section 10, I do not feel that those powers are worth pursuing. The whole point that I am making comes down to the fact that we are not providing equal access to Welsh-medium education and English-medium education. Section 10 seeks to offer a way forward, but we cannot get away from the fact that parents who want their children to go to a Welsh-medium school will not have the same access as others, who have the right to be transported to an English-medium school. We had a debate outside of this committee yesterday where everyone expressed their views on that, but I just feel that section 10 is nothing more than a fig leaf in terms of saving—

[30] **The Deputy First Minister:** May I intervene? The Government has to challenge the basis upon which you make the assertion, and because this is a legislative committee it has to be on the record that the Government challenges your interpretation, which we are entitled to do. The basis upon which we do that is even if there were no amendments to section 10 as the Government has drafted it, access to Welsh-medium and English-medium education is equal. In section 10, we have said that, in addition to that, local authorities have a responsibility to promote access to Welsh-medium education. On the record, the Government is saying that access to Welsh-medium education is in no way diminished by section 10 and is, in fact, enhanced by it. I understand the point that you make, but, on the record, that is what the Government is saying and we challenge your interpretation.

[31] **Alun Cairns:** We quite obviously disagree and we have had the debate. We proposed amendments at the last committee meeting that would have made it equal; I do not consider it to be equal, but there is no point in repeating the debate. So, I will close this discussion.

[32] **Jeff Cuthbert:** May I intervene?

[33] **Alun Cairns:** I have closed the discussion.

[34] **Jeff Cuthbert:** I thought you were about to do so.

[35] **Alun Cairns:** Okay, I will take your point then.

[36] **Jeff Cuthbert:** It is to do with amendment 33, and it is to reinforce the point that, as it is written, it states that Welsh Ministers must promote access, which, as has been said, is an active statement, and it would seem to be creating a much further step than currently exists. Currently, you may well support access to schools of a religious character, but to argue that the Welsh Assembly Government should actively encourage access—perhaps against the interests of other schools—as is written down here is a step too far. That is the fundamental problem that I have with this.

[37] **Alun Cairns:** Thank you, Jeff. I will now close the debate on this grouping of amendments. The question is that amendment 32 be agreed to. I call for a vote.

Gwelliant 32: O blaid 2, Ymatal 0, Yn erbyn 3.

Amendment 32: For 2, Abstain 0, Against 3.

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

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

Cairns, Alun
Williams, Kirsty

Barrett, Lorraine
Cuthbert, Jeff
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 32.
Amendment 32 defeated.*

[38] **Alun Cairns:** Amendment 32 has not been agreed, therefore amendment 33, which is also in my name, falls.

9.20 a.m.

**Tynnu'n ôl Drefniadau Teithio (Adrannau 14 a 27)
Withdrawal of Travel Arrangements (Sections 14 and 27)**

[39] **Alun Cairns:** I now call amendment 27, which is in my name, and will speak to the other amendments in the group.

[40] I propose amendment 27.

*Cafodd gwelliannau 27, 12, 13, 14, 29, 30 a 31 eu grwpio ar gyfer y drafodaeth.
Amendments 27, 12, 13, 14, 29, 30 and 31 grouped for debate.*

[41] These amendments effectively relate to the withdrawal of travel arrangements. I think that this is pretty fundamental, in that the whole purpose and much of the motivation behind the Proposed Learner Travel (Wales) Measure is to provide safe school transport. I think that we all congratulate the Assembly Government in terms of its intentions, but my problem with the proposed Measure, as it currently stands, is that it does not effectively allow for exclusion from the school bus, for example—if we want to talk in practical terms. It currently allows for limited exclusion of up to 10 days in one go and up to 30 days in any one school year.

[42] The point that I am making is that, first, there is an inconsistency with general exclusion from schools and I think that, for the sake of convenience for teachers, consistency would be useful. Schools can exclude for up to 15 days, for which there would be no appeal, and I think that that would be an easier and more straightforward way in which to consider this. Secondly, the current proposal does not allow for permanent exclusion. I will give an example: an unruly pupil causing problems on the school bus could have been excluded for 10 days on three separate occasions, and so would have reached the maximum of 30 days; however, the local authority would still have to provide transport for that pupil to go to school. In following the general principles of exclusion from school, I think that there must be a right to permanent exclusion. In making the exclusion arrangements far more flexible, which is why I sought amendment 27 to delete the 10 and 30-day limits, there must, naturally, be a formal right of appeal. The proposed Measure currently simply says that the matter must be discussed with parents—I forget the exact wording. It must be on the next page; forgive me. It says that

[43] ‘the learner and the parent of the learner are given the opportunity to make representations’.

[44] That is section 14(5)(a). In reality, the right to make representations does not mean anything. Who would they be making representations to? If it were to the local authority, there would be no independence, because it was the local authority that made the decision in the first place. In terms of exclusion from school, if you are excluded for more than 15 days there is a right to appeal to an independent panel. Such panels are set up to include members of the local authority, but also lay members, and I think that the rights of the child are

protected in terms of having a free and fair hearing. I do not believe that the current arrangements in the Measure allow for that.

[45] The purpose of amendment 27, in this respect, is to call on the Assembly Government or the Minister to allow for regulations to be made. I have not stipulated the appeal within the amendment, but I want to allow the Minister to introduce regulations that would allow for an independent appeal to take place. Amendment 29 effectively says that that right of appeal would only kick in if the exclusion was for longer than 15 days. The reason that I have been quite specific in mentioning 15 days is that that will tie in exactly with school exclusions.

[46] I have spoken to a headteacher who is part of Stuart's Campaign, for example, and he agrees that there needs to be a right to permanently exclude pupils, based on the tragic experiences of that campaign. Secondly, he said that, on the right of appeal, from a headteacher's practical point of view, he thought that it would be far more workable if the Measure used the same parameters that relate to exclusions from school. In closing my contribution, I will say that I want to allow for far more flexible exclusion and to introduce the right of appeal; I do not feel that the current arrangements allow for that. I will now call on Kirsty Williams to speak to the amendments, as the proposer of amendments 12, 13 and 14.

[47] **Kirsty Williams:** With regard to the principles of exclusion, I accept that there could be well be circumstances where it is felt appropriate to exclude a child from transport arrangements as a sanction against poor behaviour. I accept the principle of that, but my concern is twofold. Hopefully, in most cases, a period of exclusion as a result of a specific incident on school transport will be enough to amend that child's behaviour, and there will not be any further problems. My concern is that, in other cases, you could have children whose bad behaviour on school transport is a symptom of bad behaviour as a result of other things that are going on in their lives. My concern is that, by solving one particular problem—by kicking them off the school bus—you are, potentially, creating a whole set of other problems. I suspect that a child who is permanently excluded from the school bus will be in danger of not attending school at all, and if that child is not in school, what will he or she be doing?

[48] My amendments try to give some flexibility to the Measure before us. As we have already heard, sections 14(9) and 14(10), specify periods of exclusion. The purpose of my amendment 12 is that, if the timescales explicitly mentioned in sections 14(9) or 14(10) were thought to be not working, or needed to be amended in the light of experience, we could amend them under regulation rather than by coming back to amend the Measure by way of another Measure process. That would not be an appropriate use of Assembly time. We should allow the Minister, in the light of experience, to use regulations to amend the timescales that are explicitly set out in sections 14(9) and 14(10). It is not that I am disagreeing with them; I am just saying that, in the light of experience, we might feel that they are not appropriate, and I do not think that it would be appropriate to bring a new Measure just to amend those particular timescales. Amendment 12 in my name would allow the Minister to use regulations to amend the timescales at a point in the future if it was felt necessary.

[49] Amendment 13 talks about the right of appeal. It is fundamental that, if a decision is taken to withdraw travel, parents should have the right of appeal. You could find yourself in a situation where the withdrawal of travel is used as a sanction, perhaps not in a way that you would have envisaged that it would be used, so there should be a fundamental right of appeal. I am not stipulating when that appeal should kick in; that should be a matter for regulation, and I am content to leave that with the Minister.

[50] **Alun Cairns:** I will ask a question as a member of the committee, and not as Chair. I just want to clarify that the right of appeal, as you propose, would be for all exclusions. If

there is an exclusion for five or 10 days, do you propose that there would be a right of appeal? With exclusions from school for up to 15 days, you are not currently allowed an appeal, effectively; I know that schools quite often go to that limit, because of the time it takes to set up an appeal. So, if someone is excluded from the bus for five days, by the time that they set up an appeal, five days will have passed.

[51] **Kirsty Williams:** I absolutely accept your point that there are practical considerations—if someone is taken off the bus for one or two days, is it appropriate to have an appeals mechanism and all the bureaucracy that would be associated with that? That is why my amendment 13 does not give a specific timescale. It allows the Minister, following consultation with the relevant bodies, to come up with an appeals mechanism. I do not want to tie the Minister's hands by saying that it has to kick in by a certain time or date; that is a matter that needs further discussion and consultation with those involved, which is why the amendment specifically does not give a timescale. It allows the Minister some time to look at this issue and supplement the Measure with regulations.

9.30 a.m.

[52] Amendment 14 would be a commencement-type amendment, namely that you could not commence section 28 until that appeals mechanism had been drawn up and put into the regulations. What I am trying to do is save us the trouble of coming back to another Measure committee to look at timescales, and to give the Minister flexibility to make regulations with regard to exclusions and rights of appeal. I am not trying to tie the Minister's hands; I am trying to enable the Minister to do that via regulation.

[53] **Lorraine Barrett:** I am just trying to think this through. For example, if a child is excluded from the bus for 15 days and his or her parents put in a written appeal, that will be quite bureaucratic; there is a tribunal and people have to be called in to hear the appeal. I am looking at the words 'given the opportunity to make representations'; that may not happen in every school, but surely there is an easier and quicker way of making direct representation to headteachers or chairs of governors in order to try to deal with it in a more timely manner. I do not know how many pupils are currently excluded from school transport; I do not have the figures—I do not think that anyone does—but there is a great deal of bureaucracy involved with each one being able to go through a written appeal or tribunal system.

[54] **Kirsty Williams:** On the point about representation, that speaks for itself. Most parents are, hopefully, involved enough in their children's lives to make representations to the school should such a situation arise. However, there is some evidence to suggest a growing number of exclusions from schools; sometimes there is anecdotal evidence that that coincides with a school inspection. Potentially, the use of exclusion from transport could have—

[55] **The Deputy First Minister:** I will just challenge you there, because that is quite a serious allegation, that a school would exclude because it is facing an inspection. In those circumstances, under the Measure, I have power to direct a local authority not to do that.

[56] **Kirsty Williams:** As I said—I chose my words very carefully—there is anecdotal evidence that, potentially, that might happen—

[57] **The Deputy First Minister:** This is on the record, Kirsty.

[58] **Kirsty Williams:** I appreciate that I have not had many years' experience, but I have been here for nine years; I am well aware that this is on the record. I chose my words very carefully—there is, potentially, anecdotal evidence that that may happen. The ability to withdraw transport from a child to school could, potentially, stop that child from attending the school. That could be used inappropriately in some circumstances. What I am saying is that I

believe that the Minister should have the power, under regulations, to provide for an appeals mechanism. In all aspects of life, when sanctions are applied to an individual, there is the right of appeal. When an Assembly Member is in front of the Committee on Standards of Conduct, that Assembly Member has the right to defend himself or herself and has the right of appeal against the decision of the committee. In all aspects of life, if a sanction is applied, there should be a right of appeal so that one could make one's case. I do not believe that children have any less right to that basic function of justice.

[59] **Jeff Cuthbert:** I have been a school governor for a long time—since before I came here—and my experience is that a committee of governors is set up to hear appeals on exclusions, for example, and there is usually enough time to arrange that. Is it envisaged that an appeal would normally be to a panel of governors?

[60] **Kirsty Williams:** The regulations would allow the Minister to hold a further consultation to establish the nature of that appeal. What happens if you have two children in some kind of dispute, and one child makes an allegation against the other and the other child is excluded from school, potentially wrongfully? That child has no right to come back to anybody to appeal against that sanction. The regulation does not specify that. It allows the Minister time to think further about the nature of an appeals system, and the timescales involved. I am not dictating; I am just saying that that is a basic principle. Sorry, my throat is killing me today.

[61] **Alun Cairns:** Do you want me to give you a second? If so, I will intervene as a Member rather than as the Chair, and say that the point about the right of appeal is fundamental. The difference between amendment 13 in Kirsty's name and amendment 29 in my name is that the right of appeal in mine would kick in only after 15 days, because of the timescale. Although my amendment calls for regulations to be drafted in this respect, my expectation would be that those regulations would be on a par with those on exclusion from school, because that is the seriousness of the nature of this. An independent appeals panel considers exclusions from school, and so I would expect the same if there were a decision to exclude a child from a school bus, for example, for longer than 15 days. *[Interruption.]* We must keep order here. I have intervened on Kirsty's contribution, because I wanted to clarify the difference between my amendment and Kirsty's amendment, although the principle is broadly the same despite our different parameters.

[62] **Kirsty Williams:** Absolutely. I will finish by saying that I believe that there is a fundamental principle that, if a sanction is applied to someone, they have the right to appeal. Alun's amendment clearly states that that kicks in after 15 days; my amendment does not set a particular timescale, but allows the Minister to set a timescale that he feels is acceptable under regulations. That is the difference, but the principle, as Alun said, is that a child and parents should have the right to appeal.

[63] **Alun Cairns:** Is that the end of your contribution?

[64] **Kirsty Williams:** Yes, it is.

[65] **Alun Cairns:** I just needed to clarify that, Kirsty. May I also clarify whether you intended to move or speak to the amendments? The process is that normally you speak to the amendments at this stage and move them later, should you wish to do so at that time.

[66] **Kirsty Williams:** Sorry, I was just speaking to the amendments. I will move them later.

[67] **Alun Cairns:** That is fine. You may move them later, should you wish to do so. I now open up the discussions to other Members, should they wish to speak to these

amendments.

[68] **Jeff Cuthbert:** I have a brief point to make. I was not present at last week's deliberations, although I sat on the original Measure committee, but is this really an issue of—

[69] **Alun Cairns:** I must clarify that there was no previous committee on this Measure. You are referring to the Enterprise and Learning Committee's consideration of the proposed Measure.

[70] **Jeff Cuthbert:** I beg your pardon. So much has happened over the last year. My main point is that there seems to be a difference of opinion over the terminology of making a representation to the school, which I am sure would be handled professionally by the head or an appropriate member of staff, as opposed to a formal appeals procedure. I have to say that there is a difference, Alun, between an appeal against an exclusion, which is a more serious step and is likely to last for a much longer time, and an appeal against the withdrawal of the right to travel.

[71] **Lorraine Barrett:** I am glad that Jeff raised that, because I was getting a little confused about the difference when a pupil is 'excluded' or is 'withdrawn from school travel'. There must be a difference. I presume that if you are naughty or have been misbehaving on the bus, your right to travel can be withdrawn, and that you will have to get to school in some other way; it does not mean that you are automatically excluded from school. I think that we need to be careful with the language that we use so that we are all clear that we are talking here about the withdrawal of school transport arrangements only.

[72] I have a question for the Deputy First Minister. Is that okay, Chair?

[73] **Alun Cairns:** The process that we have all agreed is that you speak and the Deputy First Minister may intervene should he wish to do so.

[74] **Lorraine Barrett:** I will put the question to you then, Chair. Is there any clarification—

[75] **The Deputy First Minister:** May I intervene? Do you have a question for me, Lorraine?

[76] **Lorraine Barrett:** I do, and it is on the statement,

[77] 'the learner and the parent of the learner are given the opportunity to make representations'.

[78] If this Measure were passed, would there be an opportunity for you, as Deputy First Minister, to quantify and expand on what 'make representations' might mean?

9.40 a.m.

[79] **The Deputy First Minister:** As I will explain in my response, my proposal is that I take these matters away to look at them again. There is quite a broad agreement here about the need to ensure that this is absolutely right. The propriety of the representations is a matter for the local authority to determine. If I felt that the local authority was acting in any way unreasonably, I could issue directions.

[80] **Alun Cairns:** The Deputy First Minister was intervening during your contribution, Lorraine, so do you want to continue?

[81] **Lorraine Barrett:** No, I am fine. Thank you.

[82] **Alun Cairns:** In that case, I now call the Deputy First Minister to reply.

[83] **The Deputy First Minister:** There are two issues that need to be clarified. The first is that the power to withdraw school transport will be vested in the local authority and not in the school or the governors. However, that is probably just a matter of record in this case. The second point, which Lorraine made, is that we are not talking here about the withdrawal of a child from school but about the withdrawal of travel arrangements. There is a balance to be struck here, and I think that the Chair—or Alun, I should say—accepted that. He said that, if the exclusion was for a shorter period, he could see the case for not having an appeal mechanism, but, if it was for a longer period, he could understand the need for such a mechanism. It seems to me that the only disagreement between Alun and me is whether it should be 10 or 15 days rather than anything more substantive.

[84] We have consulted local authorities and others on these times periods, although I accept that it is fairly unusual to have specific days set out in the Measure, as these sorts of things are normally dealt with by regulation. However, the real reason why we felt it necessary to have specific days on the face of the Measure is because, if you are not allowing an appeal mechanism in the Measure as drafted, you need to make it clear that the exclusion could be for that relatively short period only. The point that we are making is this: as things currently stand—assuming that this Measure is not amended in any way—a complaint would be made, it would go to the local authority, which would investigate that complaint, but, before it made any final decision, the parent and the child or both would have an opportunity to make representations to the local authority.

[85] I accept the general point about an appeals system, but the question that we were asking ourselves is this. If we put in a fairly rigid bureaucratic appeal system—and it would have to be rigid and bureaucratic, as there is no other way of doing it—the danger is that local authorities would feel that it was not worth excluding a child if it had to go through the whole procedure of a first case to consider the evidence of the representations being made, and then that of facing an appeal, because, by that time, the period for the exclusion would have passed. So, there is a balance to be struck between having a time limit that is reasonable and not expensive and setting up a procedure that local authorities would feel was not only bureaucratic but would also have costs attached. If we put in an appeal mechanism based on the days set out in the Measure, we feel that it would place an unreasonable burden on local authorities. That is not to say that I do not accept the strength of the argument about an appeals system; I fully appreciate that. However, in extremis, there are three ways in which a parent could challenge: they could ask the Minister to issue directions to the local authority because it had acted unreasonably; albeit unlikely, they have the opportunity for a judicial review; and complaints can be made to the ombudsman, although that would not necessarily change the original decision. So, there are ways in which we could do it.

[86] I understand the strength of feeling, and I am prepared to respond to that. I therefore give an undertaking to the committee that, if the proposers of the amendments—Alun and Kirsty—are prepared to withdraw them, I will table an amendment at the next stage of the Measure that allows me to make regulations to extend the periods if, in the light of experience, we feel that that is needed. Therefore, 10 and 30 days are on the face of the Measure, but, at Stage 3 of the Measure, I will table an amendment that will allow me to make regulations to do two things. First, they would allow me to extend the 10 and 30 day periods, which would give the Minister and the local authority greater powers. Secondly, should the exclusion exceed what is currently in the Measure, an appeals mechanism would be introduced. Therefore, if, for example, the regulation had a substantial extension to the 10 and 30 days—and I accept the forceful point that Kirsty is making—it would be unreasonable

not to have an appeals mechanism. That is my undertaking to the committee, on the basis that the amendments are withdrawn.

[87] **Alun Cairns:** May I intervene at this stage, to clarify what you are suggesting?

[88] **The Deputy First Minister:** Yes, of course.

[89] **Alun Cairns:** Am I right to understand that you are suggesting that, should those amendments be withdrawn, you will consider the matter and bring amendments at Stage 3 to allow the limit of 10 and 30 days, as currently proposed, to be varied? You will also consider tabling amendments to introduce an appeals process. Is my understanding correct?

[90] **The Deputy First Minister:** Yes.

[91] **Alun Cairns:** That is what I am seeking. I want to press on whether the regulations—and I accept that it would not be included in the Measure—will state that someone excluded from a school bus, for example, would have the right to appeal to an independent appeals panel if the period of that exclusion was longer than had been determined to be fair at that time.

[92] **The Deputy First Minister:** To clarify and confirm the point on which Alun and I agree at least—although there is also a broad measure of agreement—if we did nothing and the 10 and 30 days remained on the face of the Measure, we do not think that there should be an appeals mechanism for the reasons that I have outlined. However, I give you the undertaking that I will bring back an amendment that would give me the power to introduce regulations under the Measure to extend those periods, of 10 and 30 days. The powers to make regulations will not specify anything other than that it could be beyond the 10 and 30 days, which I think is what Kirsty was proposing. Within those powers to make regulation, which would be on the face of the Measure, I would also have an ability to introduce an appeals mechanism. I am sorry, but I am not in a position to tell you precisely how that appeals mechanism would operate, because we need to go away and think about it, but I give you an undertaking that I will do that.

[93] **Alun Cairns:** Kirsty wants to intervene.

[94] **Kirsty Williams:** Deputy First Minister, can you explain to me how that proposal differs from my amendment 12 in any way?

[95] **The Deputy First Minister:** Please do not take my comments the wrong way. However, these Measures have to be drafted extremely carefully by parliamentary draftsmen. We want to take away the spirit of what you are saying—and this is the normal way in which these things are done—and then to ensure that the amendments to the Measure cover all of the necessary points. The fact that I am giving you this undertaking means that I accept the point that you are making. If you wish to say that the Government has accepted the spirit of your amendment, you are perfectly entitled to do so. What I cannot do is simply accept the current wording. It may well be that I come back with exactly the same wording, but I want to be able to reflect on that. I do not particularly want to include on the face of the Measure wording that has not been looked at thoroughly by draftsmen.

[96] **Alun Cairns:** As Chair, I would say that there is no normal way of doing this in Wales, because this process is new to us all, and we are all finding our own way. We are trying to develop a Welsh way.

9.50 a.m.

[97] **Kirsty Williams:** I will just say, if I may, that I would have hoped that these amendments would have been considered. We have a specific timetable to work to with these amendments, in order to allow the Government to consider them and to take a view on them. If the Minister—and I accept the spirit of what he says—says that he cannot support amendment 12 because he has not had a chance to consider it, then I suggest that we make recommendations to the Business Committee to allow the Minister and his lawyers to have a little more time. One would have expected that the lawyers would have had a look at the amendments, to confirm their accuracy, or not, and to confirm that they are properly drafted. Doing that might improve procedures.

[98] **The Deputy First Minister:** Let us try to step back a little—let us not be too precious about the wording and individual Members' points.

[99] **Kirsty Williams:** I do not believe that I am the one who is being precious, Deputy First Minister; you are the one who cannot support the Liberal Democrat amendment and wants to do this in your own name.

[100] **The Deputy First Minister:** Can we move to the vote, Chair?

[101] **Alun Cairns:** I have the right to reply to the debate first, as I proposed the amendment. I will do that now, with the committee's permission.

[102] There is obviously broad agreement on the principles of where we want to go with the amendments. The point was made earlier that issues were on the record; the whole committee meeting is on the record, as has always been the case. I want to underline that.

[103] Jeff Cuthbert said earlier that we can make representations under the current Measure, and that that would be handled professionally. I am sure that it is usually handled professionally, but that is not always the case, which is why we have an independent appeals panel on exclusions from schools. The Minister has made a generous offer, and I believe that we are coming to an agreement.

[104] **Lorraine Barrett:** May I intervene, Chair?

[105] **Alun Cairns:** Yes, of course.

[106] **Lorraine Barrett:** From my memory of my time as a school governor, if a child is to be excluded from school, there is an appeal to the governing body first, not to an independent panel and that, if that falls, there is another right of appeal. What you are proposing here, if I am correct, is that a parent could go straight to an independent panel before appealing to the chair of governors. With any appeal, you go to the person who is making the sanction first, and then you can go to a higher appeal afterwards.

[107] **Alun Cairns:** My amendment does not call for that. My amendment calls for regulations to be made with regard to an appeal process. Therefore, it would be up to the Minister to define that.

[108] **Lorraine Barrett:** You were saying 'independent'.

[109] **Alun Cairns:** I would hope that every appeal would be independent.

[110] **Lorraine Barrett:** Yes, but I think that you have to be specific.

[111] **Alun Cairns:** I take it that, in terms of the Minister's response, we broadly have a general agreement on the principle. However, before I withdraw the amendment, I invite the

Minister to clarify the offer with regard to the process. I want to get an understanding of the offer that is being made in terms of what will happen if I propose the amendment, it goes to a vote, and the vote falls.

[112] **The Deputy First Minister:** What we have tried to do in this situation is to say, ‘Look, we understand what you are both saying’. Alun and Kirsty have made important, positive points about the way forward, and I have accepted that. I made it clear that I cannot accept the wording in its present form, but I am happy to bring back an amendment that captures the spirit of what you and I have said. However, that undertaking is on the basis that the amendments are withdrawn.

[113] **Alun Cairns:** Could you explain the process if the amendments are not withdrawn?

[114] **The Deputy First Minister:** It is then a matter for me to decide whether I introduce the amendment or not—there is no guarantee then.

[115] **Alun Cairns:** We discussed that earlier, and I wanted to underline the intentions, and so on, in that respect. Therefore, in that positive spirit, I am happy to withdraw amendment 27. Does any Member object to the withdrawal of amendment 27? I see that they do not.

*Tynnwyd gwelliant 27 yn ôl drwy ganiatâd y pwyllgor.
Amendment 27 withdrawn by leave of the committee.*

[116] **Alun Cairns:** We now move to dispose of amendment 28, in my name, which was debated with amendments 24, 25 and 26 on 19 June, in relation to learners with special educational needs. This was a probing amendment to clarify the intention at that stage. It was a probing amendment that I had no intention of proposing formally. I do not wish to propose the amendment.

*Ni chynigwyd gwelliant 28.
Amendment 28 not proposed.*

[117] **Alun Cairns:** We now come to amendments 12, 13 and 14. Kirsty, would you like to propose amendments 12, 13 and 14?

[118] **Kirsty Williams:** No, given the Minister’s ever so gracious offer, I will not propose them.

*Ni chynigwyd gwelliannau 12, 13 a 14.
Amendments 12, 13 and 14 not proposed.*

[119] **Alun Cairns:** We now come to dispose of amendments 29 and 30 in my name. As I have withdrawn amendment 27, I will not propose amendments 29 and 30.

*Ni chynigwyd gwelliannau 29 a 30.
Amendments 29 and 30 not proposed.*

Drafftio Amrywiol (Adrannau 15 a 27) Miscellaneous Drafting (Sections 15 a 27)

[120] **Alun Cairns:** I call amendment 1 in the name of the Deputy First Minister, which is grouped with amendment 3. I invite the Minister to propose amendment 1 and speak to the other amendment in the group. These are technical amendments.

[121] **Y Dirprwy Prif Weinidog:** Cynigiad **The Deputy First Minister:** I propose

welliant 1.

amendment 1.

*Cafodd gwelliannau 1 a 3 eu grwpio ar gyfer y drafodaeth.
Amendments 1 and 3 grouped for debate.*

[122] Hoffwn ei wneud yn glir bod gwelliannau 1 a 3 yn rhai technegol. Ar welliant 1, o bryd i'w gilydd, mae'n rhaid i Weinidog newid canllawiau ac, o dan adran 15 o'r Mesur, mae hawl i wneud hynny. Wrth gwrs, mae gwelliant 1 yn cadarnhau bod gennym yr hawl i wneud y newidiadau hynny. Felly, gofynnaf yn syml i'r pwyllgor dderbyn gwelliant 1 am ei fod yn un eithaf technegol.

I would like to make it clear that amendments 1 and 3 are technical amendments. On amendment 1, from time to time, a Minister has to change guidelines and, under section 15 of the Measure, there is a right to do so. Of course, amendment 1 confirms that we have the right to make those amendments. Therefore, I simply ask the committee to accept amendment 1, as it is a fairly technical one.

[123] Mae gwelliant 3 yn newid adran 27 (4) y Mesur. Yr unig bŵer yn y Mesur i wneud Gorchymyn yw'r pŵer i wneud Gorchymyn cychwyn o dan adran 27. Bydd adran 27 (4) fel y mae wedi'i osod yn caniatáu i Orchymyn cychwyn ddiwygio neu ddiddymu darpariaethau o fewn Mesurau, ac yn y blaen. Ni fyddai gweithdrefn yn berthnasol i Orchymynion o'r fath. Ni chredwn ei fod yn angenrheidiol nac yn ddymunol i Orchymynion cychwyn ddiwygio deddfwriaeth arall. Felly, mae'r gwelliant hwn yn dileu'r ddarpariaeth honno. Er hynny, mae'n ofynnol bod gan y Gweinidogion y gallu i wneud darpariaeth ganlyniadol a allai ddiwygio neu ddiddymu darpariaethau mewn Mesurau. Felly, gallwn wneud hyn drwy reoliadau.

Amendment 3 changes section 27 (4) of the Measure. The only power in the Measure to make an Order is the power to make a commencement Order under section 27. Section 27 (4) as set out would allow the commencement Order to amend or abolish provisions under the Measure, and so on. The procedure would not be applicable to such Orders. We do not think that that is necessary or suitable for the commencement Orders to amend other legislation. Therefore, this amendment removes that provision. Despite that, the Minister must be able to make consequential provisions that could amend or abolish provisions in Measures. Therefore, we could do this through regulations.

[124] Mae'n bwysig nodi bod y Pwyllgor Is-Deddfwriaeth yn arbennig o awyddus i'r Cynulliad gael y cyfle i graffu, drwy'r gweithdrefnau penderfyniad cadarnhaol, ar unrhyw gynigion a fyddai'n dod gerbron. Byddwn yn ceisio, cyn belled â bod hynny'n ymarferol, wneud hynny mewn achosion penodol. Felly, gofynnaf i'r pwyllgor gefnogi gwelliannau 1 a 3.

It is important to note that the Subordinate Legislation Committee is particularly eager for the Assembly to have the opportunity to scrutinise, through the affirmative resolution procedure, any proposals that are presented. As far as that is practicable, we will try to do that in specific cases. Therefore, I ask the committee to support amendments 1 and 3.

[125] **Alun Cairns:** Are there any other contributors on this? I see that there are not. Do you wish to move to a vote on amendment 1, Minister?

[126] **The Deputy First Minister:** I do.

[127] **Alun Cairns:** Therefore, the question is that amendment 1 be agreed to. I call for a vote.

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

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

Barrett, Lorraine
Cairns, Alun
Cuthbert, Jeff
Jones, Ieuan Wyn
Williams, Kirsty

Derbyniwyd gwelliant 1.
Amendment 1 carried.

Canllawiau ar y Mathau o Gerbydau a'u Gweithredu (Adran 15)
Guidance on Types of Vehicle and their Operation (Section 15)

[128] **Alun Cairns:** The next amendment to be considered is amendment 38, which is in a group on its own. It is a pretty fundamental amendment, tabled in my name.

[129] I propose amendment 38.

10.00 a.m.

[130] This amendment relates to the types of vehicles used and their operation. We need to recognise the issue regarding the Assembly's powers and competence and how far it can go in terms of making powers. With regard to the tragic events of the Stuart Cunningham-Jones accident, which led to Stuart's Campaign, the Assembly Government has always said that it does not have the powers to introduce laws in relation to three-for-two arrangements, seatbelts on buses, and so on. Those matters have been outside the competence of the Assembly Government, and that is still the case. However, having considered legal advice from outside the Assembly and from within the Assembly Parliamentary Service, we have found that there is a way around this, which is to call on the Minister to include guidance to local authorities in terms of vehicles being used that would allow for seatbelts and in terms of addressing three-for-two arrangements, for example.

[131] I plan to continue to speak on this, but I will happily take interventions at any point if people want to seek clarification about my understanding of the legal position in this respect, and I will happily use the support that I have around me if people want any clarification.

[132] There are several motives within the proposed Measure that relate to clarifying responsibilities and to access to Welsh-medium education, and so on. However, over and above every other motive is the Assembly Government's positive motive of improving safety, and that is the debate that we have had about exclusions, because the exclusions have been about safety. I cannot think of a more important amendment that relates to safety on school transport than amendment 38. It does not talk about seatbelts or three-for-two arrangements directly, but it calls on the Minister to provide guidance in relation to those issues. I do not think that it would be unreasonable for the Measure to give the Minister powers, and to place an expectation on the Minister—whoever that may be from whichever party it may be in the future—to issue guidance to local authorities that clearly states an expectation in relation to the types of vehicles used, three-for-two arrangements and other safety requirements. That is what this comes down to. If we cannot issue guidance to local authorities to say that school transport should have seatbelts, I think that the prime motive of this Measure will have been lost. That is based on legal advice from the Assembly Parliamentary Service and legal advice from outside the Assembly that I have considered.

[133] So, I hope that I can get agreement on this, over and above every other amendment that has been tabled, because it relates to the most serious issue, and it gives the Minister

power to issue guidance that local authorities would be expected to adhere to, and which would provide for seatbelts on school transport and so on.

[134] **Kirsty Williams:** I concur with everything that you have said, and I will add that we are all frustrated by the current settlement that prevents us from acting in a way in which all of us, I think, would like to act. We must accept that we can only work within the legislative competencies that we have in the Assembly so, in the absence of the ability to make obvious rulings with regards to three-for-two seating arrangements and the type of vehicles that transport our children to school, the least that we can do is to offer guidance to local authorities to give them a steer about what our expectations are for the nature of the transport that they are commissioning and contracting to take our young people to school. This amendment does not seek to restrict the Minister in any way; it seeks to empower the Minister to ensure that that guidance goes out there so that, within the constraints of the powers that we currently have, we are able to move this agenda forward in a positive way.

[135] **Jeff Cuthbert:** I agree with the points that you make in terms of the sentiments and principles. I have been contacted many times by Stuart's Campaign and I know Dr Chris Howard, who is one of the leading campaigners, very well—he is the headteacher of a school at which I was a governor for many years. In whatever committee it was that I was talking about some time ago, we saw many examples of good quality school buses that had all the facilities that we would expect and desire to see across Wales. So I am sure that the information and understanding is there within local authorities. I take on board your points, Alun, about whether or not we have the power to do this, that or the other, and about getting around things, but with regard to including requirements in the Measure to issue guidance—and, by definition, guidance can be accepted or ignored as the case may be—I am not convinced of the necessity of that, as of this moment. I am quite sure that the Minister and his officials will want to make sure that good practice and the enormous value of safe and efficient vehicles is properly understood. However, whether to put a provision into a Measure to require guidance to be issued when we—

[136] **Alun Cairns:** May I intervene?

[137] **Jeff Cuthbert:** Certainly.

[138] **Alun Cairns:** Are you saying that we should not include a requirement for guidance? Guidance is just guidance after all, but I would expect, and I am sure that parents would expect, guidance to be issued in relation to seatbelts on school buses.

[139] **Jeff Cuthbert:** I am not convinced of the value of putting it into the Measure. *[Interruption.]*

[140] **Alun Cairns:** It is up to Jeff to give way, if he wants to give way, Kirsty.

[141] **Jeff Cuthbert:** The point I am making is that I think that issues of good practice are well known. Maybe I am being a bit over-technical here. The word that you used earlier was 'precious'. I hope that I am not being precious, but I think that what we should have in the Measure are things that we are responsible for, which we can enforce, and that lay out our responsibilities. I will leave it there.

[142] **Alun Cairns:** Lorraine Barrett, would you like to contribute?

[143] **Lorraine Barrett:** I am happy to listen to the Minister.

[144] **Alun Cairns:** I now call on the Minister to contribute.

[145] **The Deputy First Minister:** I will just make it clear that there is no disagreement between both sides as to what we want to achieve. My problem is that I am advised that the amendment is ultra vires and, therefore, if it were to be included in the Measure, we would be subject to challenge. I accept the point that it is perfectly in order to have a debate on it, but I would want to warn the committee that if we were to accept this amendment we would be acting outside our powers, which would mean that we would be open to challenge, which would mean that there would be a court hearing. I can just imagine people—

[146] **Alun Cairns:** Deputy First Minister—

[147] **The Deputy First Minister:** May I just finish? Sorry, I see that you want to intervene.

[148] **Alun Cairns:** I am not sure about court challenges. Could I clarify the process?

[149] **The Deputy First Minister:** You know what the process is.

[150] **Alun Cairns:** Yes, but I want every committee member and the public to recognise the process, because I am not sure that my understanding of the process is as you have described it. Shall I come to you, Gareth, as the clerk, or Gwyn, in terms of the process?

[151] **The Deputy First Minister:** May I just make the point? The point that I am making is about what would happen if we were to include this in the Measure. Let us assume that we included it. We believe that it is ultra vires—it is on the record that the Government says that—and so if a bus company felt that by adopting this we were acting outside our powers, it could of course challenge it legally.

[152] **Alun Cairns:** May I intervene? My interpretation would be that if guidance came from the Minister, the local authority could include within the tender that it would expect seatbelts to be included in school buses. The bus operator would not take the Assembly Government to court, even if it thought that it was outside our powers, because the requirement would be part of the tender. If the bus company did not provide seatbelts, quite obviously it would not win the tender because it would not meet the tender requirements. The expectation is—

10.10 a.m.

[153] **The Deputy First Minister:** I think that we are labouring the point. What I am saying, quite clearly, is that our advice is that this particular—. The difficulty is that we are getting into a very technical legal argument, but what we should be making clear to the public is that both of us want to see these powers given to the Assembly—we both want to achieve the same ends. I made it clear in the scrutiny committee that I was persuaded by the arguments that we should go beyond what the Measure entitles us to do. When I went away and discussed it with my advisers, we agreed that an approach be made to the Department for Transport to seek those extra powers. That process is underway. I have already written to Ruth Kelly—the letter has been made available—explaining the powers that I was seeking. My officials have already had initial discussions with officials in the Department for Transport, and it is now a matter of waiting for the response. I am fairly confident that we have a good case, not least because there is all-party support for it. What I want to ensure is that when this Measure passes into law, it is absolutely watertight legally. The issue is not whether we disagree about whether there should be three-for-two seating arrangements, seatbelts, double-deckers and so on; the issue is how we achieve the end.

[154] My view is that we should reject this amendment, because it cannot achieve the ends that the proposers seek. I took on board what the scrutiny committee said and, although it was

not a legislation committee, it considered all the arguments and I re-read its conclusions before the committee today. The committee accepted the point that we did not have the powers, and what it said was that if the Government did not bring forward an LCO, it would bring its own forward. I have no argument with that. The issue today is not whether we agree or disagree about the principle; it is about the method of achieving the objective. In my view, the safest grounds upon which we can proceed is to reject the amendment, and for all parties in the Assembly to work together with the Government to ensure that the new powers are given to us by the Department for Transport. If those powers are given to us by the Department for Transport, the argument is then over.

[155] **Lorraine Barrett:** Am I allowed to speak now?

[156] **Alun Cairns:** The procedure is that you would have to intervene on the Minister. If the Minister permits, then you can intervene. Are you happy to take an intervention, Minister?

[157] **The Deputy First Minister:** I am.

[158] **Lorraine Barrett:** I just wanted to say that I am reassured by the Minister's statement and assurances with regard to achieving the outcome that we all want. I was persuaded by Alun Cairns's arguments and was minded to support the amendment. I voted against the Government last week, and I was almost prepared to do it this time. However, we have your assurance that you have started that process, and I accept that assurance. Hopefully, we will achieve it with us all working together. There is no disagreement here; we all want the same outcome; it is just about how we get there. So, I am reassured by your comments, and I am prepared to oppose this amendment, but only because of your assurances, not because I disagree with the amendment fundamentally.

[159] **Alun Cairns:** Before I respond to the debate, I think that it would be helpful to have a clarification of the process from Gwyn Griffiths with regard to what the process would be if the amendment was passed, in terms of a challenge at later stages, because clearly there is a difference of opinion between lawyers here and lawyers in Cathays park. Will you talk us through the process, Gwyn?

[160] **The Deputy First Minister:** If the committee is going to consider legal advice, it should have both opinions presented to it.

[161] **Alun Cairns:** I have not asked for legal advice; I think that we recognise the difference. I have asked about the process, that is, if the amendment was passed, what would happen down the line. I do not think that asking for clarification of the process and procedure is unreasonable.

[162] **Kirsty Williams:** Have we seen the Minister's legal advice? Given that the reason why the Government cannot support this amendment is that it has been in receipt of legal advice that says that it is ultra vires, have we seen that advice?

[163] **Lorraine Barrett:** I would like to see Alun's advice from outside the Assembly as well.

[164] **Alun Cairns:** Let us clarify this. The Minister's legal advice has been made available to the committee.

[165] **The Deputy First Minister:** If it helps the committee, I have it with me. Would Kirsty like to see it?

[166] **Kirsty Williams:** I would like to see it; not necessarily now because it is a bit late,

but I would be grateful for a copy of it.

[167] **Alun Cairns:** I ask that that be formally presented to the clerk so that we can add it to the minutes of the meeting.

[168] **Kirsty Williams:** It has to go to the clerk, does it?

[169] **Alun Cairns:** You can see it now. I do not want to get into the legal arguments, because that is what courts are for.

[170] **The Deputy First Minister:** I would not want that copy to be presented, because I have my own notes on it, but I can let you have a clean copy.

[171] **Alun Cairns:** We accept that. I do not want to get into the legal arguments at this meeting, because that is what courts are for. I want to establish the procedural process that would follow where there are questions as to whether an amendment falls within the competence of the Assembly. We are talking about process; I assume everyone is comfortable with that. Gwyn, I call on you to talk about the process.

[172] **Mr Griffiths:** It is very simple. If the committee was minded to pass the amendment, despite the Minister's position, no doubt the Government would seek to overturn that view at Stage 3.

[173] **Alun Cairns:** What if it was passed at Stage 3?

[174] **Mr Griffiths:** If it was then passed at Stage 3, there is a procedure under section 99 of the Government of Wales Act 2006 for the Measure to be considered by the supreme court, to decide whether the matter is within competence or not.

[175] **Alun Cairns:** I was of the understanding that the Attorney-General has a role.

[176] **Mr Griffiths:** Yes, the Attorney-General has a role in referring the matter to the supreme court.

[177] **Alun Cairns:** That is if he feels that it falls outside of the competence of the Assembly?

[178] **Mr Griffiths:** It would either be the Attorney-General or the Counsel General.

[179] **Alun Cairns:** So let me clarify the process: if an amendment is passed, not only here, but at the later stages, there is a period then in which the Attorney-General should judge whether he feels it should be referred to the supreme court.

[180] **Mr Griffiths:** Yes.

[181] **Alun Cairns:** Right. Is everyone happy with that? I will now respond to the debate as a member of the committee, rather than Chair, if you are happy with that. I said earlier that the most important motive of this relates to safety and the tragedies that have been experienced in the past. I recognise the Minister's view and positive intentions, whereby the process has started to devolve the absolute power in this respect. However, we have been talking about the devolution of that power since the Stuart Cunningham-Jones tragedy all that time ago. More than five years have passed since that time, and I do not see that this amendment at all contravenes the positive intentions in that. This will be implemented, according to the current Government's schedule, in the autumn of 2009. All we are seeking to do is to give powers to the Minister to issue guidance. That guidance, in relation to three-for-

two seating arrangements, seatbelts, and double-deckers, is guidance. Let us not forget that in other areas, for example, the legislative competence Order on special educational needs, part of the motive was to make guidance statutory. This would be guidance to local authorities to adhere to in relation to seatbelts, three-for-two seating arrangements, double-deckers and other factors, and if we cannot pass this amendment, the prime motive of this Measure will have fallen, and it will be a tragedy for us, following tragedies elsewhere—

10.20 a.m.

[182] **The Deputy First Minister:** May I intervene? Points have been made that cannot go unchallenged. What you have said is simply not true, and I put it in those very strong terms. It implies that the Government has motives that it does not have, and that we are denying the opportunity. That is wrong and misleading. It is important for the record to be clear that we believe that we cannot use this Measure to legislate in the way that you are suggesting. To go back a point, if we thought that we had the powers, we would of course do that, but, because we believe that we do not, we are not prepared to allow the Measure to be amended by what is, in our view, *ultra vires*. To impugn us with an allegation that we are not prepared to legislate, and that, therefore, we are letting people down, is wrong.

[183] **Alun Cairns:** We obviously disagree—

[184] **The Deputy First Minister:** That is on the record then.

[185] **Alun Cairns:** Everything is on the record; we all know that. We obviously disagree, because lawyers in the Assembly Parliamentary Service and outside believe differently to your lawyers. The only way of testing that is in the courts, and that is why I wanted the procedure to be outlined. If this amendment was passed here and was accepted at a later Stage, the Attorney-General would have the opportunity to—

[186] **Lorraine Barrett:** May I come in on that?

[187] **Alun Cairns:** I will give way in a moment. The Attorney-General would have the opportunity to decide whether she felt that it was beyond the competence of the Assembly and, at that stage, it would be referred to the supreme court. That is the process, and that is why I wanted the process outlined. So, we are at a point where we either test the boundary or settle and say, ‘Oh no, we’ll come down on the shy side, just in case’. [*Interruption.*]

[188] **The Deputy First Minister:** I will be careful in what I say, but that is an absolutely ridiculous assertion. You are claiming that the Government is not prepared to act because it is shy.

[189] **Alun Cairns:** That is how it appears to me. There cannot be a more important issue on which we would want to test the boundary—

[190] **Lorraine Barrett:** May I come in?

[191] **Alun Cairns:** I will give way—

[192] **The Deputy First Minister:** There is confusion as to whether he is Chair or not.

[193] **Alun Cairns:** I do not take that comment lightly. I always give way.

[194] **The Deputy First Minister:** Will you withdraw that assertion?

[195] **Alun Cairns:** No, I will not withdraw that assertion. I will give way, so that everyone

can speak, but I cannot think of an issue that is more important than the safety of children travelling to school. If any issue merits the testing of the boundary, this is the issue that would warrant it. I accept that, in other areas of policy and legislation, it may well be that we do not want to test where that boundary is. There is different legal advice from Cathays park and Cardiff bay, and when you have different legal advice, the adjudicators would be the Attorney-General, and, if she chooses to refer it, the supreme court. I will now take interventions.

[196] **Lorraine Barrett:** You have mentioned the internal legal advice several times, Alun, and that is fine—the Minister has his legal advice—and you have mentioned legal advice from outside. However, you could go to 10 lawyers and get 10 different judgments. Did you choose a lawyer to give you advice? I have not gone outside to get any advice on this, and I am trying to listen to both sides. I do not think that we can accept legal advice that you have taken from outside, when we do not know what that advice is and where it comes from. I wanted to make that point.

[197] **Kirsty Williams:** The issue is that the committee lawyer, who is here to give advice to us, says that this is not ultra vires. The Deputy First Minister's lawyer disagrees, and that is fine, because if you get two lawyers in a room they will invariably say two different things. That is what lawyers are there to do and why they are so rich—they get to go through processes that take all this time. The issue is that our committee's lawyer, regardless of Alun's outside legal advice, says that this is not ultra vires, and the only way to test that is by the process that has been outlined. If you do not want to test it, and if you want to step back, that is a legitimate point of view to take, but the issue is that the committee lawyer says—*[Interruption.]*

[198] **Alun Cairns:** Let us try to keep order. I have finished my contribution, but I will happily open it for comments, as committee Chair, to strike a balance.

[199] **The Deputy First Minister:** I do not like the allegation, which I totally reject, that the Government does not want to move as fast as we can. We do. We accept the argument that you have been making. We have had a highly technical argument, which, frankly, has turned into something ridiculous. Everyone wants us to be able to legislate. However, to imply that we are not prepared to do it is ridiculous. Alun says that it has been known for five years. The scrutiny committee, on which Alun and Kirsty sat, accepted that the Government did not have the powers—I remember it well—and asked me to introduce an LCO, saying that, if I did not do so, the committee would do so itself. Therefore, there is no disagreement between us as to what we want to achieve, but, because we are taking a different view from Kirsty and Alun, to suggest that we are somehow shy is ridiculous. I would ask both of you to reflect on those comments.

[200] **Kirsty Williams:** The Deputy First Minister hid behind the statement during yesterday's debate, and he has tried to do so again today. The Enterprise and Learning Committee issue is a red herring. That committee did not have the role of looking, line by line, at legislation, and proposing amendments—that is not what it is there for. It is not your fault, Deputy First Minister, and nor is it ours, that we did not have a Stage 1 committee; the Business Committee has reflected on that, and has agreed that the procedure that has taken place was wrong. We should have had a Stage 1 committee—we should not have skipped that. That is not your fault, because you had no say in that decision, so you cannot be held responsible for that.

[201] However, it is not right to rely constantly on a report to deflect from the lines that you are taking. Of course the report said what the report said—you have a majority on that committee, Deputy First Minister; your Members outnumber the opposition Members. Committees have always worked on the basis of desperately trying to reach consensus.

Therefore, we all compromised so that the committee was not placed in a position of having a minority report.

[202] However, if Ministers adopt the attitude of, ‘Ah, well, this committee, or that committee, said this or that’, you will end up with a system where consensus in committees breaks down, and you will have minority reports, because people like me, and people like Alun, will not be put in that position. You will fundamentally undermine that process. You cannot hide behind it—the report is the report. That committee did not have the role or function of this committee, of tabling amendments. Therefore, you cannot hide behind it—you tried to do it yesterday, and you cannot do it today.

[203] **The Deputy First Minister:** We need to move forward—we have had the debate.

[204] **Alun Cairns:** Yes, I think that we can agree on that. We have had the debate.

[205] The question is that amendment 38 be agreed to. I call for a vote.

Gwelliant 38: O blaid 2, Ymatal 0, Yn erbyn 3.

Amendment 38: For 2, Abstain 0, Against 3.

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

Cairns, Alun
Williams, Kirsty

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

Barrett, Lorraine
Cuthbert, Jeff
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 38.
Amendment 38 defeated.*

[206] **Alun Cairns:** We now move to dispose of amendment 34. This amendment, on promoting access to education and training, was debated earlier with amendments 32 and 33. The question is that amendment 34 be agreed to. I call for a vote.

Gwelliant 34: O blaid 2, Ymatal 0, Yn erbyn 3.

Amendment 34: For 2, Abstain 0, Against 3.

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

Cairns, Alun
Williams, Kirsty

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

Barrett, Lorraine
Cuthbert, Jeff
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 34.
Amendment 34 defeated.*

[207] **Alun Cairns:** I suggest that this is an opportune time to have a 15-minute break. The committee will reconvene at 10.45 a.m..

*Gohiriwyd y cyfarfod rhwng 10.29 a.m. a 10.46 a.m.
The meeting adjourned between 10.29 a.m. and 10.46 a.m.*

**Penderfynu ar Breswylfa Arferol: Byw gyda Thad-cu a Mam-gu (Adran 15)
Determination of Ordinary Residence: Living with Grandparents (Section 15)**

[208] **Alun Cairns:** I will bring the committee to order and thank Members for their

prompt return. The next grouping to be considered is amendments 35, 36 and 37. I will propose amendment 35 in my name and speak to the other two amendments in the group.

[209] I propose amendment 35.

*Cafodd gwelliannau 35, 36 a 37 eu grwpio ar gyfer y drafodaeth.
Amendments 35, 36 and 37 grouped for debate.*

[210] The purpose of the amendment is to clarify the determination of ordinary residence—living with grandparents, for example. As the Measure is currently proposed, I do not believe that it accounts for the circumstances of family arrangements; we need to accept that family arrangements have changed considerably over recent years—for example, where grandparents are a stronger factor than ever before given that those grandparents may be caring for the child or young person. Therefore, the purpose of amendments 35, 36 and 37 is to confirm the right and clarify the obligations and responsibilities of the local authority in making provision for that.

[211] **Lorraine Barrett:** May I ask you a question on that? Is it right that, in law, ‘parent’ covers grandparents, guardians or aunts and uncles—any relative who may have custody of that child? I am asking whether, by specifying grandparents, you are limiting it to grandparents. What about any other relative who has care of that child? What is the legal definition of ‘parent’ in terms of this Measure?

[212] **Alun Cairns:** That issue was raised when we considered the amendments, namely at what stage do you stop? Obviously, it does not necessarily have to be a parent or a grandparent; it could be beyond those, but it is about at what stage you stop; what would be considered to be reasonable?

[213] **Lorraine Barrett:** Could we have some legal guidance on what ‘parent’ means in these terms? Does ‘parent’ mean, as I believe it does, something wider than just a parent?

[214] **The Deputy First Minister:** I think that Kirsty made the point about different legal interpretations. It is not fair for the committee to be given a different legal opinion, because it only confuses matters. I think that these are all matters for debate. That is the problem that I have.

[215] **Alun Cairns:** If Lorraine accepts that, then thank you for making the point.

[216] **Lorraine Barrett:** I have made my point.

[217] **Alun Cairns:** I merely want to underline the flexibility that I seek to build into the proposed Measure by tabling—

10.50 a.m.

[218] **The Deputy First Minister:** I will intervene to help, if I may, rather than our finding ourselves in a difficult position. Perhaps a lengthier intervention than I would normally make would help the committee to accept that this amendment is both unnecessary and unnecessarily restrictive. The definition of ‘parent’ is set out in the Education Act 1996:

[219] “‘parent’, in relation to a child or young person, includes any person—

[220] (a) who is not a parent of his but who has parental responsibility for him, or

[221] (b) who has care of him’.

[222] Therefore, the definition already covers grandparents and any other individuals, as Lorraine said, such as a foster carer, an aunt, or other relative with whom the child may live. I suggest, therefore, that the danger of your amendment is that it limits the ‘parent’ to being either a parent or a grandparent, but the amendment would extend much further if you left it as ‘parent’, because of the provision in the Education Act. Therefore, I suggest that you reflect on your amendment.

[223] **Alun Cairns:** Thank you. I close my contribution at this stage and move to Kirsty, who is a supporter of the amendment—if she wants to contribute, that is.

[224] **Kirsty Williams:** I am grateful for the Deputy First Minister’s clarification of the legal definition of ‘parent’. There was another reason for my support for these amendments. Increasingly, families can exist in a variety of contexts. I have been made aware of cases in which parents have joint custody of their children, which means that the children reside for part of the week with one parent and part of the week with the other. That has the potential to cause problems with regards to transport to school.

[225] **Jeff Cuthbert:** Will you take an intervention?

[226] **Kirsty Williams:** Yes, of course.

[227] **Jeff Cuthbert:** I know of many children who live in shared accommodation, if you like—here and there—but, bearing in mind the points that the Deputy First Minister has just made, that would seem to be covered by the definition that he gave a few moments ago.

[228] **Kirsty Williams:** Absolutely. While I accept that it is covered by that definition, there is then a difficulty in interpreting the local authority’s responsibility with regard to transport for that particular child.

[229] **The Deputy First Minister:** May I intervene?

[230] **Kirsty Williams:** Yes, of course.

[231] **The Deputy First Minister:** That issue was considered. I hate to return to this, but this was considered by the scrutiny committee. If you remember, the Children’s Commissioner for Wales asked the Government to reflect on this matter of a child having two homes, which I think is the point that Kirsty is making. The purpose of the provisions in section 19 is to ensure that, when a child lives between two homes, the local authority has to take account of both those homes in assessing the child’s needs. So, we have covered both: we have covered the definition of ‘parent’ and the fact that a child may be in two homes. We have responded. We perfectly accept the points that you are making, and we are saying that they are covered by the legislation.

[232] **Kirsty Williams:** Thank you for that clarification.

[233] **Alun Cairns:** Are there any other Members who wish to speak? I see that there are not. Deputy First Minister, would you like to respond, or do you consider that you have already done so? I see that you do not wish to comment further.

[234] I will say that, as an individual, legal interpretation is quite difficult. The Minister rightly intervenes and offers his legal interpretation, but it is difficult for committee members to get their legal support to do it. That is now said and done. On the basis of that goodwill, I will happily withdraw those amendments and reconsider. If I feel, having clarified the legislation—

[235] **The Deputy First Minister:** May I intervene?

[236] **Alun Cairns:** Yes, of course.

[237] **The Deputy First Minister:** It may be that, to clarify this, the explanatory notes will need to be amended. I accept that. Would that help Members?

[238] **Alun Cairns:** That would be helpful. I wanted to talk about the explanatory notes at the end of the meeting anyway.

[239] **The Deputy First Minister:** For this purpose—

[240] **Alun Cairns:** Yes, for this purpose, that would be helpful. Before I ask whether anyone objects to the withdrawal of the amendment, I want to state that I intend to clarify the legal arguments that have been made and, if I feel that the provisions that I am seeking are not covered, I will have an opportunity at Stage 3 to reintroduce the amendments, should I see fit.

[241] I therefore wish to withdraw amendment 35. Does any committee member object to the withdrawal of amendment 35? I see that there are no objections.

*Tynnwyd gwelliant 35 yn ôl drwy ganiatâd y pwyllgor.
Amendment 35 withdrawn by leave of the committee.*

[242] **Alun Cairns:** Given that amendment 35 has been withdrawn, I do not wish to propose amendments 36 and 37.

*Ni chynigiwyd gwelliannau 36 a 37.
Amendments 36 and 37 not proposed.*

[243] **Alun Cairns:** We now move to dispose of amendment 11, in the name of Kirsty Williams. Amendment 11 was discussed on 19 June, along with amendments 15, 10, 20, 40, and 21 on the safety of transport arrangements. As you will see, amendment 11 concerns the meaning of ‘footway’ and ‘footpath’. It is directly related to amendment 10, which was agreed on the basis of a majority vote of three in favour with two against on 19 June. I invite Kirsty to propose amendment 11 formally.

[244] **Kirsty Williams:** I propose amendment 11.

[245] **Alun Cairns:** The question is that amendment 11 be agreed to. I call for a vote.

*Gwelliant 11: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 11: For 2, Abstain 0, Against 3.*

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

Cairns, Alun
Williams, Kirsty

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

Barrett, Lorraine
Cuthbert, Jeff
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 11.
Amendment 11 defeated.*

[246] **Alun Cairns:** That paints an interesting picture for the Stage 3 debate.

[247] Amendment 21, in my name, was also debated in a group with amendments 15, 10, 20, 40 and 11 on the safety of transport arrangements. It relates to amendment 20 in my name, which fell. Therefore, I do not intend to propose the amendment.

*Ni chynigiwyd gwelliant 21.
Amendment 21 not proposed.*

Y Diffiniad o Addysg Feithrin (Adran 24) The Definition of Nursery Education (Section 24)

[248] **Alun Cairns:** The next group concerns Government amendments on the definition of nursery education. I invite the Deputy First Minister to propose the lead amendment, amendment 2, and to speak to amendments 4, 5 and 6, which are also in the group.

[249] **Y Dirprwy Brif Weinidog:** Cynigiaf **The Deputy First Minister:** I propose welliant 2. amendment 2.

*Cafodd gwelliannau 2, 4, 5 a 6 eu grwpio ar gyfer y drafodaeth.
Amendments 2, 4, 5 and 6 grouped for debate.*

[250] Mae'r gwelliannau hyn yn codi o ganlyniad i ddatblygiadau diweddar yng nghymhwysedd y Cynulliad o ran addysg feithrin. Cyn hyn, yr oedd cymhwysedd y Cynulliad o ran teithio i addysg wedi'i gyfyngu i'r sawl a oedd yn cael addysg feithrin ac a oedd dros eu dwy flwydd oed. Yr oedd hynny oherwydd y diffiniad o addysg feithrin a geir yn adran 6(1) o Ddeddf Addysg 1996. Hyderaf fod Aelodau'n ymwybodol bod y Gorchymyn cymhwysedd deddfwriaethol diweddar ar anghenion dysgu ychwanegol wedi ehangu cymhwysedd y Cynulliad mewn perthynas â theithio i'r sawl sy'n cael addysg feithrin o dan yr oed ysgol gorfodol. Mae gwelliant 2 felly yn ehangu'r diffiniad o addysg feithrin a geir yn y Mesur arfaethedig i adlewyrchu'r cymhwysedd a ddiwygiwyd. Mae gwelliannau 4, 5 a 6 yn dilyn gwelliant 2, ac felly gofynnaf i'r pwyllgor dderbyn y gwelliannau hyn, a fydd yn unioni'r Mesur â phwerau presennol y Cynulliad.

These amendments arise as a result of recent developments in the Assembly's competence in relation to nursery education. Previously, the Assembly's competence on travelling to education was restricted to those in receipt of nursery education who were over two years old. That was because of the definition of nursery education found in section 6(1) of the Education Act 1996. I am sure that Members will be aware that the recent legislative competence Order on additional learning needs has extended the Assembly's competence in relation to travel to those who are in receipt of nursery education and are below the statutory school age. Therefore, amendment 2 widens the definition of nursery education in the proposed Measure to reflect the amended competence. Amendments 4, 5 and 6 follow on from amendment 2, and I therefore ask the committee to accept these amendments, which will bring the Measure into line with the Assembly's current powers.

[251] **Alun Cairns:** Are there any other contributions in relation to this grouping of amendments? I see that there are not. Therefore, the question is that amendment 2 be agreed to. I call for a vote.

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

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

Barrett, Lorraine
Cairns, Alun

Cuthbert, Jeff
Jones, Ieuan Wyn
Williams, Kirsty

Derbyniwyd gwelliant 2.
Amendment 2 carried.

[252] **Alun Cairns:** I now call amendment 3 in the name of the Deputy First Minister, which was technical in nature and was debated in a group with amendment 1 earlier. I call on the Deputy First Minister to propose amendment 3.

[253] **Y Dirprwy Brif Weinidog:** Cynigiaf **The Deputy First Minister:** I propose welliant 3. amendment 3.

[254] **Alun Cairns:** The question is that amendment 3 be agreed to. I call for a vote.

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

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

Barrett, Lorraine
Cairns, Alun
Cuthbert, Jeff
Jones, Ieuan Wyn
Williams, Kirsty

Derbyniwyd gwelliant 3.
Amendment 3 carried.

[255] **Alun Cairns:** The next amendment to be disposed of according to the marshalled list is amendment 31, in my name, which was debated in a group with amendments 27, 12, 13, 14, 29 and 30, relating to the withdrawal of travel arrangements. I do not intend to propose amendment 31.

Ni chynigiwyd gwelliant 31.
Amendment 31 not proposed.

[256] **Alun Cairns:** The next amendments to be disposed of are amendments 4, 5 and 6, in the name of the Minister, which have just been debated with amendment 2 in the group on the definition of nursery education. I call on the Minister to propose these amendments together.

[257] **Y Dirprwy Brif Weinidog:** Cynigiaf **The Deputy First Minister:** I propose welliannau 4, 5 a 6. amendments 4, 5 and 6.

[258] **Alun Cairns:** If Members are content, I propose that a single question be put on amendments 4, 5 and 6. I see that there is no objection. The question is that amendments 4, 5 and 6 be agreed to. I call for a vote.

Gwelliannau 4, 5 a 6: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendments 4, 5 and 6: For 5, Abstain 0, Against 0.

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

Barrett, Lorraine
Cairns, Alun

Cuthbert, Jeff
 Jones, Ieuan Wyn
 Williams, Kirsty

*Derbyniwyd gwelliannau 4, 5 a 6.
 Amendments 4, 5 and 6 carried.*

**Adroddiadau ar Arfer Swyddogaethau o dan y Mesur Hwn (Adran Newydd)
 Reports on the Exercise of Functions under this Measure (New Section)**

[259] **Alun Cairns:** We now turn to the group containing amendments 16 and 17. Amendments 16 and 17 are tabled in the name of Kirsty Williams and are supported by me, acting as a member of the committee. I invite Kirsty Williams to propose the lead amendment, amendment 16 and to speak to the other amendment in the group.

[260] **Kirsty Williams:** I propose amendment 16.

11.00 a.m.

[261] The purposes of amendments 16 and 17 are clear and straightforward. They allow for the reporting back by local authorities, in amendment 16, and the Welsh Ministers, in amendment 17, on the implementation and promotion elements of the proposed Measure. They would require the local authority and the Welsh Ministers, at least once a year in reality, to report back on how they are performing with regard to the expectations placed on them by the proposed Measure. I just feel that it is important that we have an opportunity to scrutinise and make local authorities and Ministers accountable for their actions. I do not foresee their having to draft a particularly long or onerous report, but at least it would focus their minds on the fact that they have to take the issues contained in this proposed Measure seriously.

[262] **Jeff Cuthbert:** Will you take an intervention?

[263] **Kirsty Williams:** Of course.

[264] **Jeff Cuthbert:** With regard to the first sub-paragraph of amendment 16, we have already agreed not to promote access to schools of a religious character, and yet part of this amendment seeks to do just that.

[265] **Kirsty Williams:** Absolutely, and, Jeff, you will be aware that the Government has a policy to promote Welsh-medium education. In a previous meeting of this committee, Ann Jones—who has pressing appointments with Ministers in the north that prevent her from being here today—was willing to accept that we look at providing a statutory basis for transport to schools of a religious character, and I feel that it is important that local authorities have an opportunity to account for how they perform against the requirements in the Measure.

[266] **Alun Cairns:** I now speak in support of the amendments.

[267] The proposed Measure as a whole places clear responsibilities on local authorities. For example, section 11 relates to sustainable modes of travel. What is deemed to be sustainable at one point in time could change as technology changes, perhaps over a couple of years or 10 years, and we have no-one testing whether the requirements of section 11 are being met. The purpose of these amendments is to place a responsibility on the local authority to report and on the Minister to assure us that the requirements of section 11 are being met. How many calls on local authorities go unchecked in spite of all the positive intentions of the legislation as laid? We all know of parents who have to challenge local authorities on their obligations, and so if authorities were obliged to show that they were meeting those

obligations on an ongoing basis, the legislation would be more meaningful, because it would be responsive to changing needs and demands rather than being about just ticking a box to note that something has been done.

[268] I do not think that the obligations on local authorities and the Minister would be onerous; they are about ensuring that the legislation is adhered to rather than leaving it to individuals to challenge from time to time. Taking sustainable modes of travel as an example, realistically, how many people would want to challenge that? It would be left to some environmental organisations. If local authorities could demonstrate what they were doing annually to achieve and deliver sustainable modes of transport, it would be far more convenient and practical than allowing it to be challenged in the courts. It puts these matters on a far more positive footing, instead of keeping to the defensive mechanism that is included in the Measure.

[269] Do other Members wish to contribute to this debate?

[270] **Lorraine Barrett:** I have one little point to make about the amendments specifying ‘every calendar year’ as opposed to ‘every school year’. Why is that?

[271] In addition, on the issue that Jeff raised about schools of a religious character, I am amazed that the Liberal Democrats’ and the Conservatives’ representatives are proposing to impose more bureaucracy on schools. Ever since the Assembly was set up, the Government has been challenged to reduce the level of bureaucracy in schools and to avoid micromanagement. These proposals amount to micromanaging and will put more bureaucracy in the path of LEAs, who would presumably have to contact every school to ensure that the schools were adhering to the guidelines that they had laid down. I would be interested to know what the WLGA has to say about this, because it is another layer of bureaucracy.

[272] **Alun Cairns:** Does anyone else wish to contribute?

[273] **The Deputy First Minister:** One of the arguments that local authorities put, either formally in responding to Ministers or to Assembly Members, is that Governments are fond of putting new statutory responsibilities on local authorities and that an additional bureaucratic burden flows from that in that they are required to provide annual reports on everything under the sun. This is an opportunity to send a marvellous signal to local authorities that, although we are putting new responsibilities and duties on them—and they accept those responsibilities, and obviously support the spirit of the Measure—their officials’ time will not have to be tied up in preparing an annual report every year. Those 22 annual reports would have to come to a Minister and his or her officials. Just imagine the time that it would take to go through all of those—it would be totally unreasonable. So, we have to give local authorities some credit here. If we are imposing new duties on them, why do we always have to check up that they are carrying them out? Local authorities are more than willing to take on new responsibilities, provided that they are properly funded for those purposes. So, I would not want to put the burden of amendment 16 on them.

[274] **Lorraine Barrett:** On the idea of reporting every year, would it not be more reasonable to ask for a report every three years, perhaps, or even every five years? Do you feel that reporting every year is the big issue here?

[275] **The Deputy First Minister:** I would have the power to ask for that anyway, because I—or another Minister in the Welsh Assembly Government, depending on the subject area—am entitled to ask for reports in a general sense. It is therefore not necessary to put that on the face of the proposed Measure. In a sense, it could be more effective to avoid overburdening local authorities and to say that we will take stock every five years or so and see how far we have gone. I could do that without putting these proposals on the face of the proposed

Measure.

[276] The second point that I wanted to make was that not only would the Welsh Assembly Government and its officials have to read through 22 reports but that, having done that, we would need to lay a report before the Assembly setting out the steps to take. I believe that it is a given that Measures are there to be adhered to by local authorities. They have a legal obligation to carry out the proposals that are set out here. Why should we always have to second-guess what local authorities do? They feel that they are burdened enough as it is. Once we have passed the law, we have to assume that they will adhere to it. There should not always be a need to produce reports.

[277] We all accept that this Measure is needed, so it is a question of ensuring that we do not over-regulate local authorities in implementing it.

[278] **Alun Cairns:** Thank you. I call Kirsty Williams to respond to the debate.

[279] **Kirsty Williams:** First, I would like to make it clear to Lorraine that at no stage does amendment 16 refer to schools, so I refute her comments about an extra bureaucratic burden being placed on schools. That is simply not the case.

[280] I take the Minister's point that there is a careful balance to be struck between proper accountability and scrutiny of performance and not wanting to overburden local authorities or, indeed, his own officials. However, he also said that this is an important Measure. It is obviously an important Measure for the Minister as it is at the top of his legislative agenda. Given the importance of this Measure, it is surprising that the Minister would not want to have a formal mechanism by which he could satisfy himself that the contents of the Measure were being acted upon.

11.10 a.m.

[281] **Alun Cairns:** May I intervene?

[282] **Kirsty Williams:** Of course.

[283] **Alun Cairns:** Thank you, Kirsty, I am grateful that you have allowed me to intervene as an individual. The point was made by the Minister that laws are passed and that they must be adhered to. We all know that the laws are very clear in relation to special educational needs, for example, but, all too often, parents have to challenge local authorities on the way in which they deliver on them, because they are not adhered to. It is true that there will be bureaucratic difficulties for local authorities, but I do not think that they will be onerous; they will be minor bureaucratic difficulties for local authorities. I want to make life easier for parents. Do you agree that the alternative to the Assembly Government's placing an expectation on local authorities to provide an annual report showing that they are meeting those obligations is that you have to put the parents in the position of challenging the authority?

[284] **Kirsty Williams:** I take your point. Over the last nine years, I have had more opportunities than I would have wished to have to challenge the behaviour of local authorities with regard to what they are supposed to be doing. Often that behaviour is not intentional, but these things happen, and it is often due to pressure of work or a lack of resources.

[285] **Jeff Cuthbert:** Will you take an intervention?

[286] **Kirsty Williams:** Of course.

[287] **Jeff Cuthbert:** I take the point that anything is open to challenge, and parents can challenge any aspect of public service—whether that is education or whatever—if they think that something is wrong. However, in relation to the first sub-point of amendment 16 about promoting access—we have dealt with the point about schools of a religious character; I am referring to Welsh-medium education—do you not think that that would be picked up by Estyn’s reports and reviews of LEAs as well as of schools? Secondly, I know that you are not talking about schools here, but schools are required to hold annual meetings for parents, which hardly anyone attends, but they are a bureaucratic burden that they have to deal with, and very little value comes out of them, but if parents have a problem, they will go straight to the school. Can we not draw a parallel there?

[288] **Kirsty Williams:** As you said, Jeff, we are not talking about schools in this context. I accept that Estyn has a responsibility to check on the performance of LEAs, and I think that you will find that some of those reports are perhaps not what we would have wanted to see. Estyn has been critical in its reports on the performance of certain LEAs. You have made my point for me, namely that you sometimes have to have these mechanisms to drive performance.

[289] We can either pass this important Measure and send it out there into the ether and hope that we can rely upon everyone to do the right thing by it, or we can have a law that gives us as Assembly Members a mechanism to look at whether the intentions of our Measures are being acted upon.

[290] **Jeff Cuthbert:** The point that I am making about Estyn is that if one body that reports to us is already doing a piece of work, why should that work be duplicated?

[291] **Kirsty Williams:** My understanding is that not all local authorities are inspected by Estyn on a yearly basis. However, if local authorities do already have to account for themselves to Estyn, it will not be an extra bureaucratic burden to send a copy of that report to the Minister.

[292] **Alun Cairns:** Kirsty, do you wish to move the amendment to a vote?

[293] **Kirsty Williams:** Yes.

[294] **Alun Cairns:** The question is that amendment 16 be agreed to. I call for a vote.

Gwelliant 16: O blaid 2, Ymatal 0, Yn erbyn 3.

Amendment 16: For 2, Abstain 0, Against 3.

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

Cairns, Alun
Williams, Kirsty

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

Barrett, Lorraine
Cuthbert, Jeff
Jones, Ieuan Wyn

Gwrthodwyd gwelliant 16.

Amendment 16 defeated.

[295] **Alun Cairns:** We now come to dispose of amendment 17. I invite Kirsty to propose amendment 17 in her name.

[296] **Kirsty Williams:** I propose amendment 17.

[297] **Alun Cairns:** The question is that amendment 17 be agreed to. I call for a vote.

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

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

Cairns, Alun
Williams, Kirsty

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

Barrett, Lorraine
Jones, Ann
Jones, Ieuan Wyn

*Gwrthodwyd gwelliant 17.
Amendment 17 defeated.*

[298] **Alun Cairns:** That brings us to the end of our consideration of amendments at Stage 2; sections 8 to 27, and Schedules 1 and 2 are deemed agreed. Under Standing Order No. 23.40, if a proposed Measure is amended at Stage 2, in proceeding so as to insert a section or Schedule or substantially alter any existing provision, the committee considering Stage 2 proceedings may request that the Member in charge prepare a revised explanatory memorandum. I consider that the amendments agreed by this committee have substantially altered some existing provisions. As such, do Members agree that the Assembly Government should prepare a revised explanatory memorandum? I see that you do.

[299] Under Standing Order No. 23.41, any revised explanatory memorandum requested under Standing Order No. 23.40 must be laid at least five working days before the date of the first meeting of the Assembly that considers Stage 3 proceedings. Stage 3 begins tomorrow, and proceedings in Plenary are scheduled for Government time in the autumn. Members will be notified of the deadline for tabling amendments in due course, and the deadline will also be published in the business notice.

[300] Before I declare the meeting closed, I wish to thank Members for their participation in what has been a learning process. I wish to thank the officials who have provided first-class support to all committee members. I also thank the Minister for his co-operation in relation to the committee. However, I also wish to place on record—and I will be writing to the Business Committee about this—that undertaking the role of Chair and the role of a Member in moving amendments is difficult; it allows the potential for conflict, which I believe is unfair on whomever chairs the committee.

[301] I also wish to place on record the difficulty that the committee has had because of the absence of a Stage 1 Measure committee, where some of the broad principles of what we have discussed could have been considered. I believe that that would have made the Stage 2 committee far more fluid and forthcoming. Finally, I wish to place on record that the consideration given by a Measure committee is, by its very nature, different to the consideration given by a subject committee up to this point. The nature and the working of subject committees may well change in the light of experience, but I wanted to place those points on record to help the Business Committee in its considerations of making our workings easier.

[302] Therefore, unless Members have any further comments, I would like to thank everyone once again, and I declare the meeting closed.

*Daeth y cyfarfod i ben am 11.18 a.m.
The meeting ended at 11.18 a.m.*