



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

**Pwyllgor Deddfwriaeth Rhif 5
Legislation Committee No. 5**

**Dydd Iau, 24 Mehefin 2010
Thursday, 24 June 2010**

Cynnwys
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Proposed Rights of Children and Young Persons (Wales) Measure: Stage 1

Yn y golofn chwith, cofnodwyd y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor.
Yn y golofn dde, cynhwyswyd cyfieithiad o'r areithiau hynny.

In the left-hand column, the proceedings are recorded in the language in which they were spoken in the committee. In the right-hand column, a translation of those speeches has been included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Andrew Davies	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Leanne Wood	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Marcus Hill	Uwch-reolwr Mentrau Hawliau Estynedig, Yr Adran Plant, Addysg, Dysgu Gydol Oes a Sgiliau, Llywodraeth Cynulliad Cymru Senior Extended Entitlement Initiatives Manager, Department for Children, Education, Lifelong Learning and Skills, Welsh Assembly Government
Natalie Lancey	Cyfreithwraig, Yr Is-adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Lawyer, Legal Services Division, Welsh Assembly Government
Huw Lewis	Aelod Cynulliad, Llafur (Y Dirprwy Weinidog dros Blant) Assembly Member, Labour (The Deputy Minister for Children)

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

Bethan Davies	Clerc Clerk
Leanne Hatcher	Dirprwy Glerc Deputy Clerk
Helen Roberts	Cynghorydd Cyfreithiol Legal Adviser
Siân Thomas	Gwasanaeth Ymchwil yr Aelodau Members Research Service

Dechreuodd y cyfarfod am 9.02 a.m.
The meeting began at 9.02 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Mark Isherwood:** Bore da a **Mark Isherwood:** Good morning and chroeso. welcome.

[2] We do not have any apologies or substitutions this morning. So, we are quorate Nid oes gennym ymddiheuriadau na dirprwyon y bore yma. Felly, mae cworwm

with our own committee members.

[3] I will start with the usual housekeeping messages. In the event of a fire alarm, Members should leave the room via the marked fire exits and follow the instructions of the ushers and staff. No fire alarm tests are scheduled for today. All mobile phones, pagers and BlackBerrys should be switched off because they interfere with broadcasting equipment.

[4] The National Assembly for Wales operates through the media of the Welsh and English languages. Headphones are provided, through which instantaneous translations may be received on channel 1, and the verbatim feed on channel 0, which may be used to amplify the sound for those who are hard of hearing. Please do not touch any of the buttons on the microphones, because that can disable the system, but please ensure that the red light is showing before you speak.

9.03 a.m.

Mesur Arfaethedig ynghylch Hawliau Plant a Phobl Ifanc (Cymru): Cyfnod 1 Proposed Rights of Children and Young Persons (Wales) Measure: Stage 1

[5] **Mark Isherwood:** Legislation Committee No. 5 is considering the general principles of the Proposed Rights of Children and Young Persons (Wales) Measure. As agreed at last week's meeting, the public consultation will be launched on 28 June and will run to 27 August. Details are to be published on the committee's website.

[6] The purpose of today's meeting is to take oral evidence in connection with the proposed Measure. I therefore welcome Huw Lewis, AM and Deputy Minister for Children, who is responsible for introducing the proposed Measure. I also welcome his officials. I would be grateful if you could all introduce yourselves for the record.

[7] **The Deputy Minister for Children (Huw Lewis):** I am Huw Lewis, the Deputy Minister for Children.

[8] **Mr Hill:** I am Marcus Hill and I work in the rights and entitlements team within the Department for Children,

o'n haelodau pwyllgor ni.

Dechreuaf gyda'r negeseuon cadw tŷ arferol. Os ceir larwm tân, dylai'r Aelodau adael yr ystafell drwy'r allanfeydd tân sydd wedi'u nodi a dilyn cyfarwyddiadau'r tywyswyr a'r staff. Nid oes profion larwm wedi'u trefnu heddiw. Dylid diffodd pob ffôn symudol, galwr a BlackBerry gan eu bod yn tarfu ar y cyfarpar darlledu.

Mae Cynulliad Cenedlaethol Cymru yn gweithredu drwy gyfrwng y Gymraeg a'r Saesneg. Darperir clustffonau, y gellir cael cyfieithiad ar y pryd drwyddynt ar sianel 1, a'r darllediad byw ar sianel 0, y mae modd ei ddefnyddio i chwyddo'r sain i'r rhai sy'n drwm eu clyw. Cofiwch beidio â chyffwrdd ag unrhyw fotymau ar y meicroffonau, gan eu bod yn gallu rhwystro'r system, ond cofiwch wneud yn siŵr fod y golau coch ynghynn cyn ichi siarad.

Mark Isherwood: Mae Pwyllgor Deddfwriaeth Rhif 5 yn ystyried egwyddorion cyffredinol y Mesur Arfaethedig ynghylch Hawliau Plant a Phobl Ifanc (Cymru). Fel y cytunwyd yn y cyfarfod yr wythnos diwethaf, caiff ymgyngoriad cyhoeddus ei lansio ar 28 Mehefin a bydd yn para tan 27 Awst. Caiff y manylion eu cyhoeddi ar wefan y pwyllgor.

Pwrpas y cyfarfod heddiw yw cymryd tystiolaeth lafar mewn perthynas â'r Mesur arfaethedig. Yr wyf felly yn croesawu Huw Lewis, AC a'r Dirprwy Weinidog dros Blant, sy'n gyfrifol am gyflwyno'r Mesur arfaethedig. Croesawaf ei swyddogion hefyd. Byddwn yn ddiolchgar pe baech i gyd yn cyflwyno'ch hunain er mwyn y cofnod.

Y Dirprwy Weinidog dros Blant (Huw Lewis): Huw Lewis wyf fi, y Dirprwy Weinidog dros Blant.

Mr Hill: Marcus Hill wyf fi ac yr wyf yn gweithio yn y tîm hawliau yn yr Adran Plant, Addysg, Dysgu Gydol Oes a Sgiliau.

Education, Lifelong Learning and Skills.

[9] **Ms Lancey:** I am Natalie Lancey and I am a lawyer from Legal Services.

Ms Lancey: Natalie Lancey wyf fi ac yr wyf yn gyfreithiwr gyda'r Gwasanaethau Cyfreithiol.

[10] **Mark Isherwood:** Thank you. I will start with the first question and then will open it up to questions from other committee members.

Mark Isherwood: Diolch. Dechreuaf fi gyda'r cwestiwn cyntaf yna agoraf y sesiwn i gwestiynau gan aelodau eraill y pwyllgor.

[11] This proposed legislation imposes a duty on Welsh Ministers and on the First Minister to have due regard to rights and obligations in the United Nations Convention on the Rights of the Child and its optional protocols when making strategic decisions about how to exercise functions exercisable by them. Why do you think that this legislation is needed to achieve that?

Mae'r ddeddfwriaeth arfaethedig yn gosod dyletswydd ar Weinidogion Cymru ac ar y Prif Weinidog i roi ystyriaeth lawn i hawliau a rhwymedigaethau Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn a'i brotocolau dewisol wrth wneud penderfyniadau strategol ar sut i weithredu eu swyddogaethau. Pam fod angen y ddeddfwriaeth hon er mwyn gwneud hynny?

[12] **Huw Lewis:** Our belief, simply put, is that the legislation will better express the will of the National Assembly for Wales. In January 2004, there was unanimous cross-party support for the use of the United Nations Convention on the Rights of the Child as the underpinning basis for policy-making regarding children and young people in Wales. Since 2002, we have been using the seven core aims as the basis for planning services for children and young people locally and at an all-Wales level. However, it has been felt that this has not been as systematic or comprehensive as it may have been and that in using the seven core aims, there may have been a tendency to mask the UNCRC by using the seven core aims as a substitute for the convention.

Huw Lewis: Yr ydym o'r farn, yn syml, y bydd y ddeddfwriaeth yn mynegi ewyllys Cynulliad Cenedlaethol Cymru yn well. Ym mis Ionawr 2004, yr oedd cefnogaeth drawsbleidiol unfrydol i ddefnyddio Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn fel y sylfaen waelodol wrth lunio polisi yn ymwneud â phlant a phobl ifanc yng Nghymru. Er 2002, yr ydym wedi defnyddio'r saith nod craidd fel sail i gynllunio gwasanaethau ar gyfer plant a phobl ifanc yn lleol ac ar lefel Cymru gyfan. Fodd bynnag, teimlwyd nad oedd hynny'n digwydd mor systematig neu gynhwysfawr ag y dylai ac y bu tuedd efallai, o ddefnyddio'r saith nod craidd, i golli golwg ar y confensiwn drwy ddefnyddio'r saith nod craidd yn ei le.

[13] In introducing the legislation, we are also very much in line with the opinions of the United Nations Committee on the Rights of the Child, which, in its concluding observations in 2008 after looking at the progress of these issues across the UK, expressed a clear wish that it would like to see the UNCRC enshrined in domestic law. This legislation would make Wales the first part of the United Kingdom to undertake that kind of work.

Wrth gyflwyno'r ddeddfwriaeth, yr ydym hefyd yn gytûn iawn â barn Pwyllgor y Cenhedloedd Unedig ar Hawliau'r Plentyn, a fynegodd, yn ei sylwadau terfynol yn 2008 ar ôl edrych ar gynnydd y materion hyn ar draws y DU, awydd clir i weld y Confensiwn ar Hawliau'r Plentyn yn cael ei gorffori yn y gyfraith ddomestig. Byddai'r ddeddfwriaeth hon yn gwneud Cymru y rhan gyntaf o'r Deyrnas Unedig i ymgymryd â'r math hwnnw o waith.

[14] **Mark Isherwood:** Do you believe that the policy objectives could have been achieved otherwise within current legislative

Mark Isherwood: A ydych yn credu y byddai wedi bod yn bosibl cyflawni'r amcanion polisi fel arall o fewn y pwerau

powers or do we need this additional power to be drawn down?

[15] **Huw Lewis:** The difference between where we are now and where we intend to be is that we would enshrine in law the due regard duty for Ministers. So, although we have those guidelines—the seven core aims—they are mutable and would not necessarily survive Assembly elections and so on. So, this would enshrine in law a duty for Welsh Ministers to pay due regard to the UNCRC, which takes us a step further into the top level of nations across the world that are committed to the rights of the child.

[16] **Leanne Wood:** Can you provide us with specific examples as to how the rights of children and young people will be strengthened through this proposed Measure?

[17] **Huw Lewis:** That connects to the due regard that Ministers, including the First Minister, would need to have in relation to their strategic decision making and the ripple effect that that would have across policy making throughout the Assembly's functions as a whole, and, indeed, the ripple effect that would eddy outwards towards other bodies in Wales as they create policy and decide strategy as well. The duty is upon Welsh Ministers and the First Minister, and much will hinge upon the phrase 'strategic decision', which no doubt we will return to during this meeting—

[18] **Leanne Wood:** I was about to ask you what that phrase meant. Can you tell us what that means?

[19] **Huw Lewis:** The pat answer is that the scheme that we will consult on will describe what a strategic decision is. However, to my mind, a strategic decision is one that connects to high-level policy making by Ministers. The child poverty strategy that I am currently involved with is an example of high-level strategy decision making that moulds the actions and functions of Ministers and the Assembly Government as a whole further down the line. The functions

deddfwriaethol presennol, ynteu a oes angen inni dynnu'r pŵer ychwanegol hwn i lawr?

Huw Lewis: Y gwahaniaeth rhwng lle'r ydym ar hyn o bryd a lle y bwriadwn fod yw y byddem yn ymgorffori yn y gyfraith y ddyletswydd sylw dyledus ar Weinidogion. Felly, er bod y canllawiau hynny gennym—y saith nod craidd—mae modd eu newid ac ni fyddent o reidrwydd yn goroesi etholiadau Cynulliad ac ati. Felly, bydd hyn yn ymgorffori yn y gyfraith ddyletswydd ar i Weinidogion Cymru roi sylw dyledus i Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn, sy'n mynd â ni gam ymhellach i'r lefel uchaf o genhedloedd ar draws y byd sy'n ymrwymo i hawliau'r plentyn.

Leanne Wood: A allwch roi enghreifftiau penodol inni o sut y caiff hawliau plant a phobl ifanc eu cryfhau drwy'r Mesur arfaethedig hwn?

Huw Lewis: Mae hynny'n cysylltu â'r sylw dyledus y byddai gofyn i Weinidogion, yn cynnwys y Prif Weinidog, ei arddel yng nghyswllt y penderfyniadau strategol a wneir ganddynt a'r effaith grychdonni a gâi hynny ar lunio polisi ar draws holl swyddogaethau'r Cynulliad, ac, yn wir, yr effaith grychdonni a fyddai'n troelli i gyfeiriad cyrff eraill yng Nghymru wrth iddynt hwythau greu polisi a phenderfynu ar strategaeth. Mae'r ddyletswydd ar Weinidogion Cymru a'r Prif Weinidog, a bydd llawer yn dibynnu ar yr ymadrodd 'penderfyniad strategol', yr ydym yn siŵr o ddod yn ôl ato yn ystod y cyfarfod hwn—

Leanne Wood: Yr oeddwn ar fin gofyn ichi beth yw ystyr yr ymadrodd. A allwch ddweud wrthym beth yw ei ystyr?

Huw Lewis: Yr ateb parod yw y bydd y cynllun y byddwn yn ymgynghori yn ei gylch yn disgrifio beth yw penderfyniad strategol. Fodd bynnag, i'm meddwl i, mae penderfyniad strategol yn un sy'n gysylltiedig â llunio polisi ar lefel uchel gan Weinidogion. Mae'r strategaeth tloidi plant yr wyf yn ymwneud â hi ar hyn o bryd yn enghraifft o wneud penderfyniadau strategol lefel uchel sy'n mowldio penderfyniadau a swyddogaethau Gweinidogion a Llywodraeth

connected to lawmaking are also included in this, so that other legislation that we may pass as an Assembly would be bound by this due regard because they are strategic decisions.

[20] There is more to be explored with regard to what a strategic decision is and what it is not. There will be an open and transparent discussion about that, which will hopefully move us towards a robust definition, including examples within the children's scheme of what a strategic decision consists of. So, I have not come here today saying that I know exactly what a strategic decision is for all time, and that it will never change and that this is what it is. However, in my mind, at the moment, it is clearly connected to the development of legislative proposals and the policy making that we have been happily involved with in the Assembly Government for quite some time.

9.10 a.m.

[21] **Leanne Wood:** That sounds pretty confusing to me. Therefore, I would imagine that it would sound pretty confusing to people out there who will be affected by this legislation. Can you tell us why the wording is to have due regard in making strategic decisions and not all decisions?

[22] **Huw Lewis:** We have to make a distinction for practical reasons. If it were all decisions, we could get down to the level of looking at correspondence in response to questions from Assembly Members, members of the public or outside bodies and so on. If we encompassed all decisions within the remit of the legislation, we would run the risk of diluting the effect of the legislation to such an extent that it became a tick-box exercise. We have the examples of the due regard that we have to pay to equality and sustainable development, which can act as guides for us. However, if we include on the face of the proposed Measure the idea that all decisions that ever come out of the Assembly Government should be bound by the due regard duty, we could get into a situation in

y Cynulliad yn ei chyfanrwydd ar lefel is. Mae'r swyddogaethau yn ymwneud â llunio deddfau hefyd yn gynwysedig yn hyn, felly byddai unrhyw ddeddfwriaeth bellach y byddem yn ei phasio fel Cynulliad yn cael ei rhwymo gan y sylw dyledus hwn gan eu bod yn benderfyniadau strategol.

Mae rhagor i'w archwilio o ran beth yw penderfyniad strategol a'r hyn nad yw'n benderfyniad o'r fath. Ceir trafodaeth agored a thryloyw ynghylch hynny a fydd, gobeithio, yn ein symud tuag at ddiffiniad cadarn, yn cynnwys enghreifftiau yn y cynllun plant o beth sy'n gwneud penderfyniad strategol. Felly, nid wyf wedi dod yma heddiw yn dweud fy mod yn gwybod yn union beth yw penderfyniad strategol am byth mwy, ac na wnaiff newid byth ac mai dyma'r hyn ydyw. Fodd bynnag, i'm meddwl i, ar hyn o bryd, mae'n amlwg yn gysylltiedig â datblygu cynigion deddfwriaethol a'r gwaith llunio polisi yr ydym wedi ymgymryd yn fodlon ag ef yn Llywodraeth y Cynulliad ers peth amser.

Leanne Wood: Mae hynny'n swnio'n bur ddryslyd i mi. Felly, byddwn yn dychmygu y byddai'n swnio'n bur ddryslyd i bobl allan yna y bydd y ddeddfwriaeth hon yn effeithio arnynt. A allwch ddweud wrthym pam mai'r geiriad yw rhoi sylw dyledus wrth wneud penderfyniadau strategol ac nid pob penderfyniad?

Huw Lewis: Rhaid inni wahaniaethu am resymau ymarferol. Pe bai'n bob penderfyniad, gallem fynd cyn belled ag edrych ar ohebiaeth mewn ymateb i gwestiynau gan Aelodau Cynulliad, aelodau o'r cyhoedd neu gyrff allanol, ac ati. Pe baem yn cynnwys pob penderfyniad o fewn cwmpas y ddeddfwriaeth, byddai perygl inni wanhaus effaith y ddeddfwriaeth i'r fath raddau nes y byddai'n mynd yn ymarferiad ticio blychau. Mae gennym yr enghreifftiau o'r sylw dyledus y mae rhaid inni ei roi i gydraddoldeb a datblygu cynaliadwy, a all fod yn arweiniad inni. Fodd bynnag, os cynhwyswn ar wyneb y Mesur arfaethedig y syniad y dylai pob penderfyniad sy'n dod allan o Lywodraeth y Cynulliad gael ei rwymo gan y ddyletswydd sylw dyledus,

which no kind of strategic effect would be driven by this legislation. We would just have administrative staff ticking boxes as they went about their day-to-day business.

[23] **Leanne Wood:** Would it not concern you, as the Deputy Minister for Children, that any decisions fell outwith this charter?

[24] **Huw Lewis:** Yes. Passing the proposed Measure would not mean that the day-to-day scrutiny functions of the Assembly would evaporate overnight. We have those through our committees, the work of Assembly Members and outside bodies, not least of which is the Children's Commissioner for Wales. We have that complex and comprehensive ability to scrutinise the day-to-day workings of the Assembly Government, which would act as a safeguard to ensure that we have due regard. The point at issue is: to what do you apply the legislation? Do you apply the legislation to every secretary working in every office of the Assembly Government machinery or do you get in at a strategic level and ensure that, in a concentrated way, the high-level decisions are covered by the due regard duty? That is the tack that we are taking, because my fear is that if we do it any other way, we will end up with some kind of pro forma in front of administrative staff, and they will have to tick the box to—

[25] **Leanne Wood:** Would you say that the duty to promote sustainable development and the duty to promote equality are tick-box exercises? Are they not working, because those duties do not just relate to strategic decisions, but are pervasive duties?

[26] **Huw Lewis:** There is an issue with the word 'pervasive' and I would rather not use it. They operate in a different way. The equality legislation was made in another place and was not Welsh-made legislation, as such. Perhaps I could pass this on to Natalie. Your point on sustainable development deserves a more in-depth answer than I am

gallem ein cael ein hunain mewn sefyllfa lle na fyddai unrhyw effaith strategol o gwbl yn cael ei gyrru gan y ddeddfwriaeth hon. Ni fyddai gennym ddim ond staff gweinyddol yn ticio blychau wrth fwrw ymlaen â'u gwaith o ddydd i ddydd.

Leanne Wood: Oni fyddai'n eich pryderu chi, fel y Dirprwy Weinidog dros Blant, fod unrhyw benderfyniadau yn disgyn y tu allan i'r siarter hwn?

Huw Lewis: Byddai. Ni fyddai pasio'r Mesur arfaethedig yn golygu y byddai swyddogaethau craffu'r Cynulliad yn diflannu dros nos. Mae'r rheini gennym drwy ein pwyllgorau, drwy waith Aelodau Cynulliad a chyrrff allanol, yn arbennig Gomisiynydd Plant Cymru. Mae'r gallu cymhleth a chynhwysfawr hwnnw gennym i graffu ar weithrediad Llywodraeth y Cynulliad o ddydd i ddydd, a fyddai'n fesur diogelu i sicrhau bod gennym sylw dyledus. Y pwynt dan sylw yw: i beth yr ydych yn cymhwyso'r ddeddfwriaeth? A ydych yn cymhwyso'r ddeddfwriaeth i bob ysgrifenyddes sy'n gweithio ym mhob swyddfa ym mheirianwaith Llywodraeth y Cynulliad ynteu a ydych yn targedu lefel strategol ac yn sicrhau, mewn ffordd gref, fod y ddyletswydd sylw dyledus yn cwmpasu'r penderfyniadau lefel uchel? Dyna'r trywydd yr ydym yn ei gymryd, oherwydd fy ofn i yw, os gwnawn ni hyn mewn rhyw ffordd arall, mai'r hyn a gawn fydd rhyw fath o pro forma o flaen staff gweinyddol, ac y bydd rhaid iddynt dicio'r blwch i—

Leanne Wood: A fyddech yn dweud mai ymarferiadau ticio blychau yw'r ddyletswydd i hyrwyddo datblygu cynaliadwy a'r ddyletswydd i hyrwyddo cydraddoldeb? Onid ydynt yn gweithio, oherwydd mae a wnelo'r dyletswyddau hynny nid yn unig â phenderfyniadau strategol, ond maent yn ddyletswyddau sy'n treiddio i bopeth?

Huw Lewis: Mae cwestiwn ynglŷn â'r ymadrodd 'treiddio i bopeth' a byddai'n well gennyf beidio â'i ddefnyddio. Maent yn gweithredu mewn ffordd wahanol. Cafodd y ddeddfwriaeth cydraddoldeb ei gwneud mewn man arall ac nid oedd yn ddeddfwriaeth a wnaed yng Nghymru, fel y cyfryw. Efallai y caf drosglwyddo hyn i

able to give at the moment.

[27] **Ms Lancey:** The other general duties to which WAG is subject are not tick-box exercises, such as the equality legislation, for example, and European law. We comply with them, but they are legislation made in other fora than the National Assembly for Wales. Here, it is in the hands of the Welsh Assembly Government to bring forward this proposal for legislation that will create a due regard duty and it is in the hands of the National Assembly for Wales to pass that legislation. Therefore, since both arms have discretion as to how the duty will be constructed, and have a huge part to play, we are proposing to bring forward a duty that targets the decisions that we think will have the greatest effect on children, and concentrate our resources for having due regard to the UNCRC on those decisions.

[28] As the Deputy Minister said, we do not want to prejudge what will come out of the criteria in the children's scheme for identifying a strategic decision because we will involve stakeholders in a consultation on that issue, and that scheme and those criteria will be subject to Assembly approval. Our current thinking is that the duty will catch those strategic decisions where the Welsh Assembly Government identifies its long-term objectives and looks at how it will use its functions to achieve those objectives. As the Deputy Minister has explained, if we applied the duty to the exercise of all functions—which means absolutely everything that the Welsh Assembly Government does—it would catch all the day-to-day things, such as staff appointments and dismissals, and writing letters in response to complaints. In order to—

[29] **Leanne Wood:** That is just like the equality duty and the sustainable development duty in the Government of Wales Act 2006.

Natalie. Mae eich pwynt ynglŷn â datblygu cynaliadwy yn haeddu ateb mwy cynhwysfawr nag a allaf ei roi ar y funud.

Ms Lancey: Nid ymarferiadau ticio blychau yw'r dyletswyddau cyffredinol eraill y mae Llywodraeth y Cynulliad yn ddarostyngedig iddynt, fel y ddeddfwriaeth cydraddoldeb, er enghraifft, a chyfraith Ewropeaidd. Yr ydym yn cydymffurfio â nhw, ond maent yn ddeddfwriaeth a wnaed mewn fforymau gwahanol i Gynulliad Cenedlaethol Cymru. Yma, mae yn nwylo Llywodraeth Cynulliad Cymru i ddod â'r cynnig hwn gerbron am ddeddfwriaeth a fydd yn creu dyletswydd sylw dyledus ac mae yn nwylo Cynulliad Cenedlaethol Cymru i basio'r ddeddfwriaeth honno. Felly, gan fod gan y naill gangen a'r llall ddisgresiwn, a bod ganddynt ran enfawr i'w chwarae, yr ydym yn cynnig dod â dyletswydd gerbron sy'n targedu'r penderfyniadau a fydd yn ein barn ni yn cael yr effaith fwyaf ar blant, ac yn targedu ein hadnoddau i roi sylw dyledus i'r Confensiwn ar Hawliau'r Plentyn at y penderfyniadau hynny.

Fel y dywedodd y Dirprwy Weinidog, nid ydym am ragfarnu beth fydd ffrwyth y meini prawf yng nghynllun y plant i nodi penderfyniad strategol oherwydd byddwn yn rhoi llais i randdeiliaid mewn ymgynghoriad ynghylch y mater hwnnw, a bydd y cynllun hwnnw a'r meini prawf hynny yn ddarostyngedig i gymeradwyaeth y Cynulliad. Ein syniad ar hyn o bryd yw y bydd y ddyletswydd yn cwmpasu'r penderfyniadau strategol hynny lle mae Llywodraeth Cynulliad Cymru yn nodi ei hamcanion tymor hir ac yn edrych ar sut i arfer ei swyddogaethau er mwyn gwireddu'r amcanion hynny. Fel y mae'r Dirprwy Weinidog wedi egluro, pe baem yn cymhwyso'r ddyletswydd i bob swyddogaeth sy'n cael ei harfer—sy'n golygu pob un dim y mae Llywodraeth Cynulliad Cymru yn ei wneud—byddai'n cwmpasu'r holl bethau beunyddiol, megis penodi a diswyddo staff, ac ysgrifennu llythyron mewn ymateb i gwynion. Er mwyn—

Leanne Wood: Mae hynny'n union fel y ddyletswydd cydraddoldeb a'r ddyletswydd datblygu cynaliadwy yn Neddf Llywodraeth Cymru 2006.

[30] **Huw Lewis:** We will have to develop this and build it into the way that we work. There are various paths that we could take to make it effective and to make it happen. In order to do that without, to my mind, dissipating the benefits that this could provide for children and young people, it is correct to concentrate on the strategic, ministerial decisions that are involved in law making. If we take the other tack, and say that this applies every time that the Assembly Government writes a letter to whomever it may be, and that there is a due regard duty on the person who drafts that letter, we will enter a process that is very different in its nature.

[31] On the strategic route, we intend that this would be taken extremely seriously as regards the roll-out of training, particularly for senior staff and officials within the Assembly; that we really get to grips with what it means to have due regard to the rights of the child when making big decisions and making laws; and that we change the culture, effectively, of how the Assembly Government works.

[32] To go down the other route, which, as you have pointed out, may be the case with legislation made in other places, would mean that we would be involved in a very different exercise where we simply could not commit to training every single employee of the Welsh Assembly Government who has any kind of contact with decisions, no matter how minor. To get involved in such an undertaking would either be so resource-heavy that it would be impracticable or it would mean that we would simply be paying lip service to the whole deal by asking people to bear this in mind, with a bit of guidance. We are involved in something quite fundamental here regarding how you would change the culture of how the Assembly Government works from now on.

[33] **Andrew Davies:** I would like to explore this issue because it goes to the heart of this approach. I cannot understand the argument that says because the legislation is made somewhere else—either in the European Parliament or the European

Huw Lewis: Bydd rhaid inni ddatblygu hyn a'i ymgorffori yn y ffordd yr ydym yn gweithio. Mae llwybrau amrywiol y gallem eu cymryd i'w wneud yn effeithiol ac i wneud iddo ddigwydd. Er mwyn gwneud hynny heb, i'm meddwl i, wanhau'r manteision y gallai hyn eu darparu i blant a phobl ifanc, mae'n briodol canolbwyntio ar y penderfyniadau strategol gan Weinidogion sy'n rhan o lunio deddfwriaeth. Os dilynwn y trywydd arall, a dweud bod hyn yn gymwys bob tro y mae Llywodraeth y Cynulliad yn ysgrifennu llythyr at bwy bynnag y bo, a bod dyletswydd sylw dyledus ar y sawl sy'n drafftio'r llythyr hwnnw, byddwn yn dechrau ar broses sy'n wahanol iawn o ran ei natur.

O ran y llwybr strategol, yr ydym yn bwriadu i hyn gael ei gymryd yn llwyr o ddifrif parthed darparu hyfforddiant, yn arbennig i uwch staff a swyddogion yn y Cynulliad; ein bod yn mynd i'r afael o ddifrif â'r hyn a olygir gan sylw dyledus i hawliau'r plentyn wrth wneud penderfyniad mawr a llunio deddfau; a'n bod i bob diben yn newid diwylliant y ffordd y mae Llywodraeth y Cynulliad yn gweithio.

Byddai mynd i lawr y llwybr arall, ac efallai, fel yr ydych wedi nodi, mai felly y mae hi gyda deddfwriaeth a wnaed mewn mannau eraill, yn golygu y byddem yn rhan o ymarferiad gwahanol iawn lle na fyddai'n bosibl inni ymrwymo i hyfforddi pob un o weithwyr Llywodraeth Cynulliad Cymru sydd ag unrhyw fath o gysylltiad â phenderfyniadau, ni waeth pa mor ddibwys. Byddai bod yn rhan o ymrwymiad o'r fath un ai'n golygu cymaint o draul ar adnoddau fel y byddai'n anymarferol, neu byddai'n golygu na fyddem ond yn rhyw esgus cefnogi'r holl syniad drwy ofyn i bobl gadw hyn mewn cof, gydag ychydig o arweiniad. Yr ydym yn rhan o rywbeth pur sylfaenol yma o ran sut y byddech yn newid diwylliant y ffordd y mae Llywodraeth y Cynulliad yn gweithio o hyn ymlaen.

Andrew Davies: Hoffwn archwilio'r mater hwn oherwydd mae'n mynd at galon y ffordd hon o weithredu. Ni allaf ddeall y ddadl sy'n dweud, oherwydd fod y ddeddfwriaeth wedi cael ei gwneud yn rhywle arall—un ai yn Senedd Ewrop neu'r Comisiwn Ewropeaidd,

Commission, or indeed the UK Government—that it is somehow different.

neu yn wir yn Llywodraeth y DU—ei bod rywffordd yn wahanol.

9.20 a.m.

[34] The original Government of Wales Act 1998 placed a statutory duty to promote sustainable development. The Assembly Government did not then say that we would make decisions on how that would be applied strategically in certain strategic areas. It was seen as a cross-cutting, strategic approach across Government. It was not a case of which areas we would choose as an institution or as a Government. I do not understand that argument.

Rhoddodd Deddf wreiddiol Llywodraeth Cymru 1998 ddyletswydd statudol i hyrwyddo datblygu cynaliadwy. Ni ddywedodd Llywodraeth y Cynulliad bryd hynny y byddem yn gwneud penderfyniadau ar sut y câi hynny ei gymhwyso'n strategol mewn rhai meysydd strategol. Câi ei weld fel dull gweithredu strategol, trawsbynciol, ar draws y Llywodraeth. Nid oedd yn fater o ba feysydd y byddem yn eu dewis fel sefydliad neu fel Llywodraeth. Nid wyf yn deall y ddadl honno.

[35] I have privileged information, as a former Minister, and I was on the Cabinet's legislation committee. It was clear that the then First Minister's view on this issue, as for example on access to freedom of information, was that there would be an assumption that everything would be published. However, the UK Government's attitude was that you had to prove a case for why it should be published. The First Minister regarded it as the Scottish approach. The same approach was adopted—I remember the discussions in the Cabinet—on this piece of legislation, that it would place a duty on Ministers; there was not a picking and choosing and deciding what was going to be strategic. So, clearly, there has been a significant change of policy. What is the rationale for what has been a significant change of policy? The policy has gone from one where this would apply to all Ministers with relevant functions, to one where Ministers—which is the second question that I would like to come on to afterwards—decide what the priorities are where this piece of legislation will apply. There has been a significant change of policy or attitude, because I am aware of what the original proposal was.

Mae gennyf wybodaeth freintiedig, fel cyn Weinidog, ac yr oeddwn ar bwyllgor deddfau'r Cabinet. Yr oedd yn amlwg mai barn y Prif Weinidog ar y pryd ar y mater hwn, megis er enghraifft ar hawl i ryddid gwybodaeth, oedd y byddai rhagdybiaeth y câi popeth ei gyhoeddi. Fodd bynnag, agwedd Llywodraeth y DU oedd bod rhaid ichi brofi achos i ddweud pam y dylai gael ei gyhoeddi. Yr oedd y Prif Weinidog yn ystyried hyn fel dull gweithredu'r Alban. Mabwysiadwyd yr un ffordd o weithredu—cofiat y trafodaethau yn y Cabinet—ynghylch y darn hwn o ddeddfwriaeth, y byddai'n rhoi dyletswydd ar Weinidogion; nid oedd didol a dethol a phenderfynu beth a fyddai'n strategol. Felly, yn amlwg, bu newid polisi arwyddocaol yma. Beth yw'r sail resymegol dros yr hyn a fu'n newid polisi arwyddocaol? Mae'r polisi wedi newid o fod yn un a fyddai'n gymwys i bob Gweinidog sydd â swyddogaethau perthnasol, i un lle mae'r Gweinidogion—a dyma'r ail gwestiwn yr hoffwn ddod yn ôl ato wedyn—yn penderfynu i ba flaenoriaethau y bydd y darn hwn o ddeddfwriaeth yn gymwys. Bu newid arwyddocaol o ran polisi neu agwedd, oherwydd gwn beth oedd y cynnig gwreiddiol.

[36] **Huw Lewis:** We are labouring under a misapprehension here. This does apply to all Ministers—it is pervasive across all functions of the Assembly Government. That was a strong message that came from the consultation that was undertaken. I am not really getting to grips with the point that you

Huw Lewis: Yr ydym o dan gamargraff yma. Mae hyn yn gymwys i bob Gweinidog—mae'n treiddio i holl swyddogaethau Llywodraeth y Cynulliad. Yr oedd honno'n neges gref a gafwyd o'r ymgynghoriad a gynhaliwyd. Nid wyf a dweud y gwir yn llwyr ddeall y pwynt yr ydych yn ceisio'i

are trying to make, Andrew.

[37] **Andrew Davies:** The point is that this is about making decisions of a strategic nature, which is what you said earlier on. It will not apply across the board—that is what you said—because your view is that that would lead to a tick-box attitude. You say that these will be made on decisions of a strategic nature.

[38] **Huw Lewis:** All strategic decisions.

[39] **Andrew Davies:** Yes, but Government Ministers will decide where it applies.

[40] **Huw Lewis:** No. What applies will be clearly laid out in the children's scheme, and Ministers will be bound by that in the future. I will bring Marcus in for more clarification.

[41] **Mr Hill:** That is an important point, Deputy Minister. The children's scheme itself is where not only what constitutes a strategic decision and the criteria for it will be set out, but also how the Government will comply with the duty that is laid upon it. The idea behind the strategic decisions here, taking on your point about pervasiveness, is that the intention is that this will cover a wide range of strategic decisions that Ministers make when they are considering how to take forward policy and legislation. Therefore, because it is at that sort of level, bearing in mind also what you think about human rights and these particular rights within the convention, it is a progressive agenda. Article 4 of the convention says that Government should use all administrative and legislative means necessary to take forward the convention, and, in that light, it also recognises the concept of progressive realisation. We are saying that we are not going to achieve everything today, but we are drawing a line in the sand and we are going to make significant improvements over time. This piece of legislation is designed around the context of how we take this forward at the strategic level.

wneud, Andrew.

Andrew Davies: Y pwynt yw bod a wnelo hyn â gwneud penderfyniadau o natur strategol, sef yr hyn a ddywedasocho yn gynharach. Ni fydd yn gymwys i bopeth yn ddiwahân—dyna a ddywedasocho—oherwydd yn eich barn chi byddai hynny'n arwain at agwedd ticio blychau. Dywedwch y caiff y rhain eu gwneud ar benderfyniadau o natur strategol.

Huw Lewis: Pob penderfyniad strategol.

Andrew Davies: Ie, ond Gweinidogion y Llywodraeth fydd yn penderfynu ble mae'n gymwys.

Huw Lewis: Na. Bydd yr hyn sy'n gymwys wedi cael ei gyflwyno'n glir yng nghynllun y plant, a bydd hynny'n rhwymo Gweinidogion yn y dyfodol. Dof â Marcus i mewn i egluro ymhellach.

Mr Hill: Mae hwnnw'n bwynt pwysig, Ddirprwy Weinidog. Yng nghynllun y plant byddir yn nodi nid yn unig beth sy'n benderfyniad strategol a'r meini prawf ar gyfer hynny, ond hefyd sut y bydd y Llywodraeth yn cydymffurfio â'r ddyletswydd a roddir arni. Y syniad wrth wraidd y penderfyniadau strategol yma, a chymryd eich pwynt ynglŷn â threiddio, yw mai'r bwriad yw y bydd hyn yn cwmpasu ystod eang o benderfyniadau strategol a wneir gan Weinidogion pan fyddant yn ystyried sut i symud polisi a deddfwriaeth ymlaen. Felly, gan mai ar y math hwnnw o lefel y bydd yn digwydd, a chadw mewn cof hefyd eich barn am hawliau dynol a'r hawliau neilltuol hyn yn y confensiwn, mae'n agenda flaengar. Dywed Erthygl 4 o'r confensiwn y dylai Llywodraeth ddefnyddio pob cyfrwng gweinyddol a deddfwriaethol, ac, yn y goleuni hwnnw, mae hefyd yn cydnabod y cysyniad o wireddu cynyddol. Yr ydym yn dweud nad ydym yn mynd i gyflawni popeth heddiw, ond yr ydym yn tynnu llinell yn y tywod ac yr ydym yn mynd i wneud gwelliannau arwyddocaol dros gyfnod o amser. Mae'r darn hwn o ddeddfwriaeth wedi'i gynllunio yng nghydestun sut mae symud hyn ymlaen ar lefel strategol.

[42] **Andrew Davies:** That does not really answer the question of why the policy has changed. It has clearly changed, because I was present at the time when it was first developed.

[43] **Huw Lewis:** Changed for what? I was not present.

[44] **Andrew Davies:** You are saying that you are making decisions of a strategic nature. Clearly, you have moved away from something that is truly pervasive, applying right across the board, and now you are referring to decisions that are ‘of a strategic nature’.

[45] The other point that I want to raise is that I have seen a great deal of legislation coming through now that delegates significant powers to Ministers to decide—in this case, powers to decide on the scheme, and Natalie said that the scheme will specify the areas of Governmental or ministerial functions that this will apply to.

[46] **Huw Lewis:** It applies to all ministerial functions.

[47] **Andrew Davies:** What does ‘strategic nature’ mean then?

[48] **Huw Lewis:** I have attempted to answer this question to the best of my ability. I have given you my interpretation of ‘decision of a strategic nature’, and that question will be consulted on across Welsh society as we draw up the children’s scheme. The purpose of having the phrase ‘strategic nature’ in the proposed Measure is not to restrict the reach of the legislation in any way, but to concentrate its effect for the benefit of children. Therefore, when the Assembly Government is undertaking the fundamentals of its work—when we draw up our basic policy direction, for example on planning law—the rights of the child would be built into the fundamentals of that strategic decision making at the very beginning and into the documents that flow from policy development. That would also be the case whenever we do anything connected with making law. To my mind, those would be the clear strategic points of the Assembly

Andrew Davies: Nid yw hynny mewn gwirionedd yn ateb y cwestiwn pam mae’r polisi wedi newid. Mae’n amlwg ei fod wedi newid, oherwydd yr oeddwn yn bresennol pan gafodd ei ddatblygu gyntaf.

Huw Lewis: Newid i beth? Nid oeddwn i’n bresennol.

Andrew Davies: Yr ydych yn dweud eich bod yn gwneud penderfyniadau o natur strategol. Yn amlwg, yr ydych wedi symud oddi wrth rywbeth a oedd yn wir yn treiddio i bopeth yn ddiwahân, ac yn awr yr ydych yn cyfeirio at benderfyniadau sy’n ‘strategol eu natur’.

Y pwynt arall yr wyf am ei godi yw fy mod wedi gweld llawer iawn o ddeddfwriaeth yn dod drwodd erbyn hyn sy’n dirprwyo pwerau sylweddol i Weinidogion i benderfynu—yn yr achos hwn, pwerau i benderfynu ar y cynllun, ac mae Natalie wedi dweud y bydd y cynllun yn pennu pa feysydd o swyddogaethau’r Llywodraeth neu’r Gweinidogion y bydd yn gymwys iddynt.

Huw Lewis: Mae’n gymwys i holl swyddogaethau’r Gweinidogion.

Andrew Davies: Beth yw ystyr ‘strategol ei natur’ felly?

Huw Lewis: Yr wyf wedi ceisio ateb y cwestiwn hwn hyd eithaf fy ngallu. Yr wyf wedi rhoi ichi fy nehongliad i o ‘benderfyniad strategol ei natur’, a byddir yn ymgynghori ynghylch y cwestiwn hwnnw ar hyd a lled cymdeithas Cymru wrth inni lunio cynllun y plant. Nid cyfyngu ar gwmpas y ddeddfwriaeth mewn unrhyw ffordd yw pwrpas cael yr ymadrodd ‘strategol ei natur’ yn y Mesur arfaethedig, ond targedu’i effaith er budd plant. Felly, pan fydd Llywodraeth y Cynulliad yn ymgymryd â hanfodion ei gwaith—pan fyddwn yn llunio’n cyfeiriad polisi sylfaenol, er enghraifft ar gyfraith cynllunio—byddai hawliau’r plentyn yn cael eu cynnwys yn yr hanfodion wrth wneud y penderfyniad strategol hwnnw ar y cychwyn un ac yn cael eu cynnwys yn y dogfennau sy’n llifo o ddatblygu polisi. Felly y byddai hi hefyd pan fyddwn yn gwneud unrhyw beth sy’n gysylltiedig â chreu cyfraith. I’m meddwl i, dyna fyddai pwyntiau strategol clir

Government's work.

gwaith Llywodraeth y Cynulliad.

[49] There is a discussion to be had about this, but nothing in the proposed legislation would restrict it, or allow Ministers to restrict it, to certain functions of the Assembly Government. We could not suddenly decide to exempt housing policy; that is not possible. This is entirely pervasive, and affects all subject areas and portfolios. I suppose that having the phrase there is a tactical decision in that we will concentrate our training, development of awareness and awareness raising on those points in decision making when a strategic decision is made, at the start, rather than setting about a diluted exercise of trying to train every member of the Assembly Government's staff and to say, for example, that someone who is drawing up a Minister's diary has to have due regard to the rights of the child when doing that. There has to be a point at which—

Mae trafodaeth i'w chynnal ynglŷn â hyn, ond nid oes dim yn y ddeddfwriaeth strategol a fyddai'n ei chyfyngu, nac yn caniatáu i Weinidogion ei chyfyngu, i swyddogaethau penodol sy'n perthyn i Lywodraeth y Cynulliad. Ni allem benderfynu'n sydyn eithrio'r polisi tai; nid yw hynny'n bosibl. Mae'n treiddio i bopeth, ac mae'n effeithio ar bob maes pwnc a phortffolio. Mae'n debyg fod cynnwys yr ymadrodd yn benderfyniad tactegol yn yr ystyr y bydd yn ffocysu ein hyfforddiant, y datblygu ymwybyddiaeth a'r gwaith codi ymwybyddiaeth ar y pwyntiau hynny pan fydd penderfyniad strategol yn cael ei wneud, a hynny ar y dechrau, yn hytrach na bwrw iddi gydag ymarferiad gwannach a cheisio hyfforddi pob aelod o staff Llywodraeth y Cynulliad a dweud, er enghraifft, fod rhaid i rywun sy'n gyfrifol am ddyddiadur Gweinidog roi sylw dyledus i hawliau'r plentyn wrth wneud hynny. Rhaid bod pwynt pryd—

[50] **Leanne Wood:** You would have to have due regard for equality in everything that you do. There is no opting out of your duty to comply with equality legislation. There is too much potential to opt out of this.

Leanne Wood: Byddai rhaid ichi roi sylw dyledus i gydraddoldeb ym mhopeth a wnewch. Nid oes dewis i ymwrthod â'r ddyletswydd i gydymffurfio â'r ddeddfwriaeth cydraddoldeb. Mae gormod o botensial i ddewis eithrio o hyn.

[51] **Huw Lewis:** There are no opt-outs in this proposal—

Huw Lewis: Nid oes dewis i eithrio o hyn—

[52] **Leanne Wood:** Do you do not foresee arguments about what is and what is not a strategic decision? You think that there would be clarity.

Leanne Wood: Onid ydych yn rhagweld dadleuon ynglŷn â'r hyn sy'n benderfyniad strategol a'r hyn nad yw'n benderfyniad strategol? Credaf y dylai fod eglurder.

[53] **Huw Lewis:** I would be interested to hear the concerns about the definition of 'strategic decision' leading to things being opted out of, because I cannot think of any.

Huw Lewis: Hoffwn glywed y pryderon ynglŷn â'r diffiniad o 'benderfyniad strategol' yn arwain at ddewis eithrio o bethau, oherwydd ni allaf fi feddwl am yr un.

[54] **Mark Isherwood:** The Deputy Minister has made his position clear, and no doubt the committee will choose to revisit this later, and there may be further questioning on this point. However, we have a lot of questions to get through, and Eleanor wants to ask a supplementary question.

Mark Isherwood: Mae'r Dirprwy Weinidog wedi gwneud ei safbwynt yn glir, ac yr wyf yn siŵr y bydd y pwyllgor yn dewis edrych eto ar hyn yn ddiweddarach, ac efallai y ceir cwestiynu pellach ar y pwynt hwn. Fodd bynnag, mae gennym lawer o gwestiynau i fynd drwyddynt, ac mae Eleanor am ofyn cwestiwn atodol.

[55] **Eleanor Burnham:** To me, this

Eleanor Burnham: I mi, mae hwn yn

seems like a cop-out clause. I defer to the former Minister on the committee on this point, who knows far more than most of us, but the phrase does not seem to clarify the situation. It muddies the water and gives the potential for a cop-out or opt-out, or whatever you want to call it. Surely, this will lead to people accusing the Government of cherry picking, and I have not been persuaded by the argument. It will be difficult to decide—and someone will have to decide; I presume that it will be your decision—what is strategic and what is not. I am not convinced. Everyone should be involved with this at every level—strategic or otherwise.

9.30 a.m.

[56] **Huw Lewis:** We have come a long way to get to this point, and a huge amount of consultation has been carried out thus far. This is the first point at which these particular concerns have been pointed out. I accept that, if the committee has a worry in this respect, it is something that we have to explore. As I said, there will be further consultation with all stakeholders on drawing up the scheme in an attempt to get a robust, clear and transparent understanding between all of us here in Wales of what a strategic decision actually is. I want to return to the fact that are no functions that a Minister can exempt from this. This legislation does not allow wriggle room for Ministers to suddenly decide that they would take a piece of their decision making out of the due regard duty. It is all-pervasive and there are no hidden corners. In fact, that pervasiveness has been welcomed across Wales by practically all stakeholders who have taken part in the consultation process so far. They have recognised that it is a huge step forward from where we were. I want to bring Marcus in on this for a moment.

[57] **Mr Hill:** I would just like to respond to the point about clarity. I understand that you are saying that there is scope for misinterpreting what constitutes a strategic decision. I understand that there is quite a lot of confusion around the table. To reiterate what we are saying about this, with regard to

ymddangos fel cymal ymwrthod â chyfrifoldeb. Cymeraf air y cyn Weinidog ar y pwyllgor ar y mater hwn, sy'n gwybod llawer mwy na'r rhan fwyaf ohonom, ond nid yw'n ymddangos bod y cymal yn egluro'r sefyllfa. Mae'n cymylu pethau ac yn creu'r potensial i ymwrthod â chyfrifoldeb neu i ddewis eithrio, neu beth bynnag yr dydych am ei alw. Oni fydd hyn yn peri i bobl gyhuddo'r Llywodraeth o ddewis fel y mynna, ac nid yw'r ddadl wedi f'argyhoeddi. Bydd yn anodd penderfynu—a bydd rhywun yn gorfod penderfynu; cymeraf mai chi fydd yn penderfynu beth sy'n strategol a beth nad yw'n strategol. Nid wyf wedi f'argyhoeddi. Dylai pawb fod â rhan yn hyn ar bob lefel—strategol neu beidio.

Huw Lewis: Yr ydym wedi dod ymhell i gyrraedd y pwynt hwn, ac mae llawer iawn o ymgynghori wedi digwydd hyd yma. Dyma'r tro cyntaf i sylw gael ei dynnu at y pryderon neilltuol hyn. Yr wyf yn derbyn, os yw'r pwyllgor yn poeni yn y cyswllt hwn, ei fod yn rhywbeth y bydd rhaid inni ei archwilio. Fel y dywedais, bydd ymgynghori pellach gyda'r rhanddeiliaid i gyd ynghylch llunio'r cynllun mewn ymgais i gael dealltwriaeth gref, glir a thryloyw rhwng pawb ohonom yma yng Nghymru o beth yn union yw penderfyniad strategol. Yr wyf am fynd yn ôl at y ffaith a gall Gweinidog ddewis ymwrthod â hyn. Nid yw'r ddeddfwriaeth hon yn caniatáu'r hyblygrwydd i Weinidogion i benderfynu'n sydyn y byddent yn eithrio darn o'u gwaith gwneud penderfyniadau o'r ddyletswydd sylw dyledus. Mae'n treiddio i bopeth ac nid oes unrhyw gorneli cudd. Yn wir, mae'r ffaith ei bod yn treiddio i bopeth wedi cael ei chrosawu ar draws Cymru gan yr holl randdeiliaid bron sydd wedi cymryd rhan yn y broses ymgynghori hyd yma. Maent wedi cydnabod ei bod yn gam enfawr ymlaen o'r fan lle'r oeddem. Yr wyf am ddod â Marcus i mewn ar hyn am funud.

Mr Hill: Hoffwn ymateb i'r pwynt ynglŷn ag eglurder. Deallaf eich bod yn dweud bod lle i gamddehongli beth sy'n benderfyniad strategol. Yr wyf yn deall bod cryn dipyn o ddryswch ynglŷn â'r tabl. I ailadrodd yr hyn yr ydym yn ei ddweud am hyn, o ran datblygu'r cynllun ei hun, cyn mynd allan i

the development of the scheme itself, prior to going out to formal consultation and prior to it being laid before the Assembly and requiring the Assembly's approval before it is agreed, we will develop the scheme with stakeholders. They will include children and young people, so we hope that that will give us the opportunity to be incredibly clear. As you all know, many legislative proposals are not easy to read or understand. So, it is felt that that process will bring us to a position where this will be a great deal more understandable and transparent and that it will be easy, even for children and young people, to understand how it will be applied. So, that is the process that we will go through. I hope that that will allay some of your concerns about the confusion, because it will push us down that route to ensure that we are perfectly clear and transparent about what we are doing.

[58] **Mark Isherwood:** Our forthcoming oral evidence sessions will no doubt explore this and other matters with other stakeholders. We will perhaps return to this in our final evidence session with the Deputy Minister.

[59] **Huw Lewis:** Chair, it is worth mentioning one other thing. Equality legislation was mentioned. Equality legislation does not define what constitutes a strategic decision at all. So, we feel that we are heading towards a more robust, realistic picture of what can be delivered with the available resources through this way of working.

[60] **Mark Isherwood:** Yes, I think that you have made your position clear.

[61] **Leanne Wood:** Chair, I know that you want to move on from this now, because we are pushed for time, but I wonder whether I could just ask the Deputy Minister about the first question, which was to give us an example of how rights would be strengthened through this. If you do not have time to answer now, perhaps you could write to the committee with some examples.

[62] **Huw Lewis:** I would be happy to do that.

ymgyngori'n ffurfiol yn ei gylch a chyn iddo gael ei gyflwyno gerbron y Cynulliad ac inni ofyn am gymeradwyaeth y Cynulliad cyn cytuno arno, byddwn yn datblygu'r cynllun gyda rhanddeiliaid. Byddant yn cynnwys plant a phobl ifanc, felly gobeithiwn y bydd hynny'n rhoi'r cyfle inni i fod yn gwbl glir. Fel y gŵyr pawb ohonoch, mae llawer o gynigion deddfwriaethol nad ydynt yn hawdd eu darllen na'u deall. Felly, teimlir y bydd y broses honno'n dod â ni i sefyllfa lle bydd hyn yn llawer iawn mwy dealladwy a thryloyw ac y bydd yn hawdd, hyd yn oed i blant a phobl ifanc, ddeall sydd y caiff ei gymhwyso. Felly, dyna'r broses y byddwn yn mynd drwyddi. Gobeithiaf y bydd hynny'n lliniaru rhai o'ch pryderon ynglŷn â'r dryswch, oherwydd bydd yn ein gwthio i lawr y llwybr hwnnw i sicrhau ein bod yn hollol glir a thryloyw ynglŷn â'r hyn yr ydym yn ei wneud.

Mark Isherwood: Mae'n siŵr y gwnaiff ein sesiynau tystiolaeth lafar a gynhelir cyn bo hir archwilio hyn a materion eraill gyda rhanddeiliaid eraill. Efallai y gallem ddod yn ôl at hyn yn ein sesiwn tystiolaeth terfynol gyda'r Dirprwy Weinidog.

Huw Lewis: Gadeirydd, mae'n werth crybwyll un peth arall. Crybwyllwyd deddfwriaeth cydraddoldeb. Nid yw deddfwriaeth cydraddoldeb yn diffinio beth yw penderfyniad strategol o gwbl. Felly, teimlwn ein bod yn anelu tuag at ddarlun mwy cadarn a realistig o'r hyn y gellir ei gyflawni gyda'r adnoddau sydd ar gael drwy'r ffordd hon o weithio.

Mark Isherwood: Iawn, credaf eich bod wedi gwneud eich safbwynt yn glir.

Leanne Wood: Gadeirydd, gwn eich bod am symud ymlaen o hyn yn awr, oherwydd mae'r amser yn dynn, ond tybed a gaf fi holi'r Dirprwy Weinidog ynglŷn â'r cwestiwn cyntaf, sef rhoi enghraifft inni o sut y câi hawliau eu cryfhau drwy hyn. Os nad oes gennych amser i ateb yn awr, efallai y gallech ysgrifennu at y pwyllgor gyda rhai enghreifftiau.

Huw Lewis: Byddwn yn hapus iawn i wneud hynny.

[63] **Alun Davies:** We have discussed the place of this legislation in Government and how Ministers will take this legislation forward in informing their decision making. In the explanatory memorandum, you state that the legislation will have an indirect impact on other bodies. So, this legislation simply places duties on Welsh Ministers. Can you describe what you mean by an ‘indirect impact’?

[64] **Huw Lewis:** You are quite right, Alun, that the legislation applies to Assembly Government Ministers only and that there would be no direct duties imposed on other bodies. It is about having to have due regard to the UNCRC and the optional protocols when strategic decisions are made, and, in particular, when legislation is made. So, it is those ministerial powers that would have an effect on other bodies—not least within that list of local authorities—and the way that they work. So, those strategic decisions when we are making policy about children, planning and health will have a ripple effect from the due regard that the Minister has to pay to the UNCRC. Rippling through the machinery of Government, if you like, across Wales would have that indirect effect on the actions and decisions of other bodies.

[65] **Alun Davies:** Could you give us an example of what you mean by that ripple effect?

[66] **Huw Lewis:** For instance, we may take a particular look at the rights of children with regard to the development of planning law. The Children and Young People Committee is currently holding an inquiry into safe places to play and hang out. In the future, an Assembly Government Minister who is engaged in making law or policy with regard to planning would have to take the UNCRC into account. That would affect the colour of the legislation or the policy that he or she makes, which moves on to affect how local government implements its functions in terms of planning law. This will be pervasive across the portfolios of all Ministers and all

Alun Davies: Yr ydym wedi trafod lle'r ddeddfwriaeth hon mewn Llywodraeth a sut y bydd y Gweinidogion yn symud y ddeddfwriaeth hon ymlaen fel sail i'w penderfyniadau. Yn y memorandwm esboniadol, dywedwch y caiff y ddeddfwriaeth effaith anuniongyrchol ar gyrff eraill. Felly, dim ond ar Weinidogion Cymru y mae'r ddeddfwriaeth hon yn rhoi dyletswyddau. A allwch ddisgrifio'r hyn a olygwch gan 'effaith anuniongyrchol'?

Huw Lewis: Yr ydych yn hollol iawn, Alun, mai dim ond i Weinidogion Llywodraeth y Cynulliad y mae'r ddeddfwriaeth hon yn berthnasol ac na fyddai unrhyw ddyletswyddau uniongyrchol yn cael eu rhoi ar gyrff eraill. Mae'n fater o orfod rhoi sylw dyledus i Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn a'r protocolau dewisol wrth wneud penderfyniadau strategol, ac, yn arbennig, wrth lunio deddfwriaeth. Felly, y pwerau hynny o eiddo'r Gweinidogion fyddai'n effeithio ar gyrff eraill—gydag awdurdodau lleol yn amlwg ar y rhestr honno—a'r ffordd y maent yn gweithio. Felly, bydd y penderfyniadau strategol hynny pan fyddwn yn llunio polisi ynglŷn â phlant, cynllunio ac iechyd yn cael effaith grychdonni oherwydd y sylw dyladwy y mae rhaid i'r Gweinidog ei roi i'r confensiwn. Byddai hynny'n digwydd drwy beirianwaith y Llywodraeth, os mynnwch chi, ar draws Cymru gan gael effaith anuniongyrchol ar weithredoedd a phenderfyniadau cyrff eraill.

Alun Davies: A allech roi enghraifft inni o'r hyn a olygwch wrth sôn am yr effaith grychdonni honno?

Huw Lewis: Er enghraifft, gallem edrych yn arbennig ar hawliau plant yng nghyswllt datblygu cyfraith cynllunio. Mae'r Pwyllgor Plant a Phobl Ifanc yn cynnal ymchwiliad ar hyn o bryd i leoedd diogel i chwarae a threulio amser ynddynt. Yn y dyfodol, byddai rhaid i Weinidog yn Llywodraeth y Cynulliad sydd wrthi'n llunio cyfraith neu bolisi mewn perthynas â chynllunio roi ystyriaeth i Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn. Byddai hynny'n effeithio ar wawr y ddeddfwriaeth neu'r polisi y byddai ef neu hi'n ei lunio, ac mae hynny wedyn yn effeithio ar sut y mae llywodraeth leol yn gweithredu'i swyddogaethau o

outside bodies that Ministers can influence through their powers.

[67] **Alun Davies:** Thank you for that, Deputy Minister. In terms of how the legislation is framed, I find it quite curious that the duty is limited simply to Ministers. Would it not be a more effective tool to place this duty directly on all of those bodies, whether they are local authorities, NHS bodies, or local education authorities?

[68] **Huw Lewis:** That is a route that we could follow. However, it would throw up difficulties of its own in that we would have to be very clear about what we expected in terms of resource and timescales for those bodies to realistically engage with the legislation. They might want to consult with their partner organisations. We would have to have a regard to the fairness and reasonableness of what we would expect outside bodies to commit to in a timescale. There could be huge resource implications in terms of what we might be expecting other bodies to do. It is a possible route that we could take, but it would take a great deal longer in terms of timescales for us, and we would have to have the debate on exactly which outside bodies we are talking about. It is a matter of asking whether we will go right down to the level of very small organisations that might be involved in work that may or may not be directly connected to children and young people, which organisations we should include, which organisations we should not include, and how we would consult on all of that. We would essentially have to start all over again.

[69] **Alun Davies:** Or we would need to have started from a different place.

[70] **Huw Lewis:** Yes.

[71] **Alun Davies:** It is quite common in legislation for a number of different bodies to have duties imposed upon them. The Welsh language legislation is probably the best example at present, but the carers' legislation that this committee dealt with in its previous

safbwynt cyfraith cynllunio. Bydd hyn yn treiddio drwy bortffolios pob Gweinidog a phob corff allanol y gall Gweinidogion ddylanwadu arnynt drwy eu pwerau.

Alun Davies: Diolch ichi am hynny, Ddiprwy Weinidog. O ran sut y caiff y ddeddfwriaeth ei fframio, mae'n ymddangos yn bur ryfedd fod y ddyletswydd yn cael ei chyfyngu i Weinidogion yn unig. Oni fyddai'n arf mwy effeithiol rhoi'r ddyletswydd hon yn uniongyrchol ar yr holl gyrff hynny, pa un a ydynt yn awdurdodau lleol, yn gyrff GIG, neu'n awdurdodau ieched lleol?

Huw Lewis: Mae hwnnw'n llwybr y gallem ei ddilyn. Fodd bynnag, byddai hynny'n creu ei anawsterau ei hun gan y byddai rhaid inni fod yn glir iawn ynglŷn â'r hyn y byddem yn ei ddisgwyl o ran adnoddau ac amserlenni er mwyn i'r gyrff hynny weithio o ddifrif gyda'r ddeddfwriaeth. Efallai y byddent am ymgynghori â'u gyrff partner. Byddai rhaid inni ystyried pa mor deg a rhesymol yw'r hyn y byddem yn disgwyl i gyrff allanol ymrwymo iddo o fewn ffrâm amser. Gallai fod goblygiadau enfawr o ran adnoddau o safbwynt yr hyn y byddem yn disgwyl i gyrff eraill ei wneud. Mae'n llwybr posibl y gallem ei ddilyn, ond byddai'n cymryd llawer mwy o amser inni, a byddai rhaid inni gynnal trafodaeth ar ba gyrff allanol yn union yr ydym yn sôn amdanynt. Mae'n fater o ofyn a ydym am fynd i lawr cyn belled â lefel sefydliadau bach iawn sy'n gwneud gwaith a allai fod yn uniongyrchol gysylltiedig â phlant a phobl ifanc ac efallai ddim, pa sefydliadau y dylem eu cynnwys, pa sefydliadau na ddylem eu cynnwys, a sut y byddem yn ymgynghori ynghylch hynny oll. Yn ei hanfod, byddai rhaid inni ddechrau o'r dechrau eto.

Alun Davies: Neu byddai angen inni fod wedi dechrau o fan gwahanol.

Huw Lewis: Byddai.

Alun Davies: Mae'n ddigon cyffredin mewn deddfwriaeth i ddyletswyddau gael eu rhoi ar nifer o gyrff gwahanol. Mae'n debyg mai'r ddeddfwriaeth ynghylch y Gymraeg yw'r enghraifft orau ar hyn o bryd, ond dilynodd y ddeddfwriaeth ynghylch gofalwyr y deliodd y

work followed an approach of that sort. In terms of what you are seeking to achieve, Minister, in terms of the policy objectives, the resource argument is only sustainable if those resources would not be expended in any case in pursuit of this policy objective. If Welsh Ministers place this at the centre of their decision making as a part of the context in which decisions are taken and they then impose duties on other bodies, that resource implication is there in any case, is it not?

[72] **Huw Lewis:** I am talking about the resources that would need to be committed in order to properly and fairly engage other bodies in the making of this legislation, which would be quite different from the resources that you are talking about, which would be the resources that would need to be committed in order to enact or make real the effects of this legislation. In other words, it is about the consultation costs and the timescales involved.

9.40 a.m.

[73] There is a test here of fairness and reasonableness in terms of what we might expect Flintshire County Council, for example, to be engaged with when it comes to the UNCRC and, as the strategic decision-making body in Wales, we feel that this should begin with the Welsh Assembly Government.

[74] **Alun Davies:** That implies that at later times, you would consider imposing these duties on other bodies.

[75] **Huw Lewis:** I am sure that many things are possible in later times, but in a foreseeable timescale, in terms of what is realistic in order to make progress on the children and young people agenda, we have to begin with the Welsh Assembly Government.

[76] **Alun Davies:** Let us move forward on this. On the children's schemes that you envisage being developed as a consequence of this legislation, in section 3(2) of the proposed Measure, you state that:

pwyllgor hwn â hi yn ei waith blaenorol ddull o'r math hwnnw. O safbwynt yr hyn yr ydych yn ceisio'i gyflawni, Weinidog, o safbwynt yr amcanion polisi, yr unig adeg y mae'r ddadl ynglŷn ag adnoddau yn gynaliadwy yw pe na bai'r adnoddau hynny'n cael eu defnyddio beth bynnag er ymgyrraedd at yr amcan polisi hwn. Os bydd Gweinidogion Cymru'n rhoi hyn wrth galon eu penderfyniadau fel rhan o'r cyd-destun y gwneir penderfyniadau ynddo a'u bod wedyn yn gosod dyletswyddau ar gyrff eraill, mae'r goblygiadau o ran adnoddau yn bodoli beth bynnag, onid ydynt?

Huw Lewis: Yr wyf yn sôn am yr adnoddau y byddai angen eu rhwymo er mwyn ymgysylltu'n briodol a theg â chyrff eraill wrth lunio'r ddeddfwriaeth hon, a fyddai'n wahanol iawn i'r adnoddau yr ydych chi'n sôn amdanynt, sef yr adnoddau y byddai angen eu rhwymo er mwyn cyflawni neu wireddu effeithiau'r ddeddfwriaeth hon. Mewn geiriau eraill, mae a wnelo â'r costau ymgynghori a'r amserlenni dan sylw.

Mae yma brawf tegwch a rhesymoldeb o ran yr hyn y gallem ddisgwyl i Gyngor Sir y Fflint, er enghraifft, ymwneud ag ef yng nghyd-destun y confensiwn ac, fel y corff sy'n gwneud penderfyniadau strategol yng Nghymru, credwn y dylai hyn ddechrau gyda Llywodraeth Cynulliad Cymru.

Alun Davies: Mae hynny'n awgrymu y byddech, yn y dyfodol, yn ystyried rhoi'r dyletswyddau hyn ar gyrff eraill.

Huw Lewis: Yr wyf yn siŵr fod llawer o'r pethau hyn yn bosibl yn y dyfodol, ond o fewn amserlen y gellir ei rhagweld, o ran yr hyn sy'n realistig er mwyn symud yr agenda plant a phobl ifanc ymlaen, yr ydym wedi dechrau gyda Llywodraeth Cynulliad Cenedlaethol.

Alun Davies: Gadewch inni symud ymlaen ar hyn. Yng nghyswllt y cynlluniau plant yr ydych yn rhagweld y cânt eu datblygu o ganlyniad i'r ddeddfwriaeth hon, yn adran 3(2) o'r Mesur arfaethedig, dywedwch:

- [77] the Welsh Ministers may have regard to any other documents (whether or not issued by the Committee) and to any other matters which they consider to be relevant.’
- [78] Will you give us examples of how you see that operating and what that means in practice?
- [79] **Huw Lewis:** Sorry, could you repeat that, Alun?
- [80] **Alun Davies:** In terms of children’s schemes, section 3(2) of the Measure states that you provide for those schemes to be revised or remade at different times, and when doing so, Welsh Ministers may have regard to other documents whether or not issued by the committee and to any other matters. Will you give us examples of what that means in practice?
- [81] **Huw Lewis:** The most obvious documents would emanate from the children’s commissioner, for instance. However, there are other circumstances in which we might want to review the arrangements in the scheme, for example, as a result of day-to-day scrutiny work of the Assembly, committees and Assembly Members themselves, or research reports that might emerge as time goes by and so on. So, the provision does provide us with the flexibility to deal with circumstances like that as they arise and as we might want to further improve the scheme.
- [82] **Alun Davies:** I will leave it there.
- [83] **Mark Isherwood:** Thank you. Darren has the next question.
- [84] **Darren Millar:** Section 3 of the proposed Measure places a duty on Welsh Ministers to consult with relevant parties, including the Children’s Commissioner for Wales, when you are preparing, remaking or revisiting the children’s schemes. I notice that it only refers to the need to consult with children and young persons and the children’s commissioner, and then it has this sort of catch-all category:
- ‘caiff Gweinidogion Cymru roi sylw i unrhyw ddogfennau eraill (p’un a ddyroddir hwy gan y Pwyllgor ai peidio) ac i unrhyw faterion eraill sydd yn eu barn hwy yn berthnasol.’
- A wnewch chi roi enghreifftiau inni o sut y gwelwch hynny’n gweithio a beth y mae hynny’n ei olygu yn ymarferol?
- Huw Lewis:** Mae’n ddrwg gennyf, a wnewch chi ailadrodd hynny, Alun?
- Alun Davies:** O ran y cynlluniau plant, dywed adran 3(2) o’r Mesur eich bod yn darparu ar gyfer diwygio neu ail-lunio’r cynlluniau hynny ar wahanol adegau, a phan fydd hynny’n digwydd, y caiff Gweinidogion Cymru roi sylw i ddogfennau eraill pa un a ydynt wedi cael eu dyroddi gan y pwyllgor ai peidio ac i unrhyw faterion eraill. A wnewch chi roi enghreifftiau inni o’r hyn y mae hynny’n ei olygu yn ymarferol?
- Huw Lewis:** Byddai’r dogfennau mwyaf amlwg yn deillio o’r comisiynydd plant, er enghraifft. Fodd bynnag, mae amgylchiadau eraill lle byddem efallai am adolygu’r trefniadau yn y cynllun, er enghraifft, o ganlyniad i waith craffu’r Cynulliad, pwyllgorau ac Aelodau Cynulliad eu hunain o ddydd i ddydd, neu i adroddiadau ymchwil a allai ymddangos ymhen amser, ac ati. Felly, mae’r ddarpariaeth yn rhoi inni’r hyblygrwydd i ddelio ag amgylchiadau felly wrth iddynt godi ac fel y byddem am wella’r cynllun ymhellach efallai.
- Alun Davies:** Fe’i gadawaf felly
- Mark Isherwood:** Diolch. Darren sydd â’r cwestiwn nesaf.
- Darren Millar:** Mae Adran 3 o’r Mesur arfaethedig yn rhoi dyletswydd ar Weinidogion Cymru i ymgynghori â phartion perthnasol, yn cynnwys Comisiynydd Plant Cymru, pan fyddwch yn paratoi, yn ail-wneud neu’n adolygu’r cynlluniau plant. Sylwaf nad yw ond yn cyfeirio at yr angen i ymgynghori â phlant a phobl ifanc a’r comisiynydd plant, ac yna ceir y categori hwn sy’n rhyw fath o gategori dal popeth:

[85] 'such other persons or bodies as Welsh Ministers consider appropriate'. 'unrhyw bobl neu gyrff eraill y mae Gweinidogion Cymru yn barnu eu bod yn briodol'.

[86] Why have you not specified specifically on the face of the Measure a list of other appropriate bodies? Pam nad ydych wedi cynnwys yn benodol ar wyneb y Mesur restr o gyrff eraill priodol?

[87] **Huw Lewis:** I suppose the perennial problem with specifying a list is first of all the danger of omissions, particularly when circumstances or issues may be thrown into the debate. It may be unforeseeable. We could be facing issues in four, five or six years' time that we had not thought were any kind of priority at the moment, and that would involve consultation with bodies that we would not have thought of putting on a prescriptive list at the moment. There is a difference when it comes to the commissioner, for instance, because that is built into the warp and weft of everything that we will do in relation to children and young people. However, we have to have that flexibility first of all to respond to circumstance and how those circumstances affect children and young people. So, we do not think that it would be appropriate to have a prescriptive list published at the moment because I would bet my mortgage that, at some point or other, we would find that list to be inadequate, unfair or inflexible in some way.

Huw Lewis: Mae'n debyg mai'r broblem bob amser wrth bennu rhestr yw, yn gyntaf, y perygl o hepgor enwau, yn enwedig pan fydd amgylchiadau neu faterion yn cael eu taflu i'r ddadl efallai. Efallai y bydd rhywbeth nas rhagwelwyd. Gallem fod yn wynebu materion ymhen pedair, pump neu chwe blynedd nad oeddem wedi meddwl ar hyn o bryd eu bod yn flaenoriaeth o unrhyw fath, a byddai hynny'n golygu ymgynghori â chyrff na fyddem wedi meddwl eu rhoi ar restr ragnodol ar hyn o bryd. Mae'n wahanol wrth ystyried y comisiynydd, er enghraifft, oherwydd mae hynny wedi'i gynnwys yng ngwead popeth a wnawn mewn perthynas â phlant a phobl ifanc. Fodd bynnag, rhaid inni gael yr hyblygrwydd hwnnw, yn gyntaf i ymateb i amgylchiadau ac i sut y mae'r amgylchiadau hynny'n effeithio ar blant a phobl ifanc. Felly, nid ydym yn meddwl y byddai'n briodol cael cyhoeddi rhestr ragnodol ar hyn o bryd oherwydd byddwn yn betio fy morgais y byddem, ar ryw adeg neu'i gilydd, yn canfod bod y rhestr honno'n annigonol, yn annheg neu'n anhyblyg mewn rhyw ffordd.

[88] **Darren Millar:** It seems to me that there are some obvious ones that you could include and still have a catch-all category at the end. The Children and Family Court Advisory and Support Service Cymru and children and young people's partnerships in local authorities would seem to me to be organisations that you could easily list and still have a catch-all category at the end.

Darren Millar: Mae'n ymddangos i mi fod yna rai amlwg y gallech eu cynnwys a dal i fod â chategori dal popeth ar y diwedd. Byddai Gwasanaeth Cyngori a Chynorthwyo Llys i Blant a Theuluoedd Cymru a'r partneriaethau plant a phobl ifanc mewn awdurdodau lleol yn ymddangos i mi'n sefydliadau y gallech yn hawdd eu rhestru a dal i fod â chategori dal popeth ar y diwedd.

[89] The other issue here is that we must ensure that consultation is not just a tick-box exercise. You referred to it being a tick-box exercise if the terms of the proposed Measure regarding the duty to pay due regard had an impact across all decisions that Ministers make, rather than just strategic decisions. Is there not a danger in section 3(4) that because Y mater arall yma yw bod rhaid inni sicrhau nad yw ymgynghori yn ddim ond ymarferiad ticio blychau. Cyfeiriasoch ato fel ymarferiad ticio blychau pe bai telerau'r Mesur arfaethedig o ran y ddyletswydd i roi sylw dyledus yn cael effaith ar draws yr holl benderfyniadau y mae Gweinidogion yn eu gwneud, yn hytrach na dim ond

it does not say that you, as Ministers, have to pay due regard to the outcome of consultations, you could simply choose to ignore the outcome of consultations? The children's commissioner raised concerns on that point when the draft of the proposed Measure was being looked at. As a Deputy Minister, would you object to the inclusion of a requirement on Welsh Ministers to pay due regard to the outcome of a consultation on the face of the proposed Measure?

[90] **Huw Lewis:** On your suggestion about bodies such as CAF/CASS and so on, the problem is that that is your sincerely held list, but Eleanor would have another, I would have another and so on, and we would rapidly get ourselves into a very difficult discussion about who should be included and who should not. In terms of consultation, there is nothing in the proposed Measure that would change the way that the Assembly Government has undertaken consultation prior to this point. The consultation would be undertaken in the way in which we have always undertaken it, and I do not see any reason connected to this legislation as to why we should suddenly change the way that we have regard to our consultation processes. I am rather proud of the fact that if any criticism has been levelled at the Assembly Government over time, it is that its consultation processes are perhaps a little bit too in-depth and have taken a bit too long. The consultation aspect of things will continue as it has over the last 11 years.

[91] **Darren Millar:** The issue that I am trying to raise is that in other pieces of legislation that the Assembly Government has brought forward, there has been a requirement to have regard to the outcomes of consultation, which has been accepted by Ministers, usually by amendment after some discussion at committee. Usually, the phrase, 'pay regard to the outcomes of the consultation', or something similar, has been included in the final draft of the legislation approved by the National Assembly. Given the good record that you indicate that the Assembly Government has on consulting and

penderfyniadau strategol. Onid oes perygl yn adran 3(4), gan nad yw'n dweud bod rhaid i chi, fel Gweinidogion, roi sylw dyledus i ganlyniad yr ymgynghoriadau, y gallech ddewis anwybyddu canlyniadau ymgynghoriadau? Cododd y comisiynydd plant bryderon ynglŷn â'r pwynt hwnnw pan oedd drafft y Mesur arfaethedig yn cael ei ystyried. Fel Dirprwy Weinidog, a fydddech yn gwrthwynebu cynnwys gofyniad ar Weinidogion Cymru i roi sylw dyledus i ganlyniad ymgynghori ar wyneb y Mesur arfaethedig?

Huw Lewis: O ran eich awgrym ynglŷn â chyrff fel CAF/CASS ac ati, y broblem yw mai dyma'ch rhestr chi, yn gwbl ddiffuant, ond byddai gan Eleanor restr wahanol, byddai gennyf innau un wahanol ac yn y blaen, a buan iawn y caem ein hunain mewn trafodaeth anodd iawn ynglŷn â phwy ddylai gael ei gynnwys a phwy na ddylai gael ei gynnwys. O ran ymgynghori, nid oes dim yn y Mesur arfaethedig a fyddai'n newid y ffordd y mae Llywodraeth y Cynulliad wedi mynd ati i ymgynghori hyd yma. Câi'r ymgynghori ei wneud yn y ffordd yr ydym wedi'i wneud erioed, ac ni welaf unrhyw reswm yn gysylltiedig â'r ddeddfwriaeth hon sy'n dweud pam y dylem yn sydyn newid y ffordd yr ydym yn ystyried ein prosesau ymgynghori. Yr wyf yn bur falch o'r ffaith, os oes unrhyw feirniadaeth wedi cael ei hanelu at Lywodraeth y Cynulliad dros gyfnod o amser, mai'r feirniadaeth honno yw fod ei phrosesau ymgynghori ychydig yn rhy fanwl efallai a'u bod wedi cymryd ychydig gormod o amser. Bydd yr agwedd ymgynghori yn parhau fel y bu dros yr 11 mlynedd diwethaf.

Darren Millar: Y mater yr wyf yn ceisio'i godi yw y bu yna, mewn darnau eraill o ddeddfwriaeth y mae Llywodraeth y Cynulliad wedi'u dwyn gerbron, ofyniad i ystyried canlyniadau ymgynghoriadau, a bod hwnnw wedi cael ei dderbyn gan y Gweinidogion, fel arfer drwy welliant ar ôl peth trafodaeth mewn pwyllgor. Fel arfer, mae'r ymadrodd 'rhoi sylw i ganlyniadau'r ymgynghori', neu rywbeth tebyg, wedi cael ei gynnwys yn nrafft terfynol y ddeddfwriaeth a gymeradwyir gan y Cynulliad Cenedlaethol. O gofio'r record dda y cyfeiriwch ati sydd gan Lywodraeth y

making sure that it is not a tick-box exercise, I assume that it is something that you would not resist.

[92] **Huw Lewis:** I do not believe that anything needs to be said on the face of the proposed Measure in order to change the way that we respond to consultation, because Welsh Ministers are already under a public law duty to take proper account of the responses that they receive. As a way of proceeding, that has gone on for nigh on a decade without, to my knowledge, any great revolt in terms of the way that the good people of Wales respond to consultations or their expectations being particularly dashed by the way in which the consultations are used within the machinery of the Assembly Government. It is already there in public law, so I do not believe that there is any necessity to change tack in this particular proposed Measure.

[93] **Darren Millar:** We will take the views of other witnesses over the coming weeks on that particular issue. In the view of the children's commissioner, there will be no obligation on Welsh Ministers to share the results of any consultation with the National Assembly, the commissioner, children and young people, or stakeholders. Why is there no specific requirement for you to publish those results and make them available to Members of the National Assembly or anyone else who wants to scrutinise the fact that you have paid due regard to the outcome of the consultation?

[94] **Huw Lewis:** We already have a well-established process in terms of publishing the results of consultations, but a duty to publish all individual responses would lead us into a degree of difficulty. For instance, if we received a consultation response that was personal to an individual, that contained personal information or information about the individual's personal circumstances, or which contained information that the individual wanted to be included in the consultation, but which the respondent did not want to be broadcast across the nation, that would throw up difficulties for us. Again, the process that we have used is well worn, and is well understood by people across Welsh public

Cynulliad o ran ymgynghori a gwneud yn siŵr nad ymarferiad ticio blychau a geir, yr wyf yn cymryd fod hyn yn rhywbeth na fyddech yn ei wrthwynebu.

Huw Lewis: Ni chredaf fod angen dweud unrhyw beth ar wyneb y Mesur arfaethedig i newid y ffordd yr ydym yn ymateb i ymgynghori, oherwydd mae Gweinidogion Cymru eisoes o dan ddyletswydd cyfraith gyhoeddus i roi sylw priodol i'r ymatebion sy'n dod i law. Fel ffordd o fwrw ymlaen, felly y bu hi ers bron i ddegawd heb, hyd y gwn i, unrhyw wrthryfel mawr yn y ffordd y mae pobl dda Cymru yn ymateb i ymgynghoriadau na bod eu disgwyliadau'n cael eu dryllio gan y ffordd y defnyddir yr ymgynghoriadau ym mheirianwaith Llywodraeth y Cynulliad. Mae eisoes yno mewn cyfraith gyhoeddus, felly ni chredaf fod unrhyw reidrwydd i newid trywydd yn y mesur arfaethedig neilltuol hwn.

Darren Millar: Cymerwn farn tystion eraill dros yr wythnosau i ddod ar y mater neilltuol hwnnw. Ym marn y comisiynydd plant, ni fydd unrhyw reidrwydd ar Weinidogion Cymru i rannu canlyniadau unrhyw ymgynghoriad gyda'r Cynulliad Cenedlaethol, y comisiynydd, plant a phobl ifanc, na rhanddeiliaid. Pam nad oes gofyniad penodol arnoch i gyhoeddi'r canlyniadau hynny a sicrhau eu bod ar gael i Aelodau'r Cynulliad Cenedlaethol neu unrhyw un arall sydd am graffu ar y ffaith eich bod wedi rhoi sylw dyledus i ganlyniad yr ymgynghoriad?

Huw Lewis: Mae gennym eisoes broses sydd wedi hen ennill ei phlwyf o ran cyhoeddi canlyniadau ymgynghoriadau, ond byddai dyletswydd i gyhoeddi pob ymateb unigol yn peri rhywfaint o anhawster inni. Er enghraifft, pe baem yn cael ymateb i ymgynghoriad sydd yn bersonol am unigolyn, sy'n cynnwys gwybodaeth bersonol neu wybodaeth am amgylchiadau personol unigol, neu sy'n cynnwys gwybodaeth y mae'r unigolyn am iddi gael ei chynnwys yn yr ymgynghoriad, ond nad yw'r unigolyn am iddi gael ei darlledu ar draws y genedl, byddai hynny'n creu anawsterau inni. Eto, mae'r broses yr ydym wedi'i defnyddio wedi cael ei phrofi, ac mae pobl mewn

life. I do not see any reason to change that process in introducing this legislation.

bywyd cyhoeddus ar draws Cymru yn ei deall yn dda. Ni welaf unrhyw reswm i newid y broses honno wrth gyflwyno'r ddeddfwriaeth hon.

9.50 a.m.

[95] **Darren Millar:** There are personal comments and issues that people wish to keep private in all consultations, but they will still want to give a response. Surely you can give people a choice as to whether their consultation paper is published.

Darren Millar: Mae sylwadau a materion personol y mae pobl am eu cadw'n breifat ym mhob ymgynghoriad, ond maent yn dal i ddymuno ymateb. Oni allwch roi dewis i bobl a yw eu papur ymgynghori i gael ei gyhoeddi ai peidio?

[96] **Huw Lewis:** As I have already said, I do not see why we would conduct this consultation in a way that differs from the way in which we have conducted other consultations. We conduct consultations in a way that is transparent and clear, and I do not see any reason connected to this piece of law why we should change tack on that.

Huw Lewis: Fel y dywedais eisoes, nid wyf yn gweld pam y byddem yn cynnal yr ymgynghori hwn mewn ffordd sy'n wahanol i'r ffordd yr ydym wedi cynnal ymgynghoriadau eraill. Yr ydym yn cynnal ymgynghoriadau mewn ffordd sy'n dryloyw a chlir, ac ni welaf unrhyw reswm yn gysylltiedig â'r darn hwn o gyfraith pam y dylem newid trywydd ar hynny.

[97] **Darren Millar:** Section 4 of the proposed Measure imposes a duty on Welsh Ministers to publish a report every five years on how they have complied with the duty to have due regard to the convention. Do you think that there is a risk in having a report once every five years? That period of time is longer than the term of office of an Assembly Member or a Minister. Is it the 'NIMTOO'—that is, the 'not in my term of office'—attitude that is behind that? Do you not think that it needs to be done more frequently than that, perhaps annually or biannually, so that people can be held to account while they are in office for the actions that they have taken?

Darren Millar: Mae Adran 4 o'r Mesur arfaethedig yn rhoi dyletswydd ar Weinidogion Cymru i gyhoeddi adroddiad bob pum mlynedd ar sut maent wedi cydymffurfio â'r ddyletswydd i roi sylw dyledus i'r confensiwn. A ydych yn credu bod risg mewn cael adroddiad unwaith bob pum mlynedd yn unig? Mae'r cyfnod hwnnw o amser yn hwy na chyfnod Aelod Cynulliad neu Weinidog yn ei swydd. Ai'r agwedd 'NIMTOO'—hynny yw, 'not in my term of office'—sydd wrth wraidd hynny? Oni chredwch fod angen ei wneud yn amlach na hynny, bob blwyddyn neu ddwy flynedd efallai, fel y gellir dal pobl i gyfrif tra maent yn eu swydd am y camau y maent wedi'u cymryd?

[98] **Huw Lewis:** There is no conspiracy. The five-year period is there because that is the reporting cycle of the United Nations Committee on the Rights of the Child. Member states feed into it every five years. That is its timescale for reporting progress, and so ours would reflect that. However, within that, the first reporting period would end at the end of January 2013, which would be 12 months after the introduction of the proposed Measure. So, after 12 months we would pause and have a look at how things are progressing. Given the way in which we

Huw Lewis: Nid oes unrhyw gynllwyn. Mae'r cylch pum mlynedd yno gan mai dyna gylch adrodd Pwyllgor y Cenhedloedd Unedig ar Hawliau'r Plentyn. Mae aelod wladwriaethau yn bwydo iddo bob pum mlynedd. Dyna'r amserlen er mwyn adrodd ar gynnydd, felly byddai'n hamserlen ninnau yn adlewyrchu hynny. Fodd bynnag, o fewn hynny, byddai'r cyfnod adrodd cyntaf yn gorffen ddiwedd Ionawr 2013, a fyddai 12 mis ar ôl cyflwyno'r Mesur arfaethedig. Felly, ar ôl 12 mis byddem yn oedi i ystyried sut mae pethau'n mynd. O gofio'r ffordd yr

run things in Wales, there is nothing to stop reports of progress being requested through the normal business and scrutiny process of the Assembly. Committees, Assembly Members, Plenary and organisations such as the office of the Children's Commissioner for Wales, for example, could get involved in this. So, our normal scrutiny process is not affected by this in any way. If reports are required along the way regarding aspects of the effect of the legislation, nothing stops us from doing that. The requirement for reporting every five years is the minimum standard that is required, and it fits in with the way in which the United Nations operates.

[99] **Darren Millar:** Turning to section 5 of the proposed Measure, there is a duty on Welsh Ministers to promote knowledge, awareness and understanding among the public of the UNCRC and all the relevant protocols. In the explanatory memorandum, you say that there is a low baseline in relation to the level of understanding and knowledge among people at the moment. Apparently, the Our Rights, Our Story project consulted over 12,000 young people aged between 11 and 18, and found that only 8 per cent of young people had clear awareness of the UNCRC and the protocols, which is a pretty appalling state of affairs. How do you hope to be able to address that lack of knowledge and understanding? Further to that, how will you monitor whether you have been successful as Welsh Ministers in improving awareness and raising the level of understanding and knowledge across Wales?

[100] **Huw Lewis:** On how we would judge the success, perhaps it would be best judged by organisations such as Funky Dragon, which has undertaken work in this regard, and the children's commissioner. The duty that the proposed Measure imposes upon Ministers, as you rightly say, includes the duty to promote knowledge and understanding. So, starting with that ripple effect, whenever policy is made or legislation is drawn up, the duty to promote knowledge and understanding must be built into what the Minister sets out to do. That should then pervade the decision making and the

ydym yn rhedeg pethau yng Nghymru, nid oes dim i rwystro gwneud cais am adroddiadau cynnydd drwy broses fusnes a chraffu arferol y Cynulliad. Gallai pwyllgorau, Aelodau Cynulliad, Cyfarfod Llawn a sefydliadau fel swyddfa Comisiynydd Plant Cymru, er enghraifft, weithredu fel hyn. Felly, nid effeithir ar ein proses graffu arferol mewn unrhyw ffordd. Os oes angen adroddiadau wrth fynd ymlaen ynglŷn ag agweddau o effaith y ddeddfwriaeth, nid oes dim yn ein rhwystro rhag gwneud hynny. Y gofyniad i adrodd bob pum mlynedd yw'r lleiaf sy'n ofynnol, ac mae'n cyd-fynd â'r ffordd y mae'r Cenhedloedd Unedig yn gweithredu.

Darren Millar: A throi at adran 5 o'r Mesur arfaethedig, mae dyletswydd ar Weinidogion Cymru i hyrwyddo gwybodaeth, ymwybyddiaeth a dealltwriaeth ymysg y cyhoedd o Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn a'r holl brotocolau perthnasol. Yn y memorandwm esboniadol, dywedwch fod y lefel o ddealltwriaeth a gwybodaeth ymysg pobl yn isel ar hyn o bryd. Mae'n debyg i brosiect Ein Hawliau Ni, Ein Stori Ni ymgynghori â thros 12,000 o bobl ifanc rhwng 11 a 18 oed, a chanfod mae dim ond 8 y cant o bobl ifanc sydd ag ymwybyddiaeth glir o'r confensiwn a'r protocolau, sy'n sefyllfa ddigon truenus. Sut ydych chi'n gobeithio gallu mynd i'r afael â'r diffyg gwybodaeth a dealltwriaeth hwnnw? Yn ychwanegol at hynny, sut byddwch chi'n monitro a ydych wedi llwyddo fel Gweinidogion Cymru i wella ymwybyddiaeth a chodi'r lefel o ddealltwriaeth a gwybodaeth ar draws Cymru?

Huw Lewis: O ran sut y byddem yn barnu llwyddiant, efallai mai'r peth gorau fyddai iddo gael ei farnu gan sefydliadau fel y Ddraig Ffyni, sydd wedi gwneud gwaith yn y cyswllt hwn, a'r comisiynydd plant. Mae'r ddyletswydd y mae'r Mesur arfaethedig yn ei rhoi ar Weinidogion, fel y dywedwch yn briodol, yn cynnwys y ddyletswydd i hyrwyddo gwybodaeth a dealltwriaeth. Felly, gan ddechrau gyda'r effaith grychdonni, pryd bynnag y gwneir polisi neu y llunnir deddfwriaeth, rhaid i'r ddyletswydd i hyrwyddo gwybodaeth a dealltwriaeth gael ei chynnwys yn yr hyn y mae'r Gweinidog yn

implementation of functions right down the line, whatever the destination of that policy or that law.

[101] We all recognise that the levels of awareness are too low. Part of the purpose of the legislation is to alter mindsets, not least among children and young people with regard to their entitlements as citizens, given that they are in a special category because they do not have the vote or the same kind of influence on policy direction, for instance, that an adult may have. Therefore, children and young people have a voice that must be heard. Making children and young people understand that they have a voice and entitlements is central to changing our mindsets with regard to the effects of legislation and decision making upon young people. Perhaps Marcus could come in on this.

[102] **Mr Hill:** You mentioned Funky Dragon's research, which was undertaken widely across Wales among different age groups. We also have evidence from a number of other research studies, for example the children's commissioner for Wales found that 30 per cent of the children and young people whom he had surveyed had said that they had heard of the convention, and 13.5 per cent reported that they had learnt about it in school. It is important to remember with regard to the Funky Dragon research that the question that was actually asked was, 'Have you been taught about the UNCRC in school?'. We find that many of the surveys that are being undertaken by different people ask different questions; therefore the answers and the proportions that you get are very different.

[103] We cannot pretend that nothing is going on outside of the legislation on this issue. Funky Dragon and the children's commissioner have been spending quite a lot of time trying to raise awareness of the convention. You will be aware that we launched the 'Getting it Right' action plan last November, and one of the key priorities out of the 16 contained in that plan relates to raising awareness of the convention among adults and children alike. Since that time, we

bwrw iddi i'w wneud. Dylai hynny wedyn dreiddio drwy'r penderfyniadau a'r rhoi swyddogaethau ar waith ar bob cam yn y gadwyn, beth bynnag fo pen draw'r polisi hwnnw neu'r gyfraith honno.

Yr ydym i gyd yn cydnabod bod y lefelau ymwybyddiaeth yn rhy isel. Rhan o bwrpas y ddeddfwriaeth yw newid meddylfryd, yn arbennig ymysg plant a phobl ifanc ynglŷn â'u hawliau fel dinasyddion, o gofio eu bod mewn categori arbennig gan nad oes ganddynt bleidlais na'r un math o ddylanwad ar gyfeiriad polisi, er enghraifft, ag a fyddai gan oedolyn efallai. Felly, mae gan blant a phobl ifanc lais y mae rhaid iddo gael ei glywed. Mae gwneud i blant a phobl ifanc ddeall bod ganddynt lais a hawliau yn ganolog i newid ein meddylfryd ynglŷn â'r effaith a gaiff deddfwriaeth a phenderfyniadau ar bobl ifanc. Efallai y gallai Marcus ddod i mewn ar hyn.

Mr Hill: Crybwyllasoch ymchwil y Ddraig Ffyni, yr ymgwymerwyd yn eang â hi ar draws Cymru ymysg gwahanol grwpiau oedran. Mae gennym dystiolaeth hefyd o nifer o astudiaethau ymchwil, er enghraifft canfu comisiynydd plant Cymru fod 30 y cant o'r plant a'r bobl eang y gwnaeth ef arolwg ohonynt wedi dweud eu bod wedi clywed am y confensiwn, a dywedodd 13.5 y cant eu bod wedi dysgu amdano yn yr ysgol. Mae'n bwysig cofio mewn perthynas ag ymchwil y Ddraig Ffyni mai'r cwestiwn a ofynnwyd mewn gwirionedd oedd, 'Ydych chi wedi dysgu am Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn yn yr ysgol?' Mae llawer o'r arolygon yr ymgwymerir â nhw gan wahanol bobl yn gofyn cwestiynau gwahanol, felly mae'r atebion a'r cyfrannau a gewch yn wahanol iawn.

Ni allwn esgus nad oes dim yn digwydd ar wahân i'r ddeddfwriaeth ar y mater hwn. Mae'r Ddraig Ffyni a'r comisiynydd plant wedi bod yn treulio llawer o amser yn ceisio codi ymwybyddiaeth o'r confensiwn. Byddwch yn ymwybodol inni lansio cynllun gweithredu 'Gwneud Pethau'n Iawn' fis Tachwedd diwethaf, ac mae'n un o'r blaenoriaethau allweddol o blith yr 16 yn y cynllun hwnnw sy'n ymdrin â chodi ymwybyddiaeth o'r confensiwn ymysg

have started developing programmes of work, not just to work with schools to help support the personal and social education curriculum, but also wider programmes of work so that young people outside the school environment can be made aware of the convention. A lot of information has also gone out to general practitioner surgeries so that we can start helping others to understand a bit more about the convention. On measuring the success of that, there is a question in the adult national survey that tries to gauge our baseline for how many adults are aware of the convention and what it is there for. At the same time, a children and young people's module has been developed, and we are now looking at how we will improve that in the future, because the sample sizes were not very good. So, a lot of what we are talking about here is reinforcing the work that we are currently taking forward.

oedolion a phlant fel ei gilydd. Ers hynny, yr ydym wedi dechrau datblygu rhaglenni gwaith, nid yn unig i weithio gydag ysgolion i helpu i gefnogi'r cwricwlwm addysg bersonol a chymdeithasol, ond hefyd raglenni gwaith ehangach fel y gellir gwneud pobl ifanc y tu allan i amgylchedd yr ysgol yn ymwybodol o'r confensiwn. Mae llawer o wybodaeth wedi mynd allan hefyd i feddygfeydd lleol fel y gallwn ddechrau helpu eraill i ddeall ychydig mwy am y confensiwn. O safbwynt mesur llwyddiant hynny, mae cwestiwn yn yr arolwg cenedlaethol o oedolion sy'n ceisio mesur ein llinell sylfaen o ran faint o oedolion sy'n ymwybodol o'r confensiwn a beth yw ei ddiben. Ar yr un pryd, mae modiwl i blant a phobl ifanc wedi cael ei ddatblygu ac yr ydym yn ystyried yn awr sut y byddwn yn gwella hwnnw yn y dyfodol, oherwydd nid oedd maint y samplau yn dda iawn. Felly, mae llawer o'r hyn yr ydym yn siarad amdano yma yn atgyfnerthu'r gwaith yr ydym yn ei symud ymlaen ar hyn o bryd.

[104] **Andrew Davies:** Darren's question was very interesting. The Minister talks about the aspiration of changing the mindset, which we share, but changing behaviour among adults and children is equally important. Government is very good at analysing and setting up legislation, but it is the implementation stage that often goes amiss. So, to explore further Darren's second question, how is effectiveness to be measured and what will success look like?

Andrew Davies: Roedd cwestiwn Darren yn ddiddorol iawn. Mae'r Gweinidog yn sôn am y dyhead o newid meddylfryd, ac yr ydym yn rhannu hynny, ond mae newid ymddygiad ymysg oedolion a phlant yr un mor bwysig. Mae llywodraeth yn dda iawn am ddadansoddi a sefydlu deddfwriaeth, ond y cam gweithredu sy'n mynd ar chwâl yn aml. Felly, i edrych ymhellach ar gwestiwn Darren, sut y caiff effeithiolrwydd ei fesur a beth fyddai'n cael ei ystyried yn llwyddiant?

[105] **Huw Lewis:** That is an interesting question for which I do not have a pat answer this morning, but it is something that we need to explore as we develop the children's scheme, for instance. Our partner organisations would act as watchdogs with regard to measuring what success looks like in this regard, and the office of the children's commissioner springs to mind as being the obvious outside body to do that. Perhaps we need to explore that further as we develop the scheme.

Huw Lewis: Mae hynny'n gwestiwn diddorol nad oes gennyf ateb parod iddo y bore yma, ond mae'n rhywbeth y mae angen inni ei archwilio wrth inni ddatblygu'r cynllun plant, er enghraifft, Byddai ein partner sefydliadau yn gweithredu fel cyrff gwarchod o ran beth yw llwyddiant yn y cyswllt hwn, ac mae swyddfa'r comisiynydd plant yn dod i'r meddwl fel y corff allanol amlwg i wneud hynny. Efallai fod angen inni archwilio hynny ymhellach wrth inni ddatblygu'r cynllun

10.00 a.m.

[106] **Andrew Davies:** That would be welcome, and perhaps all Ministers could come back with some thoughts about how

Andrew Davies: Byddai hynny i'w goesawu, ac efallai y gallai pob Gweinidog ddod yn ôl â rhai syniadau am sut y gellid

that may be taken forward.

[107] **Eleanor Burnham:** Are you hoping to be able to go beyond what Andrew Davies just asked for with regard to monitoring its efficacy when all of this permeates down to the relevant level? I presume that the relevant level will be the local authorities, which will be delivering this across portfolios. I am still slightly confused because you have said this morning that this will be strategic and that you are going to decide on the strategy, but, unless I misheard you, I am a bit concerned that you did not think that this would be felt all the way down the line, because as we have discussed, and as Andrew reiterated, this is very often an attitudinal change. I agree that the application of children's rights with regard to safe places to play and hang out, which you mentioned in another committee that I sit on, will be important and will have to be driven by local authorities, with regard to their planning and all other aspects of their portfolios. How long will you take to monitor the efficacy all the way down the line?

[108] **Huw Lewis:** We have that five-year reporting period and, as I said in answer to a previous question, nothing within the proposed Measure prevents us from scrutinising how the effects of this legislation pan out at any point. There are outside bodies that will also be able to do that, but I freely accept, in response to this particular point, that attitudinal change is almost as important here as any kind of material change.

[109] This is really about the recognition that we need to change the way in which we order society in Wales as it relates to children and young people. There has been a problem that the voice of children and young people is not necessarily included and their awareness that they should be included has also been an issue. So, from our discussion here this morning, I accept that this needs more consideration. The machinery is all there; there is nothing to stop monitoring from happening within the proposed Measure. It is open to be discussed, so that we can improve how we measure success, as Andrew put it.

symud hynny ymlaen.

Eleanor Burnham: A ydych yn gobeithio gallu mynd y tu hwnt i'r hyn y mae Andrew Davies newydd ofyn amdano o ran monitro effeithiolrwydd pan fydd hyn i gyd yn treiddio i lawr i'r lefel berthnasol? Yr wyf yn cymryd mai'r lefel berthnasol fydd yr awdurdodau lleol, a fydd yn rhoi hyn ar waith ar draws y portffolios. Yr wyf yn dal braidd yn ddryslyd oherwydd yr ydych wedi dweud y bore yma y bydd hyn yn strategol ac mai chi fydd yn penderfynu ar y strategaeth, ond, oni chamglywais chi, yr wyf braidd yn bryderus nad oeddech yn tybio y câi hyn ei deimlo'r holl ffordd i lawr y gadwyn, oherwydd fel yr ydym wedi trafod, ac fel yr ailadroddodd Andrew, newid o ran agwedd yw hyn yn aml. Cytunaf y bydd cymhwysio hawliau plant i leoedd diogel i chwarae a threulio amser ynddynt, a grybwyllasoch mewn pwyllgor arall yr wyf yn eistedd arno, yn bwysig ac y bydd rhaid i hynny gael ei yrru gan yr awdurdodau lleol, o ran eu cynllunio a phob agwedd arall o'u portffolios. Pa mor hir fyddwch chi'n ei gymryd i fonitro effeithiolrwydd yr holl ffordd i lawr y gadwyn?

Huw Lewis: Mae gennym y cyfnod adrodd pum mlynedd hwnnw ac, fel y dywedais wrth ateb cwestiwn blaenorol, nid oes dim yn y Mesur arfaethedig i'n rhwystro rhag craffu ar effeithiau'r ddeddfwriaeth hon ar unrhyw adeg. Mae yna gyrff allanol hefyd a fydd yn gallu gwneud hynny, ond yr wyf yn derbyn yn llwyr, mewn ymateb i'r pwynt neilltuol hwn, fod newid agweddau bron mor bwysig yma ag unrhyw fath o newid materol.

Mae a wnelo hyn mewn gwirionedd â chydabod bod angen inni newid y ffordd yr ydym yn trefnu cymdeithas yng Nghymru, yn ei pherthynas â phlant a phobl ifanc. Bu problem nad yw llais plant a phobl ifanc yn cael ei gynnwys o reidrwydd ac mae eu hymwybyddiaeth y dylent gael eu cynnwys hefyd wedi bod yn broblem. Felly, o'n trafodaethau yma y bore yma, yr wyf yn derbyn bod angen ystyried hyn ymhellach. Mae'r peirianwaith i gyd yma, nid oes dim i rwystro monitro rhag digwydd o fewn y Mesur arfaethedig. Mae'n agored i'w drafod, fel y gallwn wella ar y ffordd o fesur llwyddiant, i ddefnyddio geiriau Andrew.

[110] **Eleanor Burnham:** Mae adran 7 y Mesur arfaethedig yn cynnwys darpariaeth ynghylch ymgynghori ar gymhwysiad posibl y Mesur arfaethedig i bobl sydd wedi cyrraedd 18 mlwydd oed ond sydd heb droi'n 25 mlwydd oed. A yw'n briodol defnyddio confensiwn rhyngwladol a luniwyd i ddiogelu hawliau plant, nad oes iddo gymhwysedd cyfreithiol ffurfiol, er budd oedolion rhwng 18 a 25 mlwydd oed?

[111] **Huw Lewis:** The proposed Measure applies to persons from the age of 0 to 18, but we recognise that, prior to this, pretty much everything that the Assembly Government has done, going back to 2000, with regard to policy in Wales has really looked at the children and young people bracket, which is 0 to 25-years-old. That came through as quite an obvious matter in our consultation procedure, and we had respondents coming back to us in the process saying that we should continue with that age bracket because that is the way that we do things in Wales. There are particular categories of young people who are in difficult situations and are perhaps vulnerable, for instance, care leavers. The moment that you reach 18, you do not necessarily become a completely robust, self-sufficient citizen who needs no further assistance. There are also young people with special needs and young people in other circumstances that lead to special consideration having to be made for their needs and wants, even past the age of 18. We have always done it that way in Wales.

[112] The UNCRC applies internationally from birth to the age of 18, and the proposed Measure commits us to that, but it also commits us to consider and consult as to whether any part of the proposed Measure, with modifications, should also be applied to the 18 to 24 age group. In other words, we have not shut the door on this, because there is a dissonance between the way that the United Nations does things and the way that the Assembly Government has been doing things over the last 10 years. There are strengths to both arguments. Do you water down what you are doing for children because you include young people? Some consultation responses have stated that they

Eleanor Burnham: Section 7 of the proposed Measure includes provision to consult on the possible application of the proposed Measure to persons who have reached 18 years, but are not yet 25 years old. Is it appropriate to apply an international convention drawn up to protect the rights of children, which does not have a formal legal capacity, to benefit adults aged between 18 and 25 years?

Huw Lewis: Mae'r Mesur arfaethedig yn gymwys i bobl o 0 i 18 oed, ond yr ydym yn cydnabod bod popeth bron y mae Llywodraeth y Cynulliad wedi'i wneud cyn hyn, gan fynd yn ôl i 2000, o ran polisi yng Nghymru wedi edrych mewn gwirionedd ar y grŵp plant a phobl ifanc, sef 0 i 25 oed. Daeth hynny drwodd fel mater digon amlwg wrth inni ymgynghori, a chawsom ymatebwyr yn dod yn ôl atom yn y broses gan ddweud y dylem barhau â'r grŵp oedran hwnnw gan mai felly yr ydym yn gwneud pethau yng Nghymru. Mae categorïau o bobl ifanc sydd mewn sefyllfaoedd anodd ac sydd efallai yn agored i niwed, er enghraifft, rhai sy'n gadael gofal. Y funud yr ydych yn cyrraedd 18 oed, nid ydych o reidrwydd yn dod yn ddinesydd cwbl gryf a hunanddibynnol, nad oes angen cymorth arnoch mwyach. Mae yna hefyd bobl ifanc ag anghenion arbennig a phobl ifanc mewn amgylchiadau eraill sy'n golygu bod rhaid rhoi ystyriaeth arbennig i'w hanghenion a'u dymuniadau, hyd yn oed ar ôl 18 oed. Dyna sut yr ydym wedi gwneud pethau yng Nghymru erioed.

Mae confensiwn y Cenhedloedd Unedig yn gymwys yn rhyngwladol o enedigaeth hyd at 18 oed, ac mae'r Mesur arfaethedig yn ein rhwymo i hynny, ond mae hefyd yn ein rhwymo i ystyried ac ymgynghori ynghylch a ddylai unrhyw ran o'r Mesur arfaethedig, gyda newidiadau, gael ei gymhwyso i'r grŵp oedran 18 i 24 oed. Mewn geiriau eraill, nid ydym wedi cau'r drws ar hyn, oherwydd mae anghysondeb rhwng y ffordd y mae'r Cenhedloedd Unedig yn gwneud pethau a'r ffordd y mae Llywodraeth y Cynulliad wedi bod yn gwneud pethau dros y 10 mlynedd diwethaf. A ydych yn glastwreiddio'r hyn yr ydych yn ei wneud dros blant am eich bod yn cynnwys pobl ifanc? Mae rhai ymatebion

felt that that was very much the case. Then there are the difficulties that might be thrown up with regard to everything else that we do, because, for the Assembly Government, young people are aged between birth and 25, and this, suddenly, would be different. I do not think that the conversation is over on this issue.

[113] The proposed Measure allows Welsh Ministers to apply any part of it to 18 to 24-year-olds, so the flexibility is there. We might want to continue with that flexibility being handed to Ministers and for them to be able to say 'For this part, we've really got to include people up to the age of 25'. That power would be subject to an affirmative procedure in the Assembly, so it would not just be a Minister, but the Assembly as a whole, that would have a say in that. I am attracted by the idea of allowing this flexibility for Ministers, with the safeguard that the Assembly has to affirm what they are saying about parts of this legislation applying up to the age of 25. However, the consultation on this bit is not over.

[114] **Eleanor Burnham:** Yn ei ymateb i'r Mesur arfaethedig drafft, nododd y comisiynydd plant

[115] 'the possible extension of the Measure to those aged over 18 who have formal legal capacity could...potentially take away necessary effort from delivering an effective Measure for children, which is what the UN Committee have called for'.

[116] Yng ngoleuni'r farn hon, yn ogystal â'r feirniadaeth gan grŵp monitro Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn yng Nghymru, ymhlith eraill, pam nad yw Llywodraeth Cymru wedi dewis hepgor adran 7 o'r Mesur arfaethedig?

[117] **Huw Lewis:** As I said, I have explored that. I take seriously the views of the children's commissioner, but the consultation responses were certainly not unanimous in echoing his concerns. We have to pay more attention to this question. I will bring Marcus in for a second, Chair.

[118] **Mr Hill:** One of the key issues, as

ymgyngori wedi datgan eu bod nhw'n teimlo bod hynny'n sicr yn digwydd. Yna, mae'r anawsterau a allai godi yng nghyswllt popeth arall a wnawn oherwydd, i Lywodraeth y Cynulliad, mae pobl ifanc yn golygu rhwng genedigaeth a 25 oed, a byddai hyn, yn sydyn, yn wahanol. Ni chredaf fod y trafod ar ben ar y mater hwn.

Mae'r Mesur arfaethedig yn caniatáu i Weinidogion Cymru gymhwyso unrhyw ran ohono i bobl ifanc 18 i 24 oed, felly mae'r hyblygrwydd yno. Efallai y byddem am barhau drwy roi'r hyblygrwydd hwnnw i Weinidogion ac iddynt hwythau allu dweud 'O safbwynt y rhan hon, rhaid inni gynnwys pobl hyd at 25 oed'. Byddai'r pŵer hwnnw'n ddarostyngedig i weithdrefn gadarnhaol yn y Cynulliad, felly nid Gweinidog yn unig, ond y Cynulliad cyfan, fyddai â llais yn hynny. Caf fy nenu at y syniad o ganiatáu'r hyblygrwydd hwn i Weinidogion, gyda'r trefniant diogelu fod rhaid i'r Cynulliad gadarnhau'r hyn y maent yn ei ddweud am gymhwyso rhannau o'r ddeddfwriaeth hon hyd at 25 oed. Fodd bynnag, nid yw'r ymgynghori ar hyn ar ben.

Eleanor Burnham: Commenting on the draft proposed Measure, the children's commissioner stated that

'the possible extension of the Measure to those aged over 18 who have formal legal capacity could...potentially take away necessary effort from delivering an effective Measure for children, which is what the UN Committee have called for'.

In light of this view, and also the criticism, from, among others, the Wales United Nations Convention on the Rights of the Child monitoring group, why has the Welsh Government chosen not to remove section 7 from the proposed Measure?

Huw Lewis: Fel y dywedais, yr wyf wedi edrych ar hynny. Cymeraf farn y comisiynydd plant o ddifrif, ond yn sicr nid oedd yr ymatebion i'r ymgynghoriad yn unfrydol yn adleisio'i bryderon. Rhaid inni rhoi sylw pellach i'r cwestiwn hwn. Dof â Marcus i mewn am eiliad, Gadeirydd.

Mr Hill: Un o'r materion allweddol, fel y

the Deputy Minister has mentioned, is that policy in Wales and local authority planning in Wales is around the birth to 25 age group. Since 2000, there have been 10 entitlements for young people aged 11 to 25. The idea behind them is that the young people need specific support to help them to be able to achieve. The proposed Measure offers the opportunity to consult on whether it should apply or what else we could possibly put in place to address that gap in a common way, given that this is not necessarily just an UNCRC Wales proposed Measure—it is the Proposed Rights of Children and Young Persons (Wales) Measure. That is trying to tie the two together to reflect our policy position in Wales as well as take forward what the UN committee has asked us to take forward.

crybwyllodd y Dirprwy Weinidog, yw bod polisi yng Nghymru ac yng nghynlluniau awdurdodau lleol yng Nghymru yn cwmpasu'r grŵp oedran o enedigaeth i 25 oed. Er 2000, bu 10 hawl i bobl ifanc rhwng 11 a 25 oed. Y syniad wrth wraidd y rheini yw bod angen cymorth penodol ar y bobl ifanc i'w helpu i gyflawni. Mae'r Mesur arfaethedig yn cynnig y cyfle i ymgynghori ynghylch a ddylai fod yn gymwys, neu beth arall y gallem o bosibl ei sefydlu i ymdrin â'r bwlch hwnnw mewn ffordd gyffredin, o gofio nad mesur arfaethedig Cymru ar Gonfensiwn y Cenhedloedd Unedig yn unig mo hwn o reidrwydd—Mesur Arfaethedig ynghylch Hawliau Plant a Phobl Ifanc (Cymru) ydyw. Mae hynny'n ceisio clymu'r ddau ynghyd i adlewyrchu ein sefyllfa bolisi yng Nghymru yn ogystal â symud ymlaen â'r hyn y mae pwyllgor y Cenhedloedd Unedig wedi gofyn inni ei symud ymlaen.

[119] **Eleanor Burnham:** Mae'r Mesur arfaethedig yn cynnwys Atodlen, sef Rhan I y confensiwn ac erthyglau 1 i 7 o'r protocol dewisol ar hawliau plant sydd wedi eu cynnwys mewn gwrthdaro arfog, ac eithrio erthygl 6(2), ac erthyglau 1 i 10 ar hawliau'r plentyn ar werthu plant, puteindra plant a phornograffi plant.

Eleanor Burnham: The proposed Measure includes a Schedule, which is the Part I of the convention and also articles 1 to 7 of the optional protocol on the rights of children involved in armed conflict, except article 6(2), and articles 1 to 10 on the rights of the child on the sale of children, child prostitution and child pornography.

10.10 a.m.

[120] Pam ei fod yn angenrheidiol cynnwys testun anghyflawn y confensiwn ar brotocolau fel atodlen i'r Mesur arfaethedig yn hytrach na'i gynnwys fel cyfeirnod, gan ei fod yn cael ei ddiwygio o dro i dro?

Why is it necessary for the incomplete text of the convention and protocols to be included as a schedule to the proposed Measure rather than incorporating it by reference, given that it is amended from time to time?

[121] **Huw Lewis:** From my non-legal perspective, I would say that the answer is that it aids transparency—you will have it all there in one accessible place. However, I am sure that Natalie will give you a much more in-depth response.

Huw Lewis: O'm safbwynt i, nad yw'n un cyfreithiol, byddwn yn dweud mai'r ateb yw ei fod yn hybu tryloywder—bydd i gyd yno ichi mewn un man hygyrch. Fodd bynnag, yr wyf yn siŵr y rhydd Natalie ateb llawer mwy trylwyr ichi.

[122] **Ms Lancey:** As the Minister said, there are two reasons. The first is transparency, so that you can see the substantive rights and obligations to which the Welsh Ministers have to have due regard. The text is incomplete because the UNCRC contains not only substantive rights for children—the right to healthcare, education and so on—but also deals with procedural

Ms Lancey: Fel y dywedodd y Gweinidog, mae dau reswm. Y cyntaf yw tryloywder, fel y gallwch weld yr hawliau a'r rhwymedigaethau gwirioneddol y mae rhaid i Weinidogion Cymru roi sylw dyledus iddynt. Mae'r testun yn anghyflawn gan fod y confensiwn yn cynnwys nid dim ond hawliau gwirioneddol i blant—yr hawl i ofal iechyd, addysg ac ati—ond mae hefyd yn delio â

issues in the United Nations, so it would be a bit odd to ask Welsh Ministers to have due regard to procedural provisions of the UN. So, we have only taken the substantive rights and put those in the proposed Measure.

[123] Secondly, by putting them in the proposed Measure, we are making them part of domestic law in Wales and the UK as opposed to what they are at the moment, which is just part of international law; they are part of the UNCRC, which is an international treaty between all the countries that are signed up to it. We bring them into domestic law and then, because they are a part of domestic law, the courts can interpret them, if they so wish, in a domestic context, but we cannot force the courts to interpret them in a certain way. General living standards across all countries signed up to the UNCRC are very diverse and different, but once the substantive rights and obligations are part of domestic law in the UK, the courts, if they so wish, could interpret them. They might decide that, in the domestic context—in the UK, where we generally have higher living standards—those rights or obligations might require more of Government than the International Court of Justice would decide was required of a Government in a developing country. So, that is our essential purpose in bringing them into domestic law, namely to give the courts that discretion to treat them as part of domestic law and to interpret them in our domestic context.

[124] **Eleanor Burnham:** I think that you have answered my next question, but I will repeat it in case we have left something out. Why have the articles of the optional protocols been included, given that Welsh Ministers do not have any powers regarding armed conflict and only very limited powers that would be relevant to the optional protocol on the sale of children, child prostitution and child pornography? Do you think that you have answered that in your previous response?

materion gweithdrefnol yn y Cenhedloedd Unedig, felly byddai braidd yn rhyfedd gofyn i Weinidogion Cymru roi sylw dyledus i ddarpariaethau gweithdrefnol y Cenhedloedd Unedig. Felly, nid ydym ond wedi cymryd yr hawliau gwirioneddol a rhoi'r rheini yn y Mesur arfaethedig.

Yn ail, drwy eu rhoi yn y Mesur arfaethedig, yr ydym yn eu gwneud yn rhan o gyfraith ddomestig yng Nghymru a'r DU mewn cyferbyniad â'r hyn ydynt ar y funud, sef rhan o gyfraith ryngwladol yn unig; maent yn rhan o gonfensiwn y Cenhedloedd Unedig, sy'n gytuniad rhyngwladol rhwng yr holl wledydd sydd wedi ymrwmo iddo. Rydym ni'n eu hymgorffori mewn cyfraith ddomestig ac yna, gan eu bod yn rhan o gyfraith ddomestig, gall y llysoedd eu dehongli, os ydynt yn dymuno, mewn cyd-destun domestig, ond ni allwn orfodi'r llysoedd i'w dehongli mewn ffordd neilltuol. Mae safonau byw cyffredinol ar draws yr holl wledydd sydd wedi ymrwmo i'r confensiwn yn amrywiol a gwahanol iawn, ond unwaith y mae'r hawliau a'r rhwymedigaethau gwirioneddol yn rhan o gyfraith ddomestig yn y DU, gallai'r llysoedd, pe baent yn dymuno, eu dehongli. Efallai y byddent yn penderfynu, yn y cyd-destun domestig—yn y DU, lle mae gennym safonau byw uwch yn gyffredinol—fod yr hawliau neu'r rhwymedigaethau hynny efallai yn mynnu mwy gan Lywodraeth nag y byddai'r Llys Cyfiawnder Rhyngwladol yn ei benderfynu sy'n ofynnol gan Lywodraeth mewn gwlad sy'n datblygu. Felly, dyna yw ein pwrpasol hanfodol wrth eu hymgorffori mewn cyfraith ddomestig, sef rhoi'r disgresiwn i'r llysoedd i'w trin fel rhan o gyfraith ddomestig a'u dehongli mewn cyd-destun domestig.

Eleanor Burnham: Credaf eich bod wedi ateb fy nghwestiwn nesaf, ond fe'i hailadroddaf rhag ofn ein bod wedi gadael rhywbeth allan. Pam mae erthyglau'r protocolau dewisol wedi cael eu cynnwys, o gofio nad oes gan Weinidogion Cymru unrhyw bwerau yng nghyswllt gwrthdaro arfog ac mai dim ond bwerau cyfyngedig iawn sydd ganddynt a fyddai'n berthnasol i'r protocol dewisol ar werthu plant, puteindra plant a phornograffi plant? A ydych yn credu eich bod wedi ateb hynny yn eich ymateb blaenorol?

[125] **Ms Lancey:** I think that the reason for including the protocols—even though they deal with areas over which Welsh Ministers' powers are limited in terms of the effect that they can have—is because we are making this proposed Measure one that follows how the UN's convention applies to the UK. Therefore, we have taken all of the substantive rights and obligations that apply to the UK and put them in the proposed Measure, because we thought that, once we had started down the road of not including particular substantive rights, because we thought that Welsh Ministers could have limited effect in respect of them, we were starting to construct something that was just a piecemeal version of the UNCRC.

[126] The other point is that Welsh Ministers acquire more devolved competence as time goes on, so there might be something that they cannot do now, but that they could do in the future in respect of some of those other rights and obligations. The fact that they are all included means that the ability is there for Welsh Ministers to have more due regard to them in the future, as it were.

[127] **Eleanor Burnham:** You just mentioned them all being included, but my last question is on article 6(2) of the optional protocol on the rights of children involved in armed conflict. Why has that been excluded from the proposed Measure?

[128] **Huw Lewis:** I will let you answer that one, Natalie, if that is okay.

[129] **Ms Lancey:** Article 6(2) of that optional protocol is like article 42 of the UNCRC, covering the obligation to raise awareness and understanding of the UNCRC. We have turned those two articles into section 5 of the proposed Measure, which is the substantive duty on Welsh Ministers to promote understanding of the UNCRC. Therefore, we thought that it was not appropriate to require Welsh Ministers to have due regard to those articles, because they have a main duty in the proposed

Ms Lancey: Credaf mai'r rheswm dros gynnwys y protocolau—er eu bod yn delio â meysydd y mae pwerau Gweinidogion Cymru drostynt yn gyfyngedig o ran yr effaith y gallant ei chael—yw oherwydd ein bod yn gwneud y Mesur arfaethedig hwn yn un sy'n dilyn y ffordd y cymhwysir confensiwn y Cenhedloedd Unedig i'r DU. Felly, yr ydym wedi cymryd yr holl hawliau a'r rhwymedigaethau gwirioneddol sy'n gymwys i'r DU a'u rhoi yn y Mesur arfaethedig, oherwydd tybiem, unwaith y byddem yn dechrau peidio â chynnwys rhai hawliau gwirioneddol, gan ein bod yn credu na allai Gweinidogion Cymru ond cael effaith gyfyngedig mewn perthynas â nhw, ein bod yn dechrau creu rhywbeth na fyddai ond yn fersiwn ddarniog o'r confensiwn.

Y pwynt arall yw bod Gweinidogion Cymru yn caffael mwy o gymhwysedd deddfwriaethol gyda threigl amser, felly efallai fod rhywbeth na allant ei wneud yn awr, ond y gallent ei wneud yn y dyfodol mewn perthynas â rhai o'r hawliau a'r rhwymedigaethau eraill hynny. Mae'r ffaith eu bod i gyd yn cael eu cynnwys yn golygu bod y gallu yno i Weiniogion Cymru roi rhagor o sylw dyledus iddynt yn y dyfodol, fel petai.

Eleanor Burnham: Yr ydych newydd grybwyll eu bod i gyd yn cael eu cynnwys, ond mae a wnelo fy nghwestiwn olaf ag erthygl 6(2) o'r protocol dewisol ar hawliau plant sy'n rhan o wrthdaro arfog. Pam mae hwnnw wedi cael ei eithrio o'r Mesur arfaethedig?

Huw Lewis: Gadawaf i chi ateb hynny, Natalie, os gwnewch chi.

Ms Lancey: Mae erthygl 6(2) o'r protocol dewisol hwnnw, fel erthygl 42 o'r confensiwn, yn ymdrin â'r rhwymedigaethau i godi ymwybyddiaeth a dealltwriaeth o gonfensiwn y Cenhedloedd Unedig. Yr ydym wedi troi'r ddau erthygl hynny yn adran 5 o'r Mesur arfaethedig, sef dyletswydd wirioneddol Gweinidogion Cymru i hyrwyddo dealltwriaeth o'r confensiwn. Felly, tybiwn na fyddai'n briodol ei gwneud yn ofynnol i Weiniogion Cymru roi sylw dyledus i'r erthyglau hynny, gan fod

Measure about them.

[130] **Andrew Davies:** On what Natalie was just saying about powers and the Assembly acquiring more powers, I just want to ask some questions about potential constitutional problems—or perhaps opportunities; I do not know. Given that Wales is not a nation state and that it is, therefore, the UK Government that is a signatory of the UNCRC, do you see any potential or actual constitutional problems in this regard? If so, what might they be?

[131] **Huw Lewis:** It is not something that I have lain awake wondering about.

[132] **Andrew Davies:** You might now. [*Laughter.*]

[133] **Huw Lewis:** It has crossed my mind, and my honest answer would be that, as yet, I cannot, because the proposed Measure applies to the First Minister and Welsh Ministers. So, as far as we are concerned, although the UK, as a nation state, is a signatory to the UNCRC, we are incorporating the principles of the UNCRC into the way that we work here in the Assembly Government with regard to the way we develop policy and make our Welsh law. That should not contradict anything that the UK Government gets up to, of course, because it is a signatory to the UNCRC. I am afraid that I have not delved into this with the mind of an international lawyer, but I cannot see that there would be conflict.

[134] **Andrew Davies:** Okay, but let us look at some practical issues that will affect children in Wales. Some of the most clearly observed breaches of children's rights have been in areas that are non-devolved, i.e. reserved. I am thinking of the detention of children and young people with regard to immigration. There has obviously been a big debate about the age of criminal responsibility. There are some areas where Welsh children will be affected by UK Government policy, so this is not an academic issue. You might want to lie awake with this one. [*Laughter.*] How do you see that being taken forward in terms of the relationship with the UK Government and the

ganddynt brif ddyletswydd yn y Mesur arfaethedig mewn perthynas â nhw.

Andrew Davies: O ran yr hyn y mae Natalie newydd ei ddweud ynglŷn â phwerau, a'r Cynulliad yn caffael rhagor o bwerau, hoffwn ofyn rhai cwestiynau ynglŷn â phroblemau cyfansoddiadol posibl—neu gyfleoedd efallai; wn i ddim. O gofio nad yw Cymru yn genedl-wladwriaeth ac mai Llywodraeth y DU, felly, sydd wedi llofnodi confensiwn y Cenedloedd Unedig, a ydych yn gweld unrhyw broblemau cyfansoddiadol posibl yn y cyswllt hwn? Os felly, beth fydden nhw?

Huw Lewis: Nid yw'n rhywbeth yr wyf wedi bod yn colli cwsg yn ei gylch.

Andrew Davies: Efallai y gwnewch chi yn awr. [*Chwerthin.*]

Huw Lewis: Mae wedi croesi fy meddwl, a'r ateb gonest yw, hyd yma, na allaf, oherwydd mae'r Mesur arfaethedig yn gymwys i'r Prif Weinidog a Gweinidogion Cymru. Felly, cyn belled ag yr ydym ni'n bod, er bod y DU, fel cenedl-wladwriaeth, wedi llofnodi'r confensiwn, yr ydym ni'n ymgorffori egwyddorion y confensiwn yn y ffordd yr ydym yn gweithio yma yn Llywodraeth y Cynulliad o ran y ffordd yr ydym yn datblygu polisi ac yn llunio cyfraith Cymru. Ni ddylai hynny wrth-ddweud unrhyw beth a wna Llywodraeth y DU, wrth gwrs, oherwydd mae hi wedi llofnodi'r confensiwn. Mae arnaf ofn nad wyf wedi ymchwilio ymhellach i hyn gyda meddwl cyfreithiwr rhyngwladol, ond ni allaf weld ymhle y byddai gwrthdaro.

Andrew Davies: Iawn, ond gadewch inni edrych ar rai materion ymarferol a fydd yn effeithio ar blant yng Nghymru. Bu rhai o'r methiannau amlycaf a welwyd o ran hawliau plant mewn meysydd nad ydynt wedi cael eu datganoli, h.y. a gadwyd yn ôl. Yr wyf yn meddwl am y bwriad i gadw plant a phobl ifanc yng nghyswllt mewn fudo. Bu trafodaeth fawr yn amlwg ynghylch ar ba oedran yr ysgwyddir cyfrifoldeb troseddol. Mae rhai meysydd lle'r effeithir ar blant Cymru gan bolisi Llywodraeth y DU, felly nid mater academaidd mo hwn. Efallai y collwch chi gwsg dros hyn. [*Chwerthin.*] Sut ydych chi'n gweld hynny'n cael ei symud ymlaen o ran y berthynas â Llywodraeth y

policy implications of that area? Do you see any argument for the proposed Measure reflecting those needs to, for example, consult the UK Government or for the UK Government to consult Welsh Ministers on the implication of policies for children in Wales?

[135] **Huw Lewis:** That duty to consult already exists with regard to the relationship between the UK Government and Westminster. However, I take your point; there may be aspects of UK legislation that affect children, for example with regard to children in detention, where, to use Alun's phrase, in Wales, we would not start from here—we might well do things differently. There may be a point in the future when we will do things differently. However, I would have thought that, with regard to the development of this agenda, we would have to wait for the powers and competence to come to us in order to be able to change the situation and to interpret that policy on children in line with this proposed Measure, which cannot relate to powers that we do not have. It cannot impose upon a UK Government Minister a duty to have due regard to what the National Assembly for Wales thinks. I take your point. There is an interesting crossover. However, Welsh Ministers have the power to make appropriate representations to the UK Government about any matter affecting Wales. That remains; the proposed Measure does not take anything away.

10.20 a.m.

[136] However, there is certainly potential for debate about how we might want to do things in Wales in future with regard to the lives of children who are affected by issues that we currently do not have the competence to alter. That is not a matter for the development of the proposed Measure. It is a matter for wider political debate, which is highlighted interestingly by the remit of this legislation.

[137] **Andrew Davies:** Moving from the international to the national down to Wales—although you might also describe Wales as national in relation to the Assembly—

DU a goblygiadau polisi'r maes hwnnw? A oes unrhyw ddadl yn eich barn chi y dylai'r Mesur arfaethedig adlewyrchu'r anghenion hynny i, er enghraifft, ymgynghori â Llywodraeth y DU neu i Lywodraeth y DU ymgynghori â Gweinidogion Cymru ar oblygiadau polisiâu i blant yng Nghymru?

Huw Lewis: Mae'r ddyletswydd honno i ymgynghori yn bodoli eisoes o safbwynt y berthynas rhwng Llywodraeth y DU a San Steffan. Fodd bynnag, derbynïaf eich pwynt; gallai fod agweddau o ddeddfwriaeth y DU sy'n effeithio ar blant, er enghraifft gyda golwg ar blant yn y ddalfa, lle, i ddefnyddio ymadrodd Alun, yng Nghymru, ni fyddem yn cychwyn o'r fan honno—mae'n bosibl iawn y byddem yn gwneud pethau'n wahanol. Efallai y bydd adeg yn y dyfodol pan fyddwn yn gwneud pethau'n wahanol. Fodd bynnag, byddwn yn tybio, o safbwynt datblygu'r agenda hon, y byddai rhaid inni ddisgwyl i'r pwerau a'r cymhwysedd ddod inni er mwyn gallu newid y sefyllfa neu ddehongli'r polisi hwn ynghylch plant yn unol â'r Mesur arfaethedig hwn, nad yw'n gallu bod yn berthnasol i bwerau nad oes gennym mohonynt. Ni all roi dyletswydd ar Weinidog yn Llywodraeth y DU i roi sylw dyledus i'r hyn y mae Cynulliad Cenedlaethol Cymru yn ei feddwl. Derbynïaf eich pwynt. Mae trawsgroesi diddorol. Fodd bynnag, mae gan Weinidogion Cymru y pŵer i gyflwyno sylwadau priodol i Lywodraeth y DU ar unrhyw fater sy'n effeithio ar Gymru. Mae hynny'n parhau; nid yw'r Mesur arfaethedig yn tynnu dim ymaith.

Fodd bynnag, mae potensial yn sicr inni drafod sut y byddem am wneud pethau yng Nghymru efallai yn y dyfodol o safbwynt bywydau plant yr effeithir arnynt gan faterion nad yw'r cymhwysedd gennym ar hyn o bryd i'w newid. Nid yw hynny'n fater i'w ystyried wrth ddatblygu'r Mesur arfaethedig. Mae'n fater ar gyfer trafodaeth wleidyddol ehangach, sy'n cael ei hamlygu'n ddiddorol gan gylch gwaith y ddeddfwriaeth hon.

Andrew Davies: A symud o'r rhyngwladol i'r cenedlaethol, i lefel Cymru—er na fydddech efallai yn disgrifio Cymru fel cenedlaethol mewn perthynas â'r

present there does not appear to be any effective way for children, families or carers to hold the Welsh Assembly Government to account for the commitments that are set out in the UNCRC or its protocols. How will the proposed Measure address this alleged, or apparent, deficiency?

[138] **Huw Lewis:** The answer is 'as before'. In relation to all ministerial decisions, if it can be shown that Ministers have failed to have due regard to the UNCRC in their strategic decision making—although I do not want not go back to that issue—there is the option of going to law and having a judicial review, as would be the case with regard to any ministerial decisions. The proposed Measure places an obligation on Ministers to explain publicly, periodically, through the reports that we were talking about earlier, how they have complied with the duty. So, there is another accounting mechanism, as it were, in the form of the statutory requirement for Ministers to report. Legal redress or any kind of legal comeback would be through the normal judicial review process.

[139] **Andrew Davies:** I would like to explore this point, if I may. Taking a Government to a judicial review is an incredibly challenging and expensive measure. My assumption in respect of law is that, if you are establishing rights, that imposes a duty on someone or on a body to satisfy that right. I would have thought that some form of redress would be part of that. I accept your point about the normal legal processes being open, but we are talking about young people, who will probably be from poor and disadvantaged backgrounds, and who would not have either the means or the confidence to go through an incredibly challenging procedure such as a judicial review. So, has any consideration been given to having something that is perhaps more accessible and transparent?

[140] **Huw Lewis:** As I say, built into the whole thing, to a greater extent than for most legislation, are things such as the duties upon Ministers to report and safeguards involving the Assembly itself in order to hold Ministers

Cynulliad—ar hyn o bryd nid yw'n ymddangos bod unrhyw ffordd effeithiol i blant, teuluoedd neu ofalwyr ddal Llywodraeth Cynulliad Cymru i gyfrif am yr ymrwymadau a nodir yn y confensiwn na'i brotocolau. Sut bydd y Mesur arfaethedig yn mynd i'r afael â'r diffyg honedig, neu ymddangosiadol, hwn?

Huw Lewis: Yr ateb yw 'fel o'r blaen'. Yng nghyswllt pob penderfyniad gan Weinidog, os gellir dangos bod Gweinidogion wedi methu rhoi sylw dyledus i'r confensiwn wrth wneud penderfyniadau strategol—er nad wyf am fynd yn ôl at y mater hwnnw—mae'r opsiwn o fynd i gyfraith ac o gael adolygiad barnwrol, fel a fyddai'n digwydd yng nghyswllt unrhyw benderfyniad gan Weinidog. Mae'r Mesur arfaethedig yn rhoi dyletswydd ar Weinidogion i egluro'n gyhoeddus, o bryd i'w gilydd, drwy'r adroddiadau yr oeddem yn sôn amdanynt yn gynharach, sut maent wedi cydymffurfio â'r ddyletswydd. Felly, mae mecanwaith arall i roi cyfrif, fel petai, ar ffurf y gofyniad statudol i Weinidogion gyflwyno adroddiad. Byddai iawn cyfreithiol neu unrhyw fath o edliw cyfreithiol drwy'r broses arferol o adolygiad barnwrol.

Andrew Davies: Hoffwn archwilio'r pwynt hwn, os caf fi. Mae mynd â Llywodraeth i adolygiad barnwrol yn gam eithriadol o heriol a chostus. Fy rhagdybiaeth i mewn perthynas â'r gyfraith yw, os ydych yn sefydlu hawliau, fod hynny'n rhoi dyletswydd ar rywun neu ar gorff i gyflawni'r hawl honno. Byddwn wedi disgwyl y byddai rhyw fath o iawn yn rhan o hynny. Derbyniaf eich pwynt fod y prosesau cyfreithiol arferol yn agored, ond yr ydym yn sôn am bobl ifanc, a fydd mwy na thebyg o gefndiroedd tlawd a difreintiedig, na fyddai ganddynt y modd na'r hyder i fynd drwy weithdrefn eithriadol o heriol megis adolygiad barnwrol. Felly, a oes unrhyw ystyriaeth wedi cael ei rhoi i gael rhywbeth sydd efallai yn fwy hygyrch a thryloyw?

Huw Lewis: Fel y dywedais, ymgorfforwyd yn hyn oll, i raddau mwy nag yn y rhan fwyaf o ddeddfwriaeth, bethau fel y dyletswyddau ar Weinidogion i adrodd, a mesurau diogelu sy'n cynnwys y Cynulliad ei hun, er mwyn

to account, through Plenary procedures and committees. In addition, the reporting procedure would come under the scrutiny of Welsh civil society as a whole. Let us remember that Ministers are being landed with a duty to have due regard to the UNCRC, and so everything that they do in fulfilling that duty will have to be done out in the open and in the plain light of day. I take your point that going through a judicial review process is a scary, if not terrifying, prospect for individuals, and particularly for a young person. However, unfortunately, my legislation does not set out to right the wrongs of the judicial review process. Legal aid does exist. That is not meant to be a pat answer. In Wales, crucially, we also have bodies and organisations such as the office of the children's commissioner, for whom taking the Assembly Government to court might not be such a scary prospect, if it thought that this was necessary and wanted to right a wrong, as it saw it. So, yes, I take your point; perhaps there are limitations with regard to judicial review across our citizenry, but I cannot right that wrong through this proposed Measure.

[141] **Andrew Davies:** Chair, if I may, I want to make a plea to the Deputy Minister to look at this. I think that there is an issue of consistency across Government. At the moment, the Proposed Welsh Language (Wales) Measure is going through the Assembly. It gives rights, including the right to legal challenge. It also talks about giving the proposed new Welsh language commissioner the ability to provide financial assistance for a legal challenge. So, I think that there are issues about consistency here. I accept the point about judicial review, and there are obviously paths through the system, such as the ombudsman. However, the judgments of the Public Services Ombudsman for Wales are not legally binding; they are only recommendations. There is no duty on a local authority or any other public body that has had a complaint made against it to follow a judgment. The ombudsman can make a report and recommendations, but whoever is providing that service about which a complaint has been made can ignore it.

dal Gweinidogion i gyfrif drwy weithdrefnau'r Cyfarfodydd Llawn a'r pwyllgorau. Hefyd, byddai cymdeithas sifil Cymru gyfan yn craffu ar y drefn adrodd. Gadwch inni gofio bod dyletswydd yn cael ei rhoi ar Weinidogion i roi sylw dyledus i gonfensiwn y Cenhedloedd Unedig, ac felly bydd rhaid i bopeth a wnânt wrth gyflawni'r ddyletswydd honno gael ei wneud yn agored ac yn llygad y cyhoedd. Derbyniaf eich pwynt fod mynd drwy broses adolygiad barnwrol yn beth dychrynlyd, os nad brawychus, i unigolion, ac i berson ifanc yn arbennig. Fodd bynnag, yn anffodus, nid nod fy neddfwriaeth yw unioni diffygion y broses adolygiadau barnwrol. Mae cymorth cyfreithiol ar gael. Ni olygir hynny fel rhyw ateb cyfleus. Yng Nghymru, yn dyngedfennol, mae gennym hefyd gyrff a sefydliadau megis swyddfa'r comisiynydd plant, na fyddai mynd â Llywodraeth y Cynulliad i'r llys yn beth mor ddychrynlyd iddi, pe bai'n credu bod rhaid gwneud hynny a'i bod am gywiro camwedd, fel yr oedd hi'n gweld pethau. Felly, ydwyf, yr wyf yn cymryd eich pwynt, efallai fod cyfyngiadau o ran adolygiadau barnwrol o safbwynt ein dinasyddion, ond ni allaf unioni hynny drwy'r Mesur arfaethedig hwn.

Andrew Davies: Gadeirydd, os caf fi, hoffwn wneud ple ar i'r Dirprwy Weinidog edrych ar hyn. Credaf fod mater o gysondeb ar draws Llywodraeth. Ar hyn o bryd, mae'r Mesur Arfaethedig ynghylch yr Iaith Gymraeg (Cymru) yn mynd drwy'r Cynulliad. Mae'n rhoi hawliau, yn cynnwys yr hawl i her gyfreithiol. Mae hefyd yn sôn am roi'r gallu i gomisiynydd newydd arfaethedig y Gymraeg i ddarparu cymorth ariannol ar gyfer her gyfreithiol. Felly, credaf fod materion yn ymwneud â chysondeb yma. Derbyniaf y pwynt ynglŷn ag adolygiadau barnwrol, ac mae llwybrau amlwg drwy'r system, megis yr ombwdsmon. Fodd bynnag, nid yw dyfarniadau Ombwdsmon Gwasanaethau Cyhoeddus Cymru yn rhwymo yn gyfreithiol; argymhellion yn unig ydynt. Nid oes dyletswydd ar awdurdod lleol nac unrhyw gorff cyhoeddus arall y gwnaed cwyn yn ei erbyn i ddilyn dyfarniad. Gall yr ombwdsmon wneud adroddiad ac argymhellion, ond gall pwy bynnag sy'n darparu'r gwasanaeth hwnnw y gwnaed cwyn amdano eu hanwybyddu.

[142] So, I am asking that the Deputy Minister looks at this, because, if we are talking about fundamental human rights, particularly for some very disadvantaged people in civil society, there are some fundamental issues. So, all I am asking is that the Deputy Minister looks at this and gives it some consideration. The Proposed Welsh Language (Wales) Measure accepts that there is a right to legal challenge and yet this proposed Measure, which is about a human right, does not.

[143] **Huw Lewis:** I cannot tell you that I am an expert in any way on how the Proposed Welsh Language (Wales) Measure is developing, and I have to say that I was not aware that the Welsh language commissioner would be given the right to assist in a financial sense. In that case, of course, with regard to consistency of Government policy, we will need to have a look at that. As I say, not being an expert on how that proposed Measure is developing, I think that there are subtle differences with regard to the effect of this legislation. This is a piece of legislation that would impose duties on Welsh Ministers. Although it is connected to the entitlements of citizens, this would place a duty on a very small group of people, namely the Assembly Government itself. The Welsh language legislation is developing in a slightly different way. However, I take your point, and it is something that we will take a little look at to check out whether there is cross-fertilisation here that would be beneficial to everyone.

[144] **Mark Isherwood:** We have come to the final question, which, effectively, you have already covered in your answers to Andrew. So, I will ask a couple of short supplementary questions of my own. At the beginning of the session, you referred to a list of consultees. I wonder whether consideration should be given to making specific reference to the third sector. I am thinking of the likes of Barnardo's, the National Society for the Prevention of Cruelty to Children and Save the Children, who all do a lot of work, including advocacy work, in this area. So, should specific reference be made to that? Finally, in relation

Felly, yr wyf yn gofyn i'r Dirprwy Weinidog edrych ar hyn, oherwydd, os ydym yn sôn am hawliau dynol sylfaenol, yn enwedig i rai pobl ddifreintiedig iawn mewn cymdeithas sifil, mae rhai materion sylfaenol. Felly, y cyfan yr wyf yn gofyn amdano yw bod y Dirprwy Weinidog yn edrych ar hyn ac yn ei ystyried. Mae'r Mesur Arfaethedig ynghylch yr Iaith Gymraeg (Cymru) yn derbyn bod hawl i her gyfreithiol ac eto nid yw hynny'n wir am y Mesur arfaethedig hwn, sy'n ymdrin â hawl ddynol.

Huw Lewis: Ni allaf ddweud wrthyhch fy mod yn arbenigwr mewn unrhyw ffordd ar sut y mae'r Mesur Arfaethedig ynghylch yr Iaith Gymraeg (Cymru) yn datblygu, a rhaid imi ddweud nad oeddwn yn ymwybodol y câi comisiynydd y Gymraeg yr hawl i gynorthwyo ar ffurf ariannol. Yn wyneb hynny, wrth gwrs, o safbwynt cysondeb polisi'r Llywodraeth, bydd angen inni edrych ar hynny. Fel y dywedaf, gan nad wyf yn arbenigwr ar sut mae'r Mesur arfaethedig hwnnw yn datblygu, credaf fod gwahaniaethau cynnil o safbwynt effaith y ddeddfwriaeth hon. Mae hwn yn ddarn o ddeddfwriaeth a fyddai'n rhoi dyletswyddau ar Weinidogion Cymru. Er bod a wnelo ef â hawliau dinasyddion, byddai'n rhoi dyletswydd ar grŵp bach iawn o bobl, sef Llywodraeth y Cynulliad ei hun. Mae'r ddeddfwriaeth yng nghyswllt y Gymraeg yn datblygu mewn ffordd ychydig yn wahanol. Fodd bynnag, derbynias eich pwynt, ac mae'n rhywbeth yr edrychwn arno i ganfod a oes trawsffrwythloni yma a fyddai'n llesol i bawb.

Mark Isherwood: Yr ydym wedi dod at y cwestiwn olaf, yr ydych, i bob diben, eisoes wedi ymdrin ag ef yn eich atebion i Andrew. Felly, gofynnaf gwpl o gwestiynau atodol byr fy hun. Ar ddechrau'r sesiwn, cyfeiriasoch at restr o ymgynghoreion. Tybed a ddylid ystyried cyfeirio'n benodol at y trydydd sector. Yr wyf yn meddwl am fudiadau fel Barnardo's, y Gymdeithas Genedlaethol er Atal Creulondeb i Blant ac Achub y Plant, sydd i gyd yn gwneud llawer o waith, yn cynnwys gwaith eiriolaeth, yn y maes hwn. Felly, a ddylid cyfeirio'n benodol at hynny? Yn olaf, mewn perthynas â chwestiynau cynharach Andrew, pa ystyriaeth sydd wedi

to Andrew's earlier questions, what consideration has been given to requiring Welsh Ministers to make appropriate representation to the UK Government on the rights of children in the proposed Measure that are affected by reserved matters?

[145] **Huw Lewis:** On the list of consultees, I am extremely reluctant to get into a debate on what would constitute a legitimate list, because, apart from anything else, I would be worried about the effect on any successor Ministers who have to take care of this. It may be that new organisations will arise and that existing organisations will merge or go under and cease to function. We would have to continually update the list and have an annual ding-dong about everyone's wish list for who should be consulted. So, I think that we have played it straight in saying that the consultation is open. It is the way that we always do things in Wales: it is completely open and transparent. However, we obviously name people such as the children's commissioner with whom we have a legal relationship in terms of the regard that we have to pay to what the commissioner says, for instance. In saying that, I have completely forgotten the second part of your question. Sorry, Mark.

10.30 a.m.

[146] **Mark Isherwood:** Should the proposed Measure include a requirement for Welsh Ministers to make appropriate representations to the UK Government where children's rights in Wales are affected by reserved matters?

[147] **Huw Lewis:** We have that under the Government of Wales Act 2006. Ministers have the power to make appropriate representations to any person about any matter that affects Wales.

[148] **Mark Isherwood:** This is about a requirement to make representations on children's rights, not the power to do so.

[149] **Ms Lancey:** It is a power to make representations and not a duty to do so.

[150] **Huw Lewis:** What would you be

cael ei rhoi i'w gwneud yn ofynnol i Weinidogion Cymru gyflwyno sylwadau priodol i Lywodraeth y DU ar hawliau plant yn y Mesur arfaethedig yr effeithir arnynt gan faterion a gadwyd yn ôl?

Huw Lewis: O ran y rhestr o ymgynghoreion, yr wyf yn hynod o anfoddog i gychwyn dadl ynglŷn â'r hyn a fyddai'n rhestr ddilys, oherwydd, ar wahân i unrhyw beth arall, byddwn yn poeni am yr effaith ar unrhyw Weinidogion yn y dyfodol a fydd yn gofalu am hyn. Efallai y bydd sefydliadau newydd yn ymddangos ac y bydd sefydliadau presennol yn uno neu'n mynd i'r wal neu'n rhoi'r gorau i weithredu. Byddai rhaid inni ddiweddarau'r rhestr yn barhaus a chael rhyw gecru blynyddol ynglŷn â dewis restr pawb o bwy y dylid ymgynghori â nhw. Felly, credaf ein bod wedi bod yn onest yn dweud bod yr ymgynghori yn agored. Dyna sut yr ydym yn gwneud pethau bob amser yng Nghymru: mae'n gwbl agored a thryloyw. Fodd bynnag, yr ydym yn amlwg yn enwi pobl fel y comisiynydd plant y mae gennym berthynas gyfreithiol â nhw o ran y sylw y mae rhaid inni ei roi i'r hyn a ddywed y comisiynydd, er enghraifft. Wrth ddweud hynny, yr wyf wedi llwyr anghofio ail ran eich cwestiwn. Mae'n ddrwg gennyf, Mark.

Mark Isherwood: A ddylai'r Mesur arfaethedig gynnwys gofyniad ar i Weinidogion Cymru gyflwyno sylwadau priodol i Lywodraeth y DU lle'r effeithir ar hawliau plant yng Nghymru gan faterion a gadwyd yn ôl?

Huw Lewis: Mae hynny gennym o dan Ddeddf Llywodraeth Cymru 2006. Mae gan Weinidogion y pŵer i gyflwyno sylwadau priodol i unrhyw berson am unrhyw fater sy'n effeithio ar Gymru.

Mark Isherwood: Mae a wnelo hyn â gofyniad i gyflwyno sylwadau am hawliau plant, nid y pŵer i wneud hynny.

Ms Lancey: Pŵer i gyflwyno sylwadau ydyw, nid dyletswydd i wneud hynny.

Huw Lewis: Beth fydddech chi'n ceisio'i

trying to alter if you made it a requirement rather than a power?

[151] **Mark Isherwood:** A power is discretionary; a requirement is not. Therefore, if the UK Government is legislating on matters that affect children's rights, Welsh Ministers would be required to make representations.

[152] **Huw Lewis:** If you do not allow discretion for Ministers here, then you do not allow them the flexibility to act in a way that they consider to be appropriate. This throws up all sorts of difficult questions, such as how you establish what the trigger is for deciding whether a particular Minister has said the things that you wanted them to say in conversation with a UK Minister. You begin to trespass upon the obligations and the rights of Ministers to function as effective Ministers of the Crown. It is an old debate. If Ministers are not functioning, there are ways of removing them. If in the opinion of the Assembly Government as a whole, including the First Minister, it is not working properly, there are ways of dealing with that.

[153] To put this into law, and to have some kind of legal interpretation of a conversation between Ken Clarke and myself about children's detention issues, would raise the question of how we would proceed if someone in Welsh society decided that I had not said the right things. It would not be a realistic way to do business.

[154] **Mark Isherwood:** We note your responses, thank you. You will be pleased to hear that we have come to the closing remarks. Do you have any further remarks that you would like to add before we bring matters to a close?

[155] **Huw Lewis:** No, except to thank the committee for a robust and helpful session. This is a work in progress and the committee's input is central. We will take away those issues that we said that we would follow up and respond to them.

[156] **Mark Isherwood:** That would be

newid pe baech yn ei wneud yn ofyniad yn hytrach nag yn bŵer?

Mark Isherwood: Mae pŵer yn ddewisol; nid felly ofyniad. Felly, os yw Llywodraeth y DU yn deddfu ar faterion sy'n effeithio ar hawliau plant, byddai'n ofynnol i Weinidogion Cymru gyflwyno sylwadau.

Huw Lewis: Os na chaniatewch ddisgresiwn i Weinidogion yma, yna nid ydych yn caniatáu'r hyblygrwydd iddynt i weithredu mewn ffordd y maen nhw'n ei hystyried yn briodol. Mae hyn yn codi pob math o gwestiynau anodd, megis sut mae sefydlu beth yw'r sbardun i benderfynu a yw Gweinidog neilltuol wedi dweud y pethau yr oeddech am iddo eu dweud mewn sgwrs ag un o Weinidogion y DU. Yr ydych yn dechrau tresmasu ar rwymedigaethau a hawliau Gweinidogion i weithredu fel Gweinidogion effeithiol o eiddo'r Goron. Mae'n hen ddadl. Os nad yw Gweinidogion yn gweithredu, mae ffyrdd o gael gwared arnynt. Os nad yw'n gweithio'n iawn ym marn Llywodraeth y Cynulliad yn ei chyfanrwydd, yn cynnwys y Prif Weinidog, mae ffyrdd o ddelio â hynny.

Byddai cynnwys hyn yn y gyfraith, a chael rhyw fath o ddehongliad cyfreithiol o sgwrs rhwng Ken Clarke a minnau ynglŷn â materion cadw plant, yn codi'r cwestiwn sut y byddem yn symud ymlaen pe bai rhywun yng nghymdeithas Cymru yn penderfynu nad oeddwn wedi dweud y pethau cywir. Ni fyddai'n ffordd realistig o weithio.

Mark Isherwood: Nodwn eich atebion, diolch ichi. Byddwch yn falch o glywed ein bod wedi cyrraedd y sylwadau cloi. A oes gennych unrhyw sylwadau pellach yr hoffech eu hychwanegu cyn inni ddod â'r cyfarfod i ben?

Huw Lewis: Nac oes, ar wahân i ddiolch i'r pwyllgor am sesiwn dreiddiol a buddiol. Gwaith sy'n mynd rhagddo yw hwn ac mae mewnbyn y pwyllgor yn ganolog. Awn â'r materion hynny y dywedasom y byddem yn edrych ymhellach arnynt gyda ni a byddwn yn ymateb iddynt.

Mark Isherwood: Byddem yn

much appreciated and we would be grateful if you could respond as soon as is practicable. A draft transcript of today's proceedings will be sent to you by our clerk for correction, if necessary, before being finalised. I thank you and your officials for joining us today and giving evidence. I advise Members that the next meeting will be held on the morning of Thursday, 1 July 2010. We will be taking evidence from the UNCRC monitoring group and the Welsh Local Government Association. Thank you all and I declare the meeting closed.

gwerthfawrogi hynny'n fawr a byddem yn ddiolchgar iawn ichi pe gallech ymateb cyn gynted ag sy'n ymarferol. Caiff traswsgripiad drafft o drafodion heddiw ei anfon atoch gan ein clerc i gael ei gywiro, os oes angen, cyn cytuno'n derfynol arno. Diolch i chi a'ch swyddogion am ymuno â ni heddiw a rhoi tystiolaeth. Hysbysaf yr Aelodau y cynhelir y cyfarfod nesaf fore Iau, 1 Gorffennaf 2010. Byddwn yn cymryd tystiolaeth gan grŵp monitro Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn a Chymdeithas Llywodraeth Leol Cymru. Diolch ichi i gyd ac yr wyf yn datgan fod y cyfarfod ar ben.

*Daeth y cyfarfod i ben am 10.34 a.m.
The meeting ended at 10.34 a.m.*