



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

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

**Dydd Iau, 8 Gorffennaf 2010
Thursday, 8 July 2010**

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

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

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

Huw Rowlands	Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Legal Services, Welsh Assembly Government
Gwenda Thomas AC/AM	Aelod Cynulliad, Llafur, y Dirprwy Weinidog dros Wasanaethau Cymdeithasol Assembly Member, Labour, the Deputy Minister for Social Services
Keith Towler	Comisiynydd Plant Cymru The Children's Commissioner for Wales

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 9.12 a.m.
The meeting began at 9.12 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Mark Isherwood:** The Deputy Minister is unable to be with us until 9.30 a.m., so I adjourn the meeting until then, in accordance with Standing Order No. 10.25.

Gohiriwyd y cyfarfod rhwng 9.12 a.m. a 9.20 a.m.
The meeting adjourned between 9.12 a.m. a 9.20 a.m.

[2] **Mark Isherwood:** I call the committee to order. No apologies have been received. I start by welcoming Gwenda Thomas, the Deputy Minister for Social Services, and Huw

Rowlands from the Welsh Assembly Government's Legal Services department.

[3] I will start with the basic housekeeping announcements. In the event of a fire alarm, please leave the room by the marked fire exits and follow the instructions of ushers and staff. There is no test forecast for today. Please switch off all mobile phones, pagers and BlackBerrys, as they interfere with the broadcasting equipment. The National Assembly for Wales operates through the media of the Welsh and English languages. Headphones are provided through which the simultaneous translation can be heard and sound amplified for those who are hard of hearing. Do not touch any of the buttons on the microphones, as that will disable the system. Please ensure that the red light is showing before you start speaking.

9.21 a.m.

**Y Mesur Arfaethedig ynghylch Strategaethau ar gyfer Gofalwyr (Cymru)—
Cyfnod 2: Ystyried y Gwelliannau
The Proposed Carers Strategies (Wales) Measure—Stage 2: Consideration of
Amendments**

[4] **Mark Isherwood:** This is our Stage 2 consideration of amendments. **Mark Isherwood:** Dyma ni yn ystyried y gwelliannau yng Nghyfnod 2.

[5] **Andrew Davies:** Before we start on that, we were here at 9 a.m., when the Deputy Minister was not available, but we were told that we would break until 9.30 a.m.. As we are now going to vote, I am concerned that one Member who was here at 9 a.m. is not here to vote. **Andrew Davies:** Cyn inni ddechrau trafod hynny, yr oeddem yma am 9 a.m., pan nad oedd y Dirprwy Weinidog ar gael, ond dywedwyd wrthym y byddem yn cael toriad tan 9.30 a.m.. Gan y byddwn yn pleidleisio yn awr, yr wyf yn pryderu am nad yw un Aelod a oedd yma am 9 a.m. ar gael i bleidleisio.

[6] **Mark Isherwood:** I appreciate what you are saying. Do we know where the Member is or how long he is likely to be? **Mark Isherwood:** Gwerthfawrogaf yr hyn yr ydych yn ei ddweud. A wyddom ble mae'r Aelod neu pa mor hir y mae'n debygol o fod?

[7] **Ms Davies:** He will be back here by 9.30 a.m.. **Ms Davies:** Bydd yn ôl yma erbyn 9.30 a.m..

[8] **Andrew Davies:** Chair, we did formally adjourn until 9.30 a.m., so I do not think that it is legitimate to go into voting until the Member is here. We all left in good faith. **Andrew Davies:** Gadeirydd, gohiriwyd y cyfarfod yn ffurfiol hyd 9.30 a.m., felly ni chredaf ei bod yn deg mynd ymlaen i bleidleisio nes i'r Aelod gyrraedd. Gadawsom i gyd mewn llawn hyder ffydd.

[9] **Mark Isherwood:** Absolutely, and thank you for raising that point. I will not move to voting or moving amendments until the Member in question has joined us. I will continue with my preamble, if you have no objections to that. **Mark Isherwood:** Yn wir, a diolch am godi'r pwynt hwnnw. Nid wyf yn dymuno symud at y pleidleisio na chynnig gwelliannau nes i'r Aelod dan sylw ymuno â ni. Hoffwn barhau gyda fy rhagymadrodd, os nad ydych yn gwrthwynebu hynny.

[10] The marshalled list of amendments is the list of all amendments tabled that have been marshalled into the order in which the sections appear in the proposed Measure. So, Rhestr y gwelliannau wedi'u didoli yw'r rhestr o'r holl welliannau a gynigiwyd sydd wedi'u didoli yn y drefn y mae'r adrannau y maent yn perthyn iddynt yn ymddangos yn y

for our meetings, the order in which we consider amendments will be: sections 1 to 10, followed by new sections, and then the long title.

[11] You will see from the groupings list circulated that amendments have been grouped to facilitate the debate, but the order in which they are called and moved for a decision is dictated by the marshalled list. Members will need to follow the two papers, although I will advise Members when I call them whether they are being called to speak in the debate or to move their amendments for a decision. There will be one debate on each group of amendments. I will call the proposer of the first amendment in the group, who should speak to and move their first amendment and speak to the other amendments in that group. I will then call other speakers, including any other proposers of amendments in that group, but they should not move their amendments at that stage.

[12] Members who do not have an amendment in the group but who wish to speak should indicate their wish in the usual way. I will call the Deputy Minister to speak on each group and, to conclude each debate, I will call the proposer of the first amendment in the group to wind up.

[13] Following the debate on a group, I will clarify whether the Member who moved the first amendment still wishes to press it to a decision. If not, he or she may seek the agreement of the committee to withdraw it. If it is not withdrawn, I will ask that the first amendment in the group be agreed to. It is my intention that all votes be recorded so that the names of those voting for, against or abstaining are recorded.

[14] I will call the proposers of other amendments in each group to move their amendments at the appropriate time, in accordance with the marshalled list. If you do not wish to move your amendment, you should say so clearly when the amendment is called.

[15] For the record, only committee members may move amendments. Members will wish to be aware that, in line with the

Mesur arfaethedig. Felly, ar gyfer ein cyfarfodydd, dyma'r drefn y byddwn yn ystyried y gwelliannau: adrannau 1 i 10, yna adrannau newydd, ac yna'r teitl hir.

Byddwch yn gweld o restr y grwpiau, a ddosbarthwyd, fod y gwelliannau wedi'u grwpio i hwyluso'r drafodaeth, ond rhestr y gwelliannau wedi'u didoli sy'n pennu ym mha drefn y cânt eu galw a'u cynnig. Bydd angen i Aelodau ddilyn y ddau bapur, er y byddaf yn cynghori'r Aelodau wrth eu galw a ydynt yn cael eu galw i siarad yn y drafodaeth neu i gynnig eu gwelliannau am benderfyniad. Bydd un drafodaeth am bob grŵp o welliannau. Byddaf yn galw cynigydd y gwelliant cyntaf yn y grŵp, a ddylai siarad am y gwelliant cyntaf a'i gynnig a siarad am y gwelliannau eraill yn y grŵp hwnnw. Byddaf wedyn yn galw ar siaradwyr eraill, gan gynnwys cynigyddion gwelliannau eraill yn y grŵp hwnnw, ond ni ddylent gynnig eu gwelliannau ar yr adeg honno.

Dylai Aelodau nad oes ganddynt welliant yn y grŵp ond sydd yn dymuno siarad nodi eu dymuniad yn y ffordd arferol. Byddaf yn galw ar y Dirprwy Weinidog i siarad am bob grŵp ac, i derfynu pob trafodaeth, byddaf yn galw ar gynigydd y gwelliant cyntaf yn y grŵp i ddirwyn y drafodaeth i ben.

Yn dilyn y drafodaeth am grŵp, byddaf yn ceisio eglurhad gan yr Aelod a gynigiodd y gwelliant cyntaf ynghylch a yw'n dymuno bwrw ymlaen i gael penderfyniad. Os nad ydyw, gall ofyn am ganiatâd y pwyllgor i'w dynnu'n ôl. Os nad yw'n cael ei dynnu'n ôl, byddaf yn gofyn i ni gytuno ar y gwelliant cyntaf yn y grŵp. Yr wyf yn bwriadu cofnodi pob pleidlais er mwyn sicrhau bod enwau'r sawl sy'n pleidleisio o blaid, yn erbyn, neu sy'n ymatal yn cael eu cofnodi.

Byddaf yn galw ar gynigyddion gwelliannau eraill ym mhob grŵp i gynnig eu gwelliannau ar yr adeg briodol, yn unol â rhestr y gwelliannau wedi'u didoli. Os nad ydych yn dymuno cynnig eich gwelliant, dylech ddweud hynny'n glir pan elwir y gwelliant.

Er gwybodaeth, dim ond aelodau'r pwyllgor sy'n cael cynnig gwelliannau. Bydd Aelodau yn dymuno gwybod, yn unol â'r confensiwn

convention for the operation of legislation committees, I will move the amendments in the name of the Deputy Minister. Members will be aware that the only way to debate a section of the proposed Measure is for an amendment to it to be tabled. Any sections that do not have amendments tabled to them will be deemed to have been agreed, as will any sections where tabled amendments are not agreed to. I will announce which sections have been agreed at the end of the meeting. Do Members have any questions? I see not. Members may wish to be aware that amendments 5 and 21 have been withdrawn prior to today's proceedings.

ar weithredu pwyllgorau deddfwriaeth, y byddaf yn cynnig y gwelliannau yn enw'r Dirprwy Weinidog. Bydd Aelodau yn gwybod mai'r unig ffordd i drafod adran o'r Mesur arfaethedig yw cyflwyno gwelliant iddi. Bernir bod unrhyw adrannau na chyflwynir gwelliannau iddynt wedi'u cytuno, fel y bydd unrhyw adrannau lle na chytunir ar y gwelliannau a gyflwynwyd iddynt. Byddaf yn cyhoeddi pa adrannau y cytunwyd arnynt ar ddiwedd y cyfarfod. A oes gan Aelodau unrhyw gwestiynau? Gwelaf nad oes. Efallai yr hoffai Aelodau fod yn ymwybodol bod gwelliannau 5 a 21 wedi'u tynnu'n ôl cyn trafodion heddiw.

[16] I now call for another adjournment of the meeting for five minutes; we will come back into session when the other Member arrives.

Yr wyf yn awr yn galw am ohirio'r cyfarfod eto am bum munud; byddwn yn ailafael yn y sesiwn pan fydd yr Aelod arall yn cyrraedd.

*Gohiriwyd y cyfarfod rhwng 9.25 a.m. a 9.29 a.m.
The meeting adjourned between 9.25 a.m. and 9.29 a.m.*

Gofalwyr (Gwelliannau 17 a 18) Carers (Amendments 17 and 18)

[17] **Mark Isherwood:** Welcome back. The first grouping of amendments to consider this morning concerns carers. The lead amendment in the group is amendment 17. I call on Darren Millar to move amendment 17 and to speak to the other amendment in the group.

Mark Isherwood: Croeso yn ôl. Mae'r grŵp cyntaf o welliannau i'w ystyried y bore yma yn ymwneud â gofalwyr. Y prif welliant yn y grŵp yw gwelliant 17. Yr wyf yn galw ar Darren Millar i gynnig gwelliant 17 ac i siarad am y gwelliant arall yn y grŵp.

[18] **Darren Millar:** I move amendment 17 in my name.

Darren Millar: Cynigiau welliant 17 yn fy enw i.

[19] These amendments relate directly to the definition of carers on the face of the proposed Measure. The committee received significant evidence from a number of stakeholders expressing concern that the proposed Measure did not refer explicitly to young carers. That is one reason why these particular amendments have been tabled.

Mae'r gwelliannau hyn yn ymwneud yn uniongyrchol â'r diffiniad o ofalwyr a geir ar wyneb y Mesur arfaethedig. Derbyniodd y pwyllgor dystiolaeth bwysig gan nifer o randdeiliaid yn mynegi pryder nad oedd y Mesur arfaethedig yn cyfeirio'n benodol at ofalwyr ifanc. Dyna un rheswm pam mae'r gwelliannau penodol hyn wedi'u cyflwyno.

9.30 a.m.

[20] There was also an issue relating to the need to specify primary and secondary carers on the face of the proposed Measure, as it was felt by a number of stakeholders that, by not referring to secondary carers, their needs may not be met in the

Yr oedd mater hefyd yn ymwneud â'r angen i nodi prif ofalwr neu ail ofalwr ar wyneb y Mesur arfaethedig, gan fod llawer o randdeiliaid yn credu na fyddai anghenion gofalwyr eilaidd yn cael eu diwallu wrth ddatblygu strategaethau os na cheir cyfeiriad

development of strategies. That view was supported by the Stage 1 committee's report, so I hope that all Members at committee this morning will support both amendments.

[21] **Mark Isherwood:** Do any Members wish to comment? I see that no-one does. Therefore, I call on the Deputy Minister to respond.

[22] **The Deputy Minister for Social Services (Gwenda Thomas):** I apologise for having inadvertently disrupted the committee's proceedings this morning; my time sheets were wrong.

[23] Moving to the amendments, I recognise that amendments 17 and 18 stem from Legislation Committee No. 5's recommendations. However, I have previously made clear my position on this matter. I have considered carefully the views that have been expressed, but I have not been persuaded on this. With regard to amendment 17, the existing definition of 'carer' in section 1 of the proposed Measure applies to every individual of any age

[24] 'who provides or intends to provide a substantial amount of care on a regular basis'.

[25] In other words, it is to do with the impact of caring on carers. The definition already includes young carers, so the proposed amendment is unnecessary. You will know that, if the proposed Measure is passed, I intend for there to be a separate chapter in each strategy to deal with young carers, and that we will put funding behind the development of those chapters.

[26] Amendment 17 also proposes to introduce new subcategories into the definition of 'carer', as Darren has said, of primary and secondary carers. The new categories are defined in amendment 18. My view is that no benefits would arise from seeking to introduce new categories of carers. Indeed, my worry is that doing so could lead to significant confusion. The current definition in section 1 of the proposed Measure is consistent with the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 and links to existing carers' legislation and

atynt. Ategwyd y farn honno yn adroddiad pwyllgor yng Nghyfnod 1, felly gobeithiaf fod pob Aelod yn y pwyllgor y bore yma yn cefnogi'r ddau welliant.

Mark Isherwood: A oes unrhyw Aelod yn dymuno gwneud sylw? Gwelaf nad oes. Felly, yr wyf yn galw ar y Dirprwy Weinidog i ymateb.

Y Dirprwy Weinidog dros Wasanaethau Cymdeithasol (Gwenda Thomas): Ymddiheuraf am darfu'n anfwriadol ar drafodion y pwyllgor y bore yma; yr oedd fy nhafleuni amser yn anghywir.

A symud at y gwelliannau, yr wyf yn cydnabod bod gwelliannau 17 a 18 yn deillio o argymhellion Pwyllgor Deddfwriaeth Rhif 5. Fodd bynnag, yr wyf eisoes wedi gwneud fy safbwynt yn glir ar y mater hwn. Yr wyf wedi ystyried yn ofalus y safbwyntiau a fynegwyd, ond nid wyf wedi fy narbwylllo o hyn. O ran gwelliant 17, mae'r diffiniad cyfredol o 'gofalwr' yn adran 1 y Mesur arfaethedig yn gymwys i bob unigolyn o unrhyw oedran

'sy'n darparu, neu sy'n bwriadu darparu, cyfran sylweddol o ofal yn rheolaidd'.

Hynny yw, mae'n ymwneud ag effaith gofalu ar ofalwyr. Mae'r diffiniad eisoes yn cynnwys gofalwyr ifanc, felly nid oes angen y gwelliant arfaethedig. Fel y gwyddoch, os yw'r Mesur arfaethedig yn cael ei basio, fy mwriad yw cael pennod ar wahân ym mhob strategaeth i ymdrin â gofalwyr ifanc, a byddwn yn neilltuo cyllid ar gyfer datblygu'r penodau hynny.

Mae gwelliant 17 hefyd yn cynnig cyflwyno is-gategoriâu newydd i'r diffiniad o 'gofalwr', fel y dywedodd Darren, o brif ofalwr neu ail ofalwr. Diffinnir y categorïâu newydd yng ngwelliant 18. Fy marn i yw na fyddai unrhyw fanteision yn codi o geisio cyflwyno categorïâu newydd o ofalwyr. Yn wir, yr wyf yn poeni y gallai hynny arwain at gryn ddryswch. Mae'r diffiniad cyfredol yn adran 1 o'r Mesur arfaethedig yn gyson â Gorchymyn (Cymhwysedd Deddfwriaethol) Cynulliad Cenedlaethol Cymru (Lles Cymdeithasol) 2009 ac yn gysylltiedig â deddfwriaeth ac arferion cyfredol o ran

practice. It is, therefore, well understood. I would not want to generate confusion, as would be likely, by introducing a completely new distinction between people who, together, may be acting as carers for the same cared-for person, as I believe is proposed by the amendments.

[27] I have many reservations about the definitions proposed by the amendments, and I believe that they would require a great deal more work to be done to clarify their meaning if we are to ensure that they can be fully understood. I would be prepared to consider this if I believed that amendments 17 and 18 improved the meaning of section 1, but I do not believe that that is the case. I believe that the amendments are unnecessary, so I am unable to support them.

[28] **Darren Millar:** I thank the Deputy Minister for her response. While I welcome the inclusion of a chapter that refers specifically to young carers being a requirement in regulation, I do not feel that it satisfies the calls made by witnesses at this committee. Therefore, I wish to put this matter to the vote. We must remember that many organisations called for the definitions to be included on the face of the proposed Measure, including Barnardo's Cymru, Children in Wales and the Welsh NHS Confederation, to name but three. It is important to recognise young carers specifically. The definition that is currently on the face of the proposed Measure is open to interpretation. It defines 'carers' as those who provide

[29] 'a substantial amount of care on a regular basis'.

[30] That is ambiguous and unclear, and that is why this committee recommended at Stage 1 that it be tidied up and that there should be more explicit references to primary and secondary carers, including a definition of secondary care for substantial care for young and adult carers, so I maintain the need for these amendments to the legislation and I wish to proceed to a vote.

[31] **Mark Isherwood:** You have confirmed that you wish to proceed to a vote.

gofalwyr. Felly, mae pawb yn ei ddeall. Ni fyddwn yn dymuno peri dryswch, fel sy'n debygol o gyflwyno gwahaniaeth hollol newydd rhwng pobl a all fod, gyda'i gilydd, yn gweithredu fel gofalwyr i'r un person sy'n derbyn gofal, fel y credaf a gynigir gan y gwelliannau.

Mae gennyf lawer o amheuan am y diffiniadau a gynigir gan y gwelliannau, a chredaf y byddai angen gwneud llawer mwy o waith i egluro eu hystyr os ydym eisiau sicrhau y gellir eu deall yn iawn. Byddwn yn fodlon ystyried hyn pe bawn yn credu y byddai gwelliannau 17 a 18 yn gwella ystyr adran 1, ond ni chredaf fod hynny'n wir. Credaf nad oes angen y gwelliannau, felly ni allaf eu cefnogi.

Darren Millar: Diolch i'r Dirprwy Weinidog am ei hymateb. Er fy mod yn croesawu ei gwneud yn ofynnol o dan reoliadau gynnwys pennod sy'n cyfeirio'n benodol at ofalwyr ifanc, ni chredaf fod hynny'n bodloni galwadau tystion yn y pwyllgor hwn. Felly, hoffwn inni bleidleisio ar y mater hwn. Rhaid i ni gofio bod llawer o sefydliadau wedi gofyn i'r diffiniadau gael eu cynnwys ar wyneb y Mesur arfaethedig, gan gynnwys Barnardo's Cymru, Plant yng Nghymru a Chonffederasiwn GIG Cymru ac enwi tri y unig. Mae'n bwysig cydnabod gofalwyr ifanc yn benodol. Mae'r diffiniad sydd ar wyneb y Mesur arfaethedig ar hyn o bryd yn agored i'w ddehongli. Mae'n diffinio 'gofalwyr' fel y sawl sy'n darparu

'cyfran sylweddol o ofal yn rheolaidd'.

Mae hynny'n amwys ac aneglur, a dyna pam i'r pwyllgor hwn argymhell yng Nghyfnod 1 ei fod yn cael ei dacluso ac y dylid cael cyfeiriadau mwy eglur at brif ofalwyr ac ail ofalwyr, gan gynnwys diffiniad o ofal eilaidd ar gyfer gofal sylweddol ar gyfer gofalwyr ifanc a gofalwyr sy'n oedolion, ac felly yr wyf yn parhau i gredu bod angen y gwelliannau hyn i'r ddeddfwriaeth a hoffwn fwrw ymlaen i bleidlais.

Mark Isherwood: Yr ydych wedi cadarnhau eich bod yn dymuno bwrw ymlaen i bleidlais.

Members should be aware that if amendment 17 is not agreed, amendment 18 will fall. The question is that amendment 17 be agreed to. I call for a vote.

Dylai Aelodau fod yn ymwybodol os na chytunir ar welliant 17, y bydd gwelliant 18 yn methu. Y cwestiwn yw a ddylid derbyn gwelliant 17. Galwaf am bleidlais.

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

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

Burnham, Eleanor
Millar, Darren

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

Davies, Alun
Davies, Andrew
Wood, Leanne

*Gwrthodwyd gwelliant 17.
Amendment 17 not agreed.*

[32] **Mark Isherwood:** As amendment 17 has not been agreed, amendment 18 falls.

Mark Isherwood: Gan fod gwelliant 17 wedi'i wrthod, mae gwelliant 18 yn methu.

*Methodd gwelliant 18.
Amendment 18 fell.*

**Awdurdodau Perthnasol/Cyfrifol (Gwelliannau 1, 2, 3, 4, 24, 6, 7, 8, 10, 11, 12 a 13)
Relevant/Responsible Authorities (Amendments 1, 2, 3, 4, 24, 6, 7, 8, 10, 11, 12 and 13)**

[33] **Mark Isherwood:** The second group of amendments to consider is in relation to relevant/responsible authorities. The lead amendment in the group is amendment 1. Deputy Minister, would you like amendment 1 in your name to be moved?

Mark Isherwood: Mae'r ail grŵp o welliannau i'w ystyried yn ymwneud ag awdurdodau perthnasol/cyfrifol. Gwelliant 1yw'r prif welliant yn y grŵp. Ddirprwy Weinidog, a hoffech i welliant 1 yn eich enw gael ei gynnig?

[34] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[35] **Mark Isherwood:** I move amendment 1 in the name of Gwenda Thomas. I call on the Deputy Minister to speak to amendment 1 and the other amendments in the group.

Mark Isherwood: Cynigiau welliant 1 yn enw Gwenda Thomas. Yr wyf yn galw ar y Dirprwy Weinidog i siarad am welliant 1 a'r gwelliannau eraill yn y grŵp.

[36] **Gwenda Thomas:** Amendment 1 is a drafting amendment that will provide Welsh Ministers with the flexibility to require, by way of regulations, either a single relevant authority or two or more relevant authorities to prepare and publish the strategy. This is a prudent amendment to take account of the fact that there may be occasions in future when it would be more appropriate for a single organisation, such as the Welsh Ambulance Services NHS Trust or the Public Health Wales NHS Trust, to prepare and publish a strategy. It does not, in

Gwenda Thomas: Gwelliant drafftio yw gwelliant 1 a fydd yn darparu'r hyblygrwydd i Weinidogion Cymru fynnu, drwy reoliadau, i awdurdod perthnasol unigol neu ddau awdurdod perthnasol neu fwy baratoi a chyhoeddi'r strategaeth. Mae hwn yn welliant doeth i ystyried y ffaith y gallai achlysuron godi yn y dyfodol pan fyddai'n fwy priodol i un sefydliad, fel Ymddiriedolaeth GIG Gwasanaethau Ambiwlans Cymru neu Ymddiriedolaeth GIG Iechyd Cyhoeddus Cymru, baratoi a chyhoeddi strategaeth. Nid yw'n newid effaith gyfreithiol y

any other way, alter the legal effect of the existing provisions contained in section 1 of the proposed Measure. Amendments 2, 3, 4, 6, 10, 11 and 12 are consequential on amendment 1. They update all subsequent references to 'the authorities' with appropriate wording to take amendment 1 into account.

[37] Amendment 7 removes the reference to 'an NHS organisation' from section 5(3) and replaces it with a wording that provides for the Welsh Ministers to designate any relevant authority as the lead authority for the purposes of co-ordinating and overseeing the preparation and publication of the strategy required under section 2. The amendment responds to this committee's concern about the lack of flexibility and the current proposals to put the NHS as the lead routinely. I committed to giving further consideration to this matter during the Stage 1 debate on the proposed Measure. Although I am quite clear that our current policy intention is that the NHS will be the lead organisation where there are two or more responsible authorities working together and one of these is an NHS body, I have concluded that it would be prudent to provide for future flexibility in the designation of a lead authority. I believe that such flexibility would be particularly pertinent in light of amendment 13, which, if accepted, would enable new categories of 'relevant authorities' to be added to the existing list set out in section 2(3). Amendment 8 arises as a consequence of amendment 7 and removes the whole of section 5(4) from the proposed Measure as it simply provides a definition in support of section 5(3) as originally worded. Once the revised wording from amendment 7 is applied to sub-section 3, sub-section 4 becomes redundant and can therefore be deleted. Amendment 8 has no effect on the remainder of section 5.

[38] Amendment 13 inserts a new section into the proposed Measure, which would give the Welsh Ministers new Order-making powers to amend the list of relevant authorities set out in section 2(3)

[39] 'by adding further bodies or authorities or descriptions of body or authority.'

darpariaethau cyfredol sydd wedi'u cynnwys yn adran 1 y Mesur arfaethedig mewn unrhyw ffordd arall. Mae gwelliannau 2, 3, 4, 6, 10, 11 a 12 o ganlyniad i welliant 1. Maent yn diweddarau pob cyfeiriad dilynol at 'yr awdurdodau' gyda geiriad priodol i ystyried gwelliant 1.

Mae gwelliant 7 yn cael gwared ar y cyfeiriad at 'gorff GIG' o adran 5(3) ac yn ei ddisodli gyda geiriad sy'n galluogi Gweinidogion Cymru i ddynodi unrhyw awdurdod perthnasol fel yr awdurdod arweiniol at ddibenion cydlynu a goruchwyllo'r gwaith o baratoi a chyhoeddi'r strategaeth sy'n ofynnol o dan adran 2. Mae'r gwelliant yn ymateb i bryder y pwyllgor hwn am ddiffyg hyblygrwydd a'r cynigion cyfredol i gael y GIG i arwain yn rheolaidd. Ymrwymais i roi ystyriaeth bellach i'r mater hwn yn ystod y drafodaeth Cyfnod 1 ar y Mesur arfaethedig. Er fy mod yn eithaf clir mai ein bwriad polisi ar hyn o bryd yw mai'r GIG fydd y sefydliad arweiniol pan fydd dau awdurdod cyfrifol neu fwy yn cydweithio a bod un o'r rhain yn gorff sy'n perthyn i'r GIG, yr wyf wedi dod i'r casgliad y byddai'n ddoeth darparu er mwyn galluogi hyblygrwydd yn y dyfodol wrth ddynodi awdurdod arweiniol. Credaf y byddai hyblygrwydd o'r fath yn arbennig o berthnasol o ystyried gwelliant 13, a fyddai, pe bai'n cael ei dderbyn, yn galluogi i gategorïau newydd o 'awdurdodau perthnasol' gael eu hychwanegu at y rhestr gyfredol a geir yn adran 2(3). Mae gwelliant 8 yn deillio o ganlyniad i welliant 7 ac mae'n dileu adran 5(4) yn gyfan o'r Mesur arfaethedig gan ei fod yn syml yn darparu diffiniad i ategu adran 5(3) fel y cafodd ei geirio'n wreiddiol. Ar ôl i eiriad diwygiedig gwelliant 7 gael ei gymhwyso i is-adran 3, bydd is-adran 4 yn ddiangen ac felly gellir ei dileu. Nid yw gwelliant 8 yn effeithio ar weddill adran 5.

Mae gwelliant 13 yn mewnosod adran newydd yn y Mesur arfaethedig, a fyddai'n rhoi pwerau gwneud Gorchmynion newydd i Weinidogion Cymru i wella'r rhestr o awdurdodau perthnasol a geir yn adran 2(3)

'drwy ychwanegu cyrff neu awdurdodau ychwanegol neu ddisgrifiadau ychwanegol o gyrrff neu awdurdodau.'

9.40 a.m.

[40] Recommendation 5 of the committee's Stage 1 report specifically endorses that approach. Therefore, I believe that we are accommodating that recommendation. After careful consideration, I have decided to support and implement the committee's recommendation. I believe that that would be a prudent drafting change to provide future Welsh Ministers with the necessary powers to respond to new organisational structures that may emerge over the lifetime of the Measure.

[41] Regarding amendment 24, the educational services and functions of the county council or county borough council are already included by virtue of the current wording of the proposed Measure. There is therefore no purpose in specifically referring to educational services. Indeed, in doing so, there is the potential for confusion as it could then raise queries about whether other services provided by a local authority would be included and would form a part of the proposed Measure. Therefore, I am not able to support amendment 24.

[42] **Eleanor Burnham:** Is it appropriate for me to speak to amendment 24?

[43] **Mark Isherwood:** You may speak in response to the Deputy Minister's comments.

[44] **Eleanor Burnham:** The committee expressed concern that the specific support needs of young carers were not being addressed appropriately. Many witnesses talked about the importance of educational services. Accurate numbers of young carers are not known, although the report of our children's commissioner, 'Full of Care', cites the Welsh Government figure of around 11,000 young carers in Wales, based on the 2001 census. The actual figure may be higher. Many young carers are in primary school, and many remain unidentified and perhaps unsupported. Committee recommendation 4 sought to include educational services in the first set of regulations, and I believe that this amendment strengthens that recommendation by specifying educational services within the

Mae argymhelliad 5 adroddiad Cyfnod 1 y pwyllgor yn cymeradwyo'r dull hwnnw yn benodol. Felly, credaf ein bod yn ystyriol o'r argymhelliad hwnnw. Ar ôl ystyried yn ofalus, yr wyf wedi penderfynu cefnogi a gweithredu argymhelliad y pwyllgor. Credaf y byddai hynny'n newid drafftio doeth i roi'r pwerau sydd eu hangen ar Weinidogion Cymru i ymateb i strwythurau sefydliadol newydd yn y dyfodol a allai godi yn ystod oes y Mesur.

O ran gwelliant 24, mae'r gwasanaethau addysgol a swyddogaethau'r cyngor sir neu'r cyngor bwrdeistref sirol eisoes wedi'u cynnwys drwy eiriad cyfredol y Mesur arfaethedig. Felly, nid oes diben cyfeirio'n benodol at wasanaethau addysgol. Yn wir, drwy wneud hynny, mae'r potensial am ddryswch oherwydd gallai wedyn godi cwestiynau ynglŷn ag a yw'r gwasanaethau eraill a ddarperir gan awdurdod lleol wedi'u cynnwys ac a ydynt yn rhan o'r Mesur arfaethedig. Felly, ni allaf gefnogi gwelliant 24.

Eleanor Burnham: A yw'n briodol i mi siarad am welliant 24?

Mark Isherwood: Gallwch siarad mewn ymateb i sylwadau'r Dirprwy Weinidog.

Eleanor Burnham: Mynegodd y pwyllgor bryderon nad oedd anghenion cymorth penodol gofalwyr ifanc yn cael sylw priodol. Siaradodd llawer o dystion am bwysigrwydd gwasanaethau addysgol. Ni wyddom am niferoedd manwl gywir gofalwyr ifanc, er bod adroddiad ein comisiynydd plant, 'Bywyd Llawn Gofal', yn dyfynnu ffigur Llywodraeth Cymru fod tua 11,000 o ofalwyr ifanc yng Nghymru, ar sail cyfrifiad 2001. Gallai'r ffigur cywir fod yn uwch. Mae llawer o ofalwyr ifanc yn yr ysgol gynradd, ac mae llawer ohonynt yn anhysbys ac o bosibl heb eu cynorthwyo. Ceisiodd argymhelliad 4 y pwyllgor gynnwys gwasanaethau addysgol yn y gyfres gyntaf o reoliadau, a chredaf fod y gwelliant hwn yn cryfhau'r argymhelliad hwnnw drwy nodi gwasanaethau addysgol o fewn cwmpas yr

scope of the responsible authorities.

awdurdodau cyfrifol.

[45] **Mark Isherwood:** Do any other Members wish to speak?

Mark Isherwood: A oes unrhyw Aelodau eraill yn dymuno siarad?

[46] **Alun Davies:** I understand where the Liberals and the Conservatives are coming from on this. The Deputy Minister has responded to the conclusions of this committee and to the evidence that the committee received. I am surprised that there would be any opposition to these rafts of amendments since they do, in many ways, support the work and the tone of the committee report in its investigations.

Alun Davies: Deallaf safbwynt y Rhyddfrydwyr a'r Ceidwadwyr ar hyn. Mae'r Dirprwy Weinidog wedi ymateb i gasgliadau'r pwyllgor hwn ac i'r dystiolaeth a dderbyniodd y pwyllgor. Yr wyf yn synnu y byddai unrhyw wrthwynebiad i'r gyfres hon o welliannau gan eu bod, mewn sawl ffordd, yn cefnogi gwaith a naws adroddiad y pwyllgor yn ei ymchwiliadau.

[47] **Eleanor Burnham:** May I respond to that?

Eleanor Burnham: A gaf fi ymateb i hynny?

[48] **Mark Isherwood:** You may.

Mark Isherwood: Cewch.

[49] **Eleanor Burnham:** I am surprised that you are surprised, Alun, because there is full testimony and, in particular, there is the testimony of the Children's Commissioner for Wales in his report, 'Full of Care'. It is particularly shocking that there are many carers in primary schools who remain unidentified and perhaps unsupported. That is why I strongly advocate our amendment 24.

Eleanor Burnham: Yr wyf yn synnu eich bod yn synnu, Alun, gan fod tystiolaeth lawn ac, yn benodol, mae tystiolaeth Comisiynydd Plant Cymru yn ei adroddiad, 'Bywyd Llawn Gofal'. Mae'n arbennig o ysgytiol bod cynifer o ofalwyr yn yr ysgol gynradd sy'n anhysbys ac nad ydynt yn derbyn cymorth o bosibl. Dyna'r rheswm yr wyf yn cefnogi ein gwelliant 24 i'r carn.

[50] **Mark Isherwood:** I call on the Deputy Minister to reply to those comments.

Mark Isherwood: Galwaf ar y Dirprwy Weinidog i ymateb i'r sylwadau hynny.

[51] **Gwenda Thomas:** This group includes Government amendments and one non-Government amendment. I feel that there is consensus on the Government amendments, because they respond to committee recommendations. With regard to the non-Government amendment, amendment 24 in the name of Eleanor Burnham, the issue is not that I do not sympathise with what has been said about educational services. Educational services are included in the proposed Measure, because all functions of a local authority are included. However, what I am saying is that education is not to be a part of the first tranche of services included, because—and I have explained this before—we specifically want to start with the NHS and social services. I explained to the committee that a big-bang approach could become unwieldy and would not be easy to handle. It is not that we are saying that

Gwenda Thomas: Mae'r grŵp hwn yn cynnwys gwelliannau'r Llywodraeth ac un gwelliant nad yw'n ymwneud â'r Llywodraeth. Credaf fod consensws ynghylch gwelliannau'r Llywodraeth, gan eu bod yn ymateb i argymhellion y pwyllgor. O ran y gwelliant nad yw'n ymwneud â'r Llywodraeth, gwelliant 24 yn enw Eleanor Burnham, nid yw hyn yn golygu nad wyf yn cydymdeimlo â'r hyn sydd wedi'i ddweud am wasanaethau addysgol. Mae gwasanaethau addysgol wedi'u cynnwys yn y Mesur arfaethedig, gan fod holl swyddogaethau awdurdodau lleol wedi'u cynnwys. Fodd bynnag, yr wyf yn dweud nad yw addysg yn rhan o'r gyfran gyntaf o wasanaethau sydd wedi'u cynnwys, oherwydd—ac yr wyf wedi egluro hyn o'r blaen—yr ydym am ddechrau'n benodol gyda'r GIG a gwasanaethau cymdeithasol. Eglurais i'r pwyllgor y gallai dull o wneud

educational services should not be included, but we are saying that we will take the first step to embrace the NHS and social services. The scope of the proposed Measure will then allow for its expansion to educational services, as and when that is deemed appropriate. That could happen within a year or two, which would be a matter for the next administration, but the scope certainly encompasses educational services.

popeth ar unwaith fynd yn afrosgo ac na fyddai'n hawdd ei drafod. Nid ydym yn dweud na ddylid cynnwys gwasanaethau addysgol, ond byddwn yn cymryd y cam cyntaf i gynnwys y GIG a gwasanaethau cymdeithasol. Bydd cwmpas y Mesur arfaethedig yn caniatáu ei ymestyn i wasanaethau addysgol wedyn, unwaith y bernir bod hynny'n briodol. Gallai hynny fod o fewn blwyddyn neu ddwy, a fyddai'n fater i'r weinyddiaeth nesaf, ond mae'r cwmpas yn sicr yn cynnwys gwasanaethau addysgol.

[52] **Mark Isherwood:** Deputy Minister, do you wish to proceed to a vote on amendment 1?

Mark Isherwood: Ddirprwy Weinidog, a hoffech fwrw ymlaen i bleidlais ar welliant 1?

[53] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[54] **Mark Isherwood:** The question is that amendment 1 be agreed to. I call for a vote.

Mark Isherwood: Y cwestiwn yw a ddylid derbyn gwelliant 1. Galwaf am bleidlais.

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

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 1.
Amendment 1 agreed.*

[55] **Mark Isherwood:** We now come to dispose of amendment 2. Deputy Minister, would you like amendment 2 in your name to be moved?

Mark Isherwood: Deuwn yn awr i waredu ar welliant 2. Ddirprwy Weinidog, a hoffech i welliant 2 yn eich enw gael ei gynnig?

[56] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[57] **Mark Isherwood:** I move amendment 2 in the name of Gwenda Thomas. The question is that amendment 2 be agreed to. I call for a vote.

Mark Isherwood: Cynigaf welliant 2 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 2. Galwaf am bleidlais.

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

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

Burnham, Eleanor
 Davies, Alun
 Davies, Andrew
 Millar, Darren
 Wood, Leanne

*Derbyniwyd gwelliant 2.
 Amendment 2 agreed.*

[58] **Mark Isherwood:** There will be no vote on the other amendments in this group at this point. We will return to vote on these later in the proceedings, in accordance with the marshalled list.

Mark Isherwood: Ni fydd pleidlais ar y gwelliannau eraill yn y grŵp hwn ar hyn o bryd. Byddwn yn dychwelyd i bleidleisio ar y rhain yn ddiweddarach yn y trafodion, yn unol â rhestr y gwelliannau wedi'u didoli.

Strategaeth (Gwelliannau 23, 9 a 26) Strategy (Amendments 23, 9 a 26)

[59] **Mark Isherwood:** This grouping of amendments is in relation to strategies. The lead amendment is amendment 23. I call on Eleanor Burnham to move amendment 23 and to speak to the other amendments in the group.

Mark Isherwood: Mae'r grŵp hwn o welliannau yn ymwneud â strategaethau. Gwelliant 23 yw'r prif welliant. Galwaf ar Eleanor Burnham i gynnig gwelliant 23 ac i siarad am y gwelliannau eraill yn y grŵp.

[60] **Eleanor Burnham:** I move amendment 23 in my name.

Eleanor Burnham: Cynigaf welliant 23 yn fy enw i.

[61] These amendments attempt to implement the committee's recommendation 11. While the proposed Measure currently allows for the provision of a strategy, that places no obligation on authorities to promote and communicate that strategy to carers. In the first instance, amendment 23 amends section 2 to include a requirement to promote and communicate the strategy. The production of a strategy, I believe, is not an end in itself. The priority must be the benefit to carers and those whom they care for, so access to information must be promoted and communicated. Our amendment 26 therefore builds on the previous amendment by ensuring that the strategy is proactively brought to the attention of carers.

Mae'r gwelliannau hyn yn ceisio gweithredu argymhelliad 11 y pwyllgor. Er bod y Mesur arfaethedig yn darparu ar gyfer cyhoeddi strategaeth ar hyn o bryd, nid yw hynny'n cynnwys unrhyw rwymedigaeth ar awdurdodau i hyrwyddo a chyfathrebu'r strategaeth i ofalwyr. Yn y lle cyntaf, mae gwelliant 23 yn diwygio adran 2 i gynnwys gofyniad i hyrwyddo a chyfathrebu'r strategaeth. Nid yw llunio strategaeth, credaf, yn ofyniad ynddo'i hun. Y flaenoriaeth fydd budd gofalwyr a'r sawl y maent yn gofalu amdanynt, felly rhaid hyrwyddo a chyfathrebu mynediad i wybodaeth. Felly, mae ein gwelliant 26 yn adeiladu ar y gwelliant blaenorol drwy sicrhau bod y strategaeth yn cael ei dwyn at sylw gofalwyr yn rhagweithiol.

[62] As the proposed Measure stands, young carers in particular could be at a disadvantage, since many young carers are not identified by the authorities, as I have said. There is therefore a danger that if the strategy is not actively promoted, young carers could be excluded from the benefits that this proposed Measure attempts to

Fel y mae'r Mesur arfaethedig yn sefyll ar hyn o bryd, gallai gofalwyr ifanc yn arbennig fod o dan anfantais, gan nad yw llawer ohonynt yn hysbys i'r awdurdodau, fel y dywedais. Felly, mae perygl os nad yw'r strategaeth yn cael ei hyrwyddo'n weithgar, y gallai gofalwyr ifanc gael eu heithrio o'r manteision y mae'r Mesur arfaethedig hwn

deliver. By ensuring that the strategy is publicised and promoted, particularly in education environments, there is a greater chance that young carers will be included, supported and be aware of their rights.

[63] **Mark Isherwood:** Do any other Members wish to speak? I see that no-one does. Therefore, I call on the Deputy Minister to respond.

[64] **Gwenda Thomas:** With regard to amendment 23, I do not consider that the current wording of section 2(1)(a) of the proposed Measure needs to be amended in this way. Using the words 'promote and communicate' does not add anything to the words 'to provide appropriate information and advice'. For example, in providing information, such information would have to be communicated to the intended recipient and also promoted or it would not be properly provided. I therefore cannot support that amendment, and I do not recall this particular matter being raised during the scrutiny of the proposed Measure. I believe that this is a matter that could be more appropriately considered as part of the development of the draft regulations relating to the preparation and publication of strategies under section 2. These regulation powers are contained in section 5(1) of the proposed Measure, which states:

[65] 'The Welsh Ministers may by regulations make further provision as to the preparation and publication of strategies under section 2.'

[66] While I acknowledge the thinking behind amendment 26, I believe that the regulation-making powers proposed again under section 5 will enable us to address these matters in regulations. Section 5(2)(c) is pertinent in this context. Putting such detail on the face of the proposed Measure is therefore unnecessary and I cannot support this amendment.

9.50 a.m.

[67] However, I add here that under Government amendment 16, which we will come to shortly, we are also proposing that

yn eu cynnig. Drwy sicrhau bod y strategaeth yn cael cyhoeddusrwydd ac yn cael ei hyrwyddo, yn enwedig mewn amgylcheddau addysg, mae mwy o gyfle y bydd gofalmwr ifanc yn cael eu cynnwys, eu cefnogi a'u bod yn ymwybodol o'u hawliau.

Mark Isherwood: A oes unrhyw Aelod arall yn dymuno siarad? Gwelaf nad oes. Felly, yr wyf yn galw ar y Dirprwy Weinidog i ymateb.

Gwenda Thomas: O ran gwelliant 23, nid wyf yn ystyried bod angen gwella geiriad cyfredol adran 2(1)(a) y Mesur arfaethedig yn y ffordd hon. Nid yw defnyddio'r geiriau 'hyrwyddo a chyfleu' yn ychwanegu unrhyw beth at y geiriau 'i ddarparu gwybodaeth briodol a chyingor priodol'. Er enghraifft, wrth ddarparu gwybodaeth, byddai'n rhaid cyfathrebu gwybodaeth o'r fath i'r derbynnydd a fwriedir a'i hyrwyddo neu ni fyddai'n cael ei darparu'n iawn. Felly ni allaf gefnogi'r gwelliant hwnnw, ac ni allaf gofio'r mater penodol hwn yn cael ei godi wrth graffu ar y Mesur arfaethedig. Credaf fod hwn yn fater y gellid ei ystyried yn fwy priodol fel rhan o'r gwaith o ddatblygu rheoliadau drafft sy'n ymwneud â pharatoi a chyhoeddi strategaethau o dan adran 2. Mae'r pwerau rheoleiddio hyn i'w cael yn adran 5(1) y Mesur arfaethedig, sy'n datgan:

'Caiff Gweinidogion Cymru, drwy reoliadau, wneud darpariaeth bellach ynghylch paratoi a chyhoeddi strategaethau o dan adran 2.'

Er fy mod yn cydnabod y bwriad sydd wrth wraidd gwelliant 26, credaf y bydd y pwerau gwneud rheoliadau a gynigir eto o dan adran 5 yn ein galluogi i fynd i'r afael â'r materion hyn mewn rheoliadau. Mae adran 5(2)(c) yn berthnasol yn y cyd-destun hwn. Felly, nid oes angen rhoi cymaint o fanylder ar wyneb y Mesur arfaethedig ac ni allaf gefnogi'r gwelliant.

Fodd bynnag, ychwanegaf yma yr ydym hefyd yn cynnig, o dan welliant 16 y Llywodraeth y byddwn yn ei drafod yn y

the first set of regulations under section 5(1) be subject to the affirmative resolution process, so the National Assembly will have the opportunity to scrutinise our regulation proposals.

[68] The proposed Government amendment 9 is another consequential amendment that takes account of and is dependent on amendment 1. It provides that each strategy must be submitted in draft form to the Welsh Ministers by the responsible authority, if there is only one, and by the lead authority where there is more than one responsible authority. Therefore, this complements the inclusion of a single authority. That is what amendment 9 is about.

[69] **Mark Isherwood:** Do you want to reply, Eleanor?

[70] **Eleanor Burnham:** No, I will leave it at that.

[71] **Mark Isherwood:** In that case, Eleanor, do you want to proceed to a vote on amendment 23?

[72] **Eleanor Burnham:** Yes, please.

[73] **Mark Isherwood:** The question is that amendment 23 be agreed to. I call for a vote.

man, fod y gyfres gyntaf o reoliadau o dan adran 5(1) yn amodol ar y broses penderfyniad cadarnhaol, fel bod y Cynulliad Cenedlaethol yn cael y cyfle i graffu ar ein cynigion am reoleiddio.

Mae gwelliant 9 arfaethedig y Llywodraeth yn welliant canlyniadol arall sy'n ystyried ac sy'n ddibynnol ar welliant 1. Mae'n darparu bod yn rhaid i bob strategaeth gael ei chyflwyno ar ffurf ddrafft i Weinidogion Cymru gan yr awdurdod cyfrifol, os dim ond un sy'n bodoli, a chan yr awdurdod arweiniol lle bo mwy nag un awdurdod cyfrifol. Felly, mae hyn yn ategu cynhwysiad awdurdod unigol. Dyna hanfod gwelliant 9.

Mark Isherwood: A hoffech ymateb, Eleanor?

Eleanor Burnham: Na, gadawaf pethau fel yna.

Mark Isherwood: Felly, Eleanor, a hoffech fwrw ymlaen i bleidlais ar welliant 23?

Eleanor Burnham: Hoffwn, os gwelwch yn dda.

Mark Isherwood: Y cwestiwn yw a ddylid derbyn gwelliant 23. Galwaf am bleidlais.

*Gwelliant 23: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 23: For 2, Abstain 0, Against 3.*

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

Burnham, Eleanor
Millar, Darren

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

Davies, Alun
Davies, Andrew
Wood, Leanne

*Gwrthodwyd gwelliant 23.
Amendment 23 not agreed.*

[74] **Mark Isherwood:** In accordance with the marshalled list, we now move to dispose of amendments 3 and 4, which were debated in the previous group, group 2. Deputy Minister, would you like amendment 3 in your name to be moved?

[75] **Gwenda Thomas:** Yes, please.

Mark Isherwood: Yn unol â rhestr y gwelliannau wedi'u didoli, symudwn yn awr i waredu ar welliannau 3 a 4, a drafodwyd yn y grŵp blaenorol, grŵp 2. Ddirprwy Weinidog, a hoffech i welliant 3 yn eich enw gael ei gynnig?

Gwenda Thomas: Hoffwn, os gwelwch yn

dda.

[76] **Mark Isherwood:** I move amendment 3 in the name of Gwenda Thomas. The question is that amendment 3 be agreed to. I call for a vote.

Mark Isherwood: Cynigiau welliant 3 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 3. Galwaf am bleidlais.

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

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 3.
Amendment 3 agreed.*

[77] **Mark Isherwood:** Deputy Minister, would you like amendment 4 in your name to be moved?

Mark Isherwood: Ddirprwy Weinidog, a hoffech i welliant 4 yn eich enw gael ei gynneg?

[78] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[79] **Mark Isherwood:** I move amendment 4 in the name of Gwenda Thomas. Members should be aware that if amendment 4 is agreed, amendment 22, which has not yet been debated, will fall. The question is that amendment 4 be agreed to. I call for a vote.

Mark Isherwood: Cynigiau welliant 4 yn enw Gwenda Thomas. Dylai Aelodau fod yn ymwybodol y bydd gwelliant 22, nad ydym wedi'i drafod eto, yn methu os derbynnir gwelliant 4. Y cwestiwn yw a ddylid derbyn gwelliant 4. Galwaf am bleidlais.

*Gwelliant 4: O blaid 3, Ymatal 0, Yn erbyn 2.
Amendment 4: For 3, Abstain 0, Against 2.*

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

Davies, Alun
Davies, Andrew
Wood, Leanne

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

Burnham, Eleanor
Millar, Darren

*Derbyniwyd gwelliant 4.
Amendment agreed.*

[80] **Mark Isherwood:** As amendment 4 was agreed, amendment 22 falls.

Mark Isherwood: Gan ein bod wedi derbyn gwelliant 4, mae gwelliant 22 yn methu.

*Methodd gwelliant 22.
Amendment 22 fell.*

Ymgynghori (Gwelliannau 22, 20 a 19)
Consultation (Amendments 22, 20 and 19)

[81] **Mark Isherwood:** We now move to group 4, on consultation, relating to amendments 22, 20 and 19. As amendment 22 has fallen, the lead amendment will be the next amendment in the group, amendment 20, which is on page 3 of the marshalled list. I call on Darren Millar to move amendment 20 and to speak to the other amendment in the group.

[82] **Darren Millar:** I move amendment 20 in my name and with the name of Eleanor Burnham in support.

[83] These amendments relate to section 4 of the proposed Measure, which relates to requirements for consultation with stakeholders and carers when strategies are being put together by the relevant authorities. In particular, it reflects the strong evidence that we received from almost all the contributors of written and oral evidence requiring a reference on the face of the proposed Measure to the duty to consult with carers, and, more importantly, to give regard to the outcomes of the consultation and to specify minimum terms for consultation. We received evidence from the Wales Neurological Alliance that made specific reference to the suggestion to include on the face of the proposed Measure a requirement for, at a minimum, stakeholder meetings, a survey of all carers and service users, and a 28-day consultation period within which interested parties should be consulted. That is the rationale behind these particular amendments. Of course, these were supported by the committee during Stage 1 and in the report that was published afterwards, so I encourage Members to support these amendments.

[84] **Mark Isherwood:** Do any other Members wish to speak? I see that you do not and therefore call on the Deputy Minister to reply.

[85] **Gwenda Thomas:** I have considered amendment 22 carefully and have taken further legal advice in relation to the matter. However, my view remains that the term 'and pay due regard' adds nothing to the

Mark Isherwood: Yr ydym yn awr yn symud at grŵp 4, ar ymgynghori, sy'n ymwneud â gwelliannau 22, 20 ac 19. Gan fod gwelliant 22 wedi methu, y gwelliant nesaf yn y grŵp fydd y prif welliant, sef gwelliant 20, sydd ar dudalen 3 rhestr y gwelliannau wedi'u didoli. Galwaf ar Darren Millar i gynnig gwelliant 20 ac i siarad am y gwelliant arall yn y grŵp.

Darren Millar: Cynigiaf welliant 20 yn fy enw a chydag enw Eleanor Burnham mewn cefnogaeth.

Mae'r gwelliannau hyn yn ymwneud ag adran 4 y Mesur arfaethedig, sy'n ymwneud â gofynion i ymgynghori â rhanddeiliaid a gofawyr wrth i awdurdodau perthnasol lunio strategaethau. Yn benodol, mae'n adlewyrchu'r dystiolaeth gref a dderbyniwyd gan fwy neu lai bawb a gyfrannodd dystiolaeth ysgrifenedig a llafar yn gofyn am gyfeiriad ar wyneb y Mesur arfaethedig i'r ddyletswydd i ymgynghori â gofawyr, ac, yn bwysicach, i ystyried canlyniadau'r ymgynghoriad ac i nodi'r cyfnod lleiaf ar gyfer ymgynghori. Derbyniwyd tystiolaeth gennym gan Gynghrai Niwrolegol Cymru a oedd yn cyfeirio'n benodol at yr awgrym i gynnwys gofyniad ar wyneb y Mesur arfaethedig i o leiaf gynnal cyfarfodydd rhanddeiliaid, arolwg o'r holl ofalwyr a defnyddwyr gwasanaethau, a chyfnod ymgynghori 28 diwrnod er mwyn ymgynghori â buddgyfranogwyr. Dyna'r sail resymegol wrth wraidd y gwelliannau arbennig hyn. Yn amlwg, yr oedd y pwyllgor yn cefnogi'r rhain yn ystod Cyfnod 1 ac yn yr adroddiad a gyhoeddwyd wedi hynny, felly anogaf Aelodau i gefnogi'r gwelliannau hyn.

Mark Isherwood: A yw unrhyw Aelodau eraill yn dymuno cyfrannu? Gwelaf nad oes, ac felly galwaf ar y Dirprwy Weinidog i ymateb.

Gwenda Thomas: Yr wyf wedi ystyried gwelliant 22 yn ofalus ac wedi derbyn cyngor cyfreithiol pellach am y mater. Fodd bynnag, credaf o hyd nad yw'r term 'ac yn rhoi sylw dyledus i' yn ychwanegu dim at

effectiveness of the process of the relevant authorities consulting carers, as it is already implicit in any duty to consult. Section 2(1) provides a more appropriate way for us to consider how to address, in regulations, the concerns that underlie this amendment. I will refer to what I said about amendment 16—that the first set of regulations will be subject to the affirmative procedure. That will allow for further scrutiny.

[86] Turning to amendment 20, as I have previously explained, our intention is that the use of the words ‘must or may’ gives the Welsh Ministers the power to specify in regulations both the steps that an authority must take in consulting with carers and the steps that it may take in that regard. I feel quite strongly that to remove the word ‘may’ would restrict the scope of the regulations, as the Welsh Ministers could then specify only which steps the relevant authorities must take in consulting with carers, rather than also being able to specify what an authority may do with regard to a matter of good practice. It is important that we include the word ‘may’, and I cannot therefore support that amendment.

[87] While I understand the thinking behind amendment 19, I believe that the regulation-making powers proposed under section 4 enable us to address these matters in regulations, and putting such statements on the face of the proposed Measure is therefore unnecessary—again bearing in mind what I will be saying when I speak to amendment 16.

[88] **Mark Isherwood:** Darren, would you like to reply?

[89] **Darren Millar:** I am grateful for the Minister’s response. She clearly has the intention that proper consultation will be undertaken, and will make reference to that in the regulations, which will be subject to scrutiny in the National Assembly under the affirmative procedure. However, I do not feel that that is satisfactory given the evidence that was received by the committee. There was concern that consultation in many regards under existing legislation—whether it is consultation required with relevant

effeithlonrwydd proses yr awdurdodau perthnasol sy’n ymgynghori â gofalwyr, gan fod hynny eisoes ymhlyg mewn unrhyw ddyletswydd i ymgynghori. Mae adran 2(1) yn darparu ffordd fwy priodol inni ystyried sut i fynd i’r afael, mewn rheoliadau, â’r pryderon sydd wrth wraidd y gwelliant hwn. Cyfeiriaf at yr hyn a ddywedais am welliant 16—y bydd y gyfres gyntaf o reoliadau yn amodol ar y weithdrefn gadarnhaol. Bydd hynny’n caniatáu craffu pellach.

Gan droi at welliant 20, fel yr eglurais eisoes, drwy ddefnyddio’r geiriau ‘y mae’n rhaid, neu y caniateir’ ein bwriad yw rhoi’r pŵer i Weinidogion Cymru nodi mewn rheoliadau y camau y mae’n rhaid i awdurdod eu cymryd wrth ymgynghori â gofalwyr, a’r camau a ganiateir yn hynny o beth. Credaf yn eithaf cryf y byddai cael gwared ar y geiriau ‘neu y caniateir’ yn cyfyngu ar gwmpas y rheoliadau, gan y gallai Gweinidogion Cymru wedyn nodi ond y camau hynny y mae’n rhaid i’r awdurdodau perthnasol eu cymryd wrth ymgynghori â gofalwyr yn hytrach na’r hyn y caniateir i awdurdod ei wneud o ran arfer da. Mae’n bwysig ein bod yn cynnwys y geiriau ‘neu y caniateir’, ac felly ni allaf gefnogi’r gwelliant hwnnw.

Er fy mod yn deall y bwriad sydd wrth wraidd gwelliant 19, credaf fod y pwerau gwneud rheoliadau a gynigir o dan adran 4 yn ein galluogi i fynd i’r afael â’r materion hyn mewn rheoliadau, ac felly nid oes angen rhoi datganiadau o’r fath ar wyneb y Mesur arfaethedig—eto gan gofio’r hyn y byddaf yn ei ddweud wrth siarad am welliant 16.

Mark Isherwood: Darren, a hoffech ymateb?

Darren Millar: Yr wyf yn ddiolchgar i’r Dirprwy Weinidog am yr ymateb hwnnw. Mae’n amlwg ei bod yn bwriadu cynnal ymgynghoriad priodol a bydd yn cyfeirio at hynny yn y rheoliadau a fydd yn destun craffu yn y Cynulliad Cenedlaethol o dan y weithdrefn gadarnhaol. Fodd bynnag, ni chredaf fod hynny’n foddhaol o ystyried y dystiolaeth a gafodd y pwyllgor. Yr oedd pryder bod ymgynghori ar sawl cyfrif o dan ddeddfwriaeth gyfredol—boed yn ymgynghori gofynnol ag awdurdodau

authorities, such as those mentioned in the proposed Measure—is nothing more than a tick-box exercise, and there is no regard for the outcomes of consultation with those individuals and organisations who participate in that process. I therefore feel that it is important that these amendments be made on the face of the proposed Measure, and I request that this goes to a vote.

[90] **Mark Isherwood:** While it is usual to vote on the lead amendment at this point in proceedings, in accordance with the marshalled list, we will vote on amendment 20 later. In accordance with the marshalled list, we now come to dispose of amendment 24, which was debated with group 2. I invite Eleanor to move the amendment.

[91] **Eleanor Burnham:** I move amendment 24 in my name.

[92] **Mark Isherwood:** The question is that amendment 24 be agreed to. I call for a vote.

perthnasol, fel y rhai a grybwyllir yn y Mesur arfaethedig—yn ddim mwy nag ymarfer ticio blychau, ac ni chaiff canlyniadau'r ymgynghori â'r unigolion a'r sefydliadau hynny sy'n cymryd rhan yn y broses eu hystyried. Felly, credaf ei bod yn bwysig bod y gwelliannau hyn yn cael eu gwneud ar wyneb y Mesur arfaethedig, a gofynnaf i hyn fynd i bleidlais.

Mark Isherwood: Er ei bod yn arferol pleidleisio ar y prif welliant ar yr adeg hon yn ein trafodaethau, yn unol â rhestr y gwelliannau wedi'u didoli, byddwn yn pleidleisio ar welliant 20 yn ddiweddarach. Yn unol â'r rhestr honno, symudwn yn awr i waredu gwelliant 24, a drafodwyd gyda grŵp 2. Gwahoddaf Eleanor i gynnig y gwelliant.

Eleanor Burnham: Cynigaf welliant 24 yn fy enw i.

Mark Isherwood: Y cwestiwn yw a ddylid derbyn gwelliant 24. Galwaf am bleidlais.

*Gwelliant 24: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 24: For 2, Abstain 0, Against 3.*

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

Burnham, Eleanor
Millar, Darren

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

Davies, Alun
Davies, Andrew
Wood, Leanne

*Gwrthodwyd gwelliant 24.
Amendment 24 not agreed.*

9.59 a.m.

Diffiniad o Wybodaeth Briodol a Chyngor Priodol (Gwelliant 25) Definition of Appropriate Information and Advice (Amendment 25)

[93] **Mark Isherwood:** We now move to group 5, which relates to amendment 25. This group relates to the definition of 'appropriate information and advice'. The lead and only amendment is amendment 25, and I call on Eleanor Burnham to move and speak to amendment 25.

10.00 a.m.

[94] **Eleanor Burnham:** I move amendment 25 in my name.

Mark Isherwood: Symudwn yn awr at grŵp 5, sy'n ymwneud â gwelliannau 25. Mae'r grŵp hwn yn ymwneud â'r diffiniad o 'gwybodaeth briodol a chyngor priodol'. Y prif welliant a'r unig welliant yw gwelliant 25, a galwaf ar Eleanor Burnham i gynnig a siarad am welliant 25.

Eleanor Burnham: Cynigaf welliant 25 yn fy enw i.

[95] This amendment implements the committee's recommendation 6. We believe that the definition of 'appropriate information and advice' is insufficient in the proposed Measure as it currently stands and should be improved. Therefore, amendment 25 proposes a strengthened definition and adds the words 'relevant', 'comprehensive' and 'up to date' to ensure a more meaningful outcome.

[96] **Mark Isherwood:** Do any other Members wish to speak at this point? I see that you do not, in which case, I call on the Deputy Minister.

[97] **Gwenda Thomas:** As I mentioned in Plenary on 8 June, further details about 'appropriate information and advice' should be left to regulations. As I have said, this is a case of less being more. I accept that information and advice should be appropriate to the needs of the individual at the time and be appropriate to the circumstances and context as they apply. We will address this through regulations. In this context, 'appropriate' includes matters such as relevant, comprehensive information that is up to date. However, I again refer to what I have said and what I shall say when I speak to amendment 16. I therefore think that the inclusion of such detail on the face of the proposed Measure is unnecessary.

[98] **Mark Isherwood:** Eleanor, would you like to reply?

[99] **Eleanor Burnham:** Only to say that I understand and sympathise with the Deputy Minister's point of view, but I would nonetheless like a vote on this important matter, please. The Deputy Minister said that less is more, so I shall not say too much more.

[100] **Mark Isherwood:** You have confirmed that you wish to proceed to a vote. The question is that amendment 25 be agreed to. I call for a vote.

Mae'r gwelliant hwn yn gweithredu argymhellad 6 y pwyllgor. Credwn nad yw'r diffiniad o 'gwybodaeth briodol a chyngor priodol' yn ddigonol yn y Mesur arfaethedig fel ag y mae ar hyn o bryd a dylid ei wella. Felly, mae gwelliant 25 yn cynnig diffiniad cryfach ac yn ychwanegu'r geiriau 'berthnasol', 'yn gynhwysfawr' ac 'yn gyfoes' i sicrhau canlyniad mwy ystyrlon.

Mark Isherwood: A oes unrhyw Aelod arall yn dymuno siarad yn awr? Gwelaf nad oes, felly galwaf ar y Dirprwy Weinidog.

Gwenda Thomas: Fel y crybwyllais yn y Cyfarfod Llawn ar 8 Mehefin, dylid gadael y manylion pellach o ran 'gwybodaeth briodol a chyngor priodol' i reoliadau. Fel y dywedais yn gynharach, mae hyn yn achos lle mae llai yn fwy. Derbyniaf y dylai gwybodaeth a chyngor fod yn briodol i anghenion yr unigolyn ar y pryd a dylai fod yn briodol i'r cyfryw amgylchiadau a'r cyd-destun. Byddwn yn mynd i'r afael â hyn drwy reoliadau. Yn y cyd-destun hwn, mae 'priodol' yn cynnwys materion fel gwybodaeth berthnasol, gynhwysfawr sy'n gyfoes. Fodd bynnag, cyfeiriaf eto at yr hyn yr wyf wedi'i ddweud a'r hyn y byddaf yn ei ddweud wrth siarad am welliant 16. Credaf felly nad oes angen cynnwys manylion o'r fath ar wyneb y Mesur arfaethedig.

Mark Isherwood: Eleanor, a hoffech ymateb?

Eleanor Burnham: Dim ond i ddweud fy mod yn deall ac yn cydymdeimlo â safbwynt y Dirprwy Weinidog, ond er hynny hoffwn bleidlais ar y mater pwysig hwn, os gwelwch yn dda. Dywedodd y Dirprwy Weinidog bod llai yn fwy, felly nid wyf am ddweud llawer mwy.

Mark Isherwood: Yr ydych wedi cadarnhau eich bod am fynd ymlaen i bleidlais. Y cwestiwn yw a ddylid derbyn gwelliant 25. Galwaf am bleidlais.

*Gwelliant 25: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 25: For 2, Abstain 0, Against 3.*

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

Burnham, Eleanor
Millar, Darren

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

Davies, Alun
Davies, Andrew
Wood, Leanne

*Gwrthodwyd gwelliant 25.
Amendment 25 not agreed.*

[101] **Mark Isherwood:** In accordance with the marshalled list, we now come to dispose of amendments that have already been debated. Darren, do you wish to proceed to a vote on amendment 20?

Mark Isherwood: Yn unol â rhestr y gwelliannau wedi'u didoli, symudwn yn awr i waredu ar y gwelliannau sydd eisoes wedi'u trafod. Darren, a ydych am fynd ymlaen i bleidlais ar welliant 20?

[102] **Darren Millar:** Yes.

Darren Millar: Ydwyf.

[103] **Mark Isherwood:** The question is that amendment 20 be agreed to. I call for a vote.

Mark Isherwood: Y cwestiwn yw a ddylid derbyn gwelliant 20. Galwaf am bleidlais.

*Gwelliant 20: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 20: For 2, Abstain 0, Against 3.*

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

Burnham, Eleanor
Millar, Darren

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

Davies, Alun
Davies, Andrew
Wood, Leanne

*Gwrthodwyd gwelliant 20.
Amendment 20 not agreed.*

[104] **Mark Isherwood:** We now come to dispose of amendment 19. I call on Darren to move amendment 19.

Mark Isherwood: Symudwn yn awr i waredu ar welliant 19. Galwaf ar Darren i gynnig gwelliant 19.

[105] **Darren Millar:** I move amendment 19 in my name.

Darren Millar: Cynigïaf welliant 19 yn fy enw i.

[106] **Mark Isherwood:** The question is that amendment 19 be agreed to. I call for a vote.

Mark Isherwood: Y cwestiwn yw a ddylid derbyn gwelliant 19. Galwaf am bleidlais.

*Gwelliant 19: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 19: For 2, Abstain 0, Against 3.*

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

Burnham, Eleanor
Millar, Darren

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

Davies, Alun
Davies, Andrew
Wood, Leanne

*Gwrthodwyd gwelliant 19.
Amendment 19 not agreed.*

[107] **Mark Isherwood:** We now come to dispose of amendment 6. Deputy Minister, would you like amendment 6 in your name to be moved?

Mark Isherwood: Symudwn yn awr i waredu ar welliant 6. Ddirprwy Weinidog, a hoffech i welliant 6 yn eich enw gael ei gynnig?

[108] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[109] **Mark Isherwood:** I move amendment 6 in the name of Gwenda Thomas. The question is that amendment 6 be agreed to. I call for a vote.

Mark Isherwood: Cynigiau welliant 6 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 6. Galwaf am bleidlais.

*Gwelliant 6: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 6: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 6.
Amendment 6 agreed.*

[110] **Mark Isherwood:** We now come to dispose of amendment 7. Deputy Minister, would you like amendment 7 in your name to be moved?

Mark Isherwood: Symudwn yn awr i waredu ar welliant 7. Ddirprwy Weinidog, a hoffech i welliant 7 yn eich enw gael ei gynnig?

[111] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[112] **Mark Isherwood:** I move amendment 7 in the name of Gwenda Thomas. The question is that amendment 7 be agreed to. I call for a vote.

Mark Isherwood: Cynigiau welliant 7 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 7. Galwaf am bleidlais.

*Gwelliant 7: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 7: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 7.
Amendment 7 agreed.*

[113] **Mark Isherwood:** We now come to

Mark Isherwood: Symudwn yn awr i

dispose of amendment 8. Deputy Minister, would you like amendment 8 in your name to be moved?

waredu ar welliant 8. Ddirprwy Weinidog, a hoffech i welliant 8 yn eich enw gael ei gynnig?

[114] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[115] **Mark Isherwood:** I move amendment 8 in the name of Gwenda Thomas. The question is that amendment 8 be agreed to. I call for a vote.

Mark Isherwood: Cynigiaf welliant 8 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 8. Galwaf am bleidlais.

Gwelliant 8: O blaid 5, Ymatal 0, Yn erbyn 0.

Amendment 8: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 8.
Amendment 8 agreed.*

[116] **Mark Isherwood:** We now come to dispose of amendment 9. Deputy Minister, would you like amendment 9 in your name to be moved?

Mark Isherwood: Symudwn yn awr i waredu ar welliant 9. Ddirprwy Weinidog, a hoffech i welliant 9 yn eich enw gael ei gynnig?

[117] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[118] **Mark Isherwood:** I move amendment 9 in the name of Gwenda Thomas. The question is that amendment 9 be agreed to. I call for a vote.

Mark Isherwood: Cynigiaf welliant 9 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 9. Galwaf am bleidlais.

Gwelliant 9: O blaid 5, Ymatal 0, Yn erbyn 0.

Amendment 9: For 5, Abstain 0, Against 0.

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 9.
Amendment 9 agreed.*

[119] **Mark Isherwood:** We now come to dispose of amendment 10. Deputy Minister, would you like amendment 10 in your name

Mark Isherwood: Symudwn yn awr i waredu ar welliant 10. Ddirprwy Weinidog, a hoffech i welliant 10 yn eich enw gael ei

to be moved?

gynnig?

[120] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[121] **Mark Isherwood:** I move amendment 10 in the name of Gwenda Thomas. The question is that amendment 10 be agreed to. I call for a vote.

Mark Isherwood: Cynigiau welliant 10 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 10. Galwaf am bleidlais.

*Gwelliant 10: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 10: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 10.
Amendment 10 agreed.*

[122] **Mark Isherwood:** We now come to dispose of amendment 11. Deputy Minister, would you like amendment 11 in your name to be moved?

Mark Isherwood: Symudwn yn awr i waredu ar welliant 11. Ddirprwy Weinidog, a hoffech i welliant 11 yn eich enw gael ei gynnig?

[123] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[124] **Mark Isherwood:** I move amendment 11 in the name of Gwenda Thomas. The question is that amendment 11 be agreed to. I call for a vote.

Mark Isherwood: Cynigiau welliant 11 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 11. Galwaf am bleidlais.

*Gwelliant 11: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 11: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 11.
Amendment 11 agreed.*

[125] **Mark Isherwood:** We now come to dispose of amendment 12. Deputy Minister, would you like amendment 12 in your name to be moved?

Mark Isherwood: Symudwn yn awr i waredu ar welliant 12. Ddirprwy Weinidog, a hoffech i welliant 12 yn eich enw gael ei gynnig?

[126] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[127] **Mark Isherwood:** I move amendment 12 in the name of Gwenda Thomas. The question is that amendment 12 be agreed to. I call for a vote.

Mark Isherwood: Cynigïaf welliant 12 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 12. Galwaf am bleidlais.

*Gwelliant 12: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 12: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 12.
Amendment 12 agreed.*

[128] **Mark Isherwood:** We now come to dispose of amendment 26. I invite Eleanor to move amendment 26.

Mark Isherwood: Symudwn yn awr i waredu ar welliant 26. Gwahoddaf Eleanor i gynnig gwelliant 26.

[129] **Eleanor Burnham:** I move amendment 26 in my name.

Eleanor Burnham: Cynigïaf welliant 26 yn fy enw i.

[130] **Mark Isherwood:** The question is that amendment 26 be agreed to. I call for a vote.

Mark Isherwood: Y cwestiwn yw a ddylid derbyn gwelliant 26. Galwaf am bleidlais.

*Gwelliant 26: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 26: For 2, Abstain 0, Against 3.*

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

Burnham, Eleanor
Millar, Darren

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

Davies, Alun
Davies, Andrew
Wood, Leanne

*Gwrthodwyd gwelliant 26.
Amendment 26 not agreed.*

Y Weithdrefn ar gyfer Gwneud Is-ddeddfwriaeth (Gwelliannau 15 a 16) Procedure for Making Subordinate Legislation (Amendments 15 and 16)

[131] **Mark Isherwood:** We now move to group 6, which relates to amendments 15 and 16. This group relates to the procedure for making subordinate legislation. The lead amendment is amendment 15. Deputy Minister, would you like amendment 15 in your name to be moved?

Mark Isherwood: Symudwn yn awr at grŵp 6, sy'n ymwneud â gwelliannau 15 ac 16. Mae'r grŵp yn ymwneud â'r weithdrefn ar gyfer gwneud is-ddeddfwriaeth. Gwelliant 15 yw'r prif welliant. Ddirprwy Weinidog, a hoffech i welliant 15 yn eich enw gael ei gynnig?

[132] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[133] **Mark Isherwood:** I move amendment 15 and I call on the Deputy Minister to speak to amendment 15 and the other amendment in the group.

Mark Isherwood: Cynigiaf welliant 15 a galwaf ar y Dirprwy Weinidog i siarad am welliant 15 a'r gwelliant arall yn y grŵp.

[134] **Gwenda Thomas:** Amendment 15 is consequential on amendment 16, which provides that the first regulations made under each of sections 2(1), 3(2), 4 and 5(1) will be subject to the affirmative procedure. I want to explain to the committee at this point that there seems to be an inadvertent omission here of section 6(4). I intend to bring forward a Government amendment at Stage 3 to put that right. So, my intention is that the first regulations made under all sections will be subject to the affirmative procedure. The effect is to disapply the existing requirement in section 8(3) that a statutory instrument containing regulations under the Measure will be subject to the negative resolution procedure so as to take account of the provisions of amendment 16 and to ensure that they work as intended. Amendment 16 will provide that an Order or regulations made under the proposed Measure would be subject to the affirmative resolution procedure. These Orders or regulations will be the first regulations under all sections of the proposed Measure. I hope that the committee can support that.

Gwenda Thomas: Mae gwelliant 15 o ganlyniad i welliant 16, sy'n golygu y caiff y rheoliadau cyntaf a wneir o dan adrannau 2(1), 3(2), 4 a 5(1) eu gwneud o dan y weithdrefn gadarnhaol. Hoffwn egluro i'r pwyllgor ar yr adeg hon yr ymddengys bod adran 6(4) wedi'i hepgor yn anfwriadol yma. Yr wyf yn bwriadu cyflwyno gwelliant gan y Llywodraeth yng Nghyfnod 3 i gywiro hynny. Felly, fy mwriad yw y daw'r rheoliadau cyntaf a wneir o dan bob adran o dan y weithdrefn gadarnhaol. Effaith hynny fydd datgymhwyso'r gofyniad cyfredol yn adran 8(3) fod offeryn statudol sy'n cynnwys rheoliadau o dan y Mesur yn amodol ar y weithdrefn penderfyniad negyddol, a hynny er mwyn ystyried darpariaethau gwelliant 16 a sicrhau eu bod yn gweithio yn ôl y bwriad. Bydd gwelliant 16 yn darparu y byddai Gorchymyn neu reoliadau a wnaed o dan y Mesur arfaethedig yn amodol ar y weithdrefn penderfyniad cadarnhaol. Y Gorchymynion neu reoliadau hyn fydd y rheoliadau cyntaf o dan bob adran o'r Mesur arfaethedig. Gobeithiaf y gall y pwyllgor gefnogi hynny.

[135] The procedure to be followed for regulations made under the Measure has been the subject of much attention during the scrutiny process, and recommendation 12 of the committee's scrutiny report subsequently endorsed an approach that would require the first set of regulations made under all sections of the Measure to be subject to the affirmative procedure. Therefore, bearing in mind what I have said about section 6(4), I hope that the committee can support these amendments.

Bu'r weithdrefn sydd i'w dilyn ar gyfer rheoliadau a wneir o dan y Mesur yn destun llawer o sylw yn ystod y broses graffu, a chadarnhaodd argymhelliad 12 adroddiad craffu'r pwyllgor ddull a fyddai'n ei gwneud yn ofynnol i'r gyfres gyntaf o reoliadau a wneir o dan bob adran o'r Mesur ddod o dan y weithdrefn gadarnhaol. Felly, gan gofio'r hyn yr wyf wedi'i ddweud am adran 6(4), gobeithiaf y gall y pwyllgor gefnogi'r gwelliannau hyn.

[136] **Mark Isherwood:** Does any Member wish to speak to these amendments? I see that no-one does. Deputy Minister, do you wish to proceed to a vote on amendment 15?

Mark Isherwood: A oes unrhyw Aelod yn dymuno siarad am y gwelliannau hyn? Gwelaf nad oes. Ddirprwy Weinidog, a hoffech fwrw ymlaen gyda'r bleidlais ar welliant 15?

[137] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn

dda.

[138] **Mark Isherwood:** The question is that amendment 15 be agreed to. I call for a vote.

Mark Isherwood: Y cwestiwn yw a ddylid derbyn gwelliant 15. Galwaf am bleidlais.

10.10 a.m.

*Gwelliant 15: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 15: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 15.
Amendment 15 agreed.*

[139] **Mark Isherwood:** We now come to dispose of amendment 16. Deputy Minister, would you like amendment 16 in your name to be moved?

Mark Isherwood: Symudwn yn awr i waredu ar welliant 16. Ddirprwy Weinidog, a hoffech i welliant 16 yn eich enw gael ei gynnig?

[140] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[141] **Mark Isherwood:** I move amendment 16 in the name of Gwenda Thomas. The question is that amendment 16 be agreed to. I call for a vote.

Mark Isherwood: Cynigïaf welliant 16 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 16. Galwaf am bleidlais.

*Gwelliant 16: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 16: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 16.
Amendment 16 agreed.*

[142] **Mark Isherwood:** In accordance with the marshalled list, we now come to dispose of amendment 13, which was debated in group 2. Deputy Minister, would you like amendment 13 in your name to be moved?

Mark Isherwood: Yn unol â rhestr y gwelliannau wedi'u didoli, symudwn yn awr i waredu ar welliant 13, a drafodwyd gyda grŵp 2. Ddirprwy Weinidog, a hoffech i welliant 13 yn eich enw gael ei gynnig?

[143] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn

dda.

[144] **Mark Isherwood:** I move amendment 13 in the name of Gwenda Thomas. The question is that amendment 13 be agreed to. I call for a vote.

Mark Isherwood: Cynigiaf welliant 13 yn enw Gwenda Thomas. Y cwestiwn yw a ddylid derbyn gwelliant 13. Galwaf am bleidlais.

*Gwelliant 13: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 13: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 13.
Amendment 13 agreed.*

Gwelliannau Technegol (Gwelliant 14) Technical Amendments (Amendment 14)

[145] **Mark Isherwood:** We now move to group 7, which relates to amendment 14. This group relates to technical amendments. The lead and only amendment is amendment 14. Deputy Minister, would you like amendment 14 in your name to be moved?

Mark Isherwood: Symudwn yn awr at grŵp 7, sy'n ymwneud â gwelliant 14. Mae'r grŵp hwn yn ymwneud â gwelliannau technegol. Gwelliant 14 yw'r prif welliant a'r unig welliant. Ddirprwy Weinidog, a hoffech i welliant 14 yn eich enw gael ei gynnig?

[146] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[147] **Mark Isherwood:** I move amendment 14 and I call on the Deputy Minister to speak to amendment 14.

Mark Isherwood: Cynigiaf welliant 14 a galwaf ar y Dirprwy Weinidog i siarad am welliant 14.

[148] **Gwenda Thomas:** This amends Schedule 1 to the Local Authority Social Services Act 1970. That Act makes provision concerning the exercise of social services functions including a requirement that Welsh local authorities, in exercising their social services functions, comply with guidance and directions given by the Welsh Ministers. For the purpose of the 1970 Act, 'social services functions' are those under enactments specified in Schedule 1 to the Act. This amendment adds this Measure to that list of enactments under Schedule 1, and the effect of the amendment is to remove any possible ambiguity as to whether the Measure falls within those 'social services functions' as defined in the 1970 Act. This is important in

Gwenda Thomas: Mae hyn yn diwygio Atodlen 1 Deddf Gwasanaethau Cymdeithasol Awdurdodau Lleol 1970. Mae'r Ddeddf yn darparu ynghylch arfer swyddogaethau gwasanaethau cymdeithasol, gan gynnwys gofyniad bod awdurdodau lleol Cymru, wrth arfer eu swyddogaethau gwasanaethau cymdeithasol, yn cydymffurfio â chanllawiau a chyfarwyddiadau a roddir gan Weinidogion Cymru. At ddiben Deddf 1970, 'swyddogaethau gwasanaethau cymdeithasol' yw'r rheini o dan t deddfiadau a nodir yn Atodlen 1 i'r Ddeddf. Mae'r gwelliant hwn yn ychwanegu'r Mesur at y rhestr o ddeddfiadau yn Atodlen 1, ac effaith y gwelliant yw cael gwared ar unrhyw amwysedd ynghylch a yw'r Mesur yn rhan

that it provides legal certainty—for example, that people can access the social services statutory complaints procedure about matters connected with the Measure, and that it falls within the remit of the Care and Social Services Inspectorate Wales inspection function. There is no equivalent of the 1970 Act that applies to the national health service.

o'r 'swyddogaethau gwasanaethau cymdeithasol' hynny a ddiffinnir yn Neddf 1970. Mae hyn yn bwysig gan ei fod yn rhoi sicrwydd cyfreithiol—er enghraifft, o ran mynediad i weithdrefn cwynion statudol gwasanaethau cymdeithasol oherwydd materion sy'n gysylltiedig â'r Mesur, a'i fod o fewn cylch gwaith swyddogaeth arolygu Arolygiaeth Gofal a Gwasanaethau Cymdeithasol Cymru. Nid oes dim sy'n cyfateb i Ddeddf 1970 yn berthnasol i'r gwasanaeth iechyd gwladol.

[149] **Mark Isherwood:** Do any other Members wish to speak? I see not. Deputy Minister, do you wish to proceed to a vote on amendment 14?

Mark Isherwood: A oes unrhyw Aelod arall yn dymuno siarad? Gwelaf nad oes. Ddirprwy Weinidog, a hoffech fwrw ymlaen i bleidlais ar welliant 14?

[150] **Gwenda Thomas:** Yes, please.

Gwenda Thomas: Hoffwn, os gwelwch yn dda.

[151] **Mark Isherwood:** The question is that amendment 14 be agreed to. I call for a vote.

Mark Isherwood: Y cwestiwn yw a ddylid derbyn gwelliant 14. Galwaf am bleidlais.

*Gwelliant 14: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 14: For 5, Abstain 0, Against 0.*

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

Burnham, Eleanor
Davies, Alun
Davies, Andrew
Millar, Darren
Wood, Leanne

*Derbyniwyd gwelliant 14.
Amendment 14 agreed.*

[152] **Mark Isherwood:** For the record, all sections of the proposed Measure have now been agreed by the committee. As we have disposed of all amendments, Stage 3 begins tomorrow. The deadline for tabling amendments will be notified to Members in due course and will be published in the business notice. Under Standing Order No. 23.40,

Mark Isherwood: Er gwybodaeth, mae'r pwyllgor bellach wedi cytuno ar bob adran o'r Mesur arfaethedig. Gan ein bod wedi gwaredu ar bob gwelliant, bydd Cyfnod 3 yn dechrau yfory. Byddwn yn hysbysu'r Aelodau o ddyddiad cau cyflwyno gwelliannau maes o law a byddwn yn cyhoeddi hynny yn yr hysbysiad busnes. O dan Reol Sefydlog Rhif 23.40,

'If a proposed Measure is amended at Stage 2 proceedings so as to insert a section or schedule, or substantially alter any existing provision, the committee considering Stage 2 proceedings may request that the Member in charge prepare a revised Explanatory

'Os caiff Mesur arfaethedig ei ddiwygio yn nhrefodion Cyfnod 2 i fewnosod adran neu atodlen, neu i newid yn sylweddol ar unrhyw ddarpariaeth bresennol, caiff y pwyllgor sy'n ystyried trafodion Cyfnod 2 ofyn i'r Aelod sy'n gyfrifol amdano baratoi Memorandwm

Memorandum.’

Esboniadol diwygiedig.’

[153] As such, do Members agree that the Welsh Government should prepare a revised explanatory memorandum? I see that all Members are in agreement. That concludes Stage 2 proceedings on the Proposed Carers Strategies (Wales) Measure. We will now take a short break until 10.30 a.m..

Felly, a yw Aelodau yn cytuno y dylai Llywodraeth Cymru baratoi memorandwm esboniadol diwygiedig? Gwelaf fod pob Aelod yn cytuno. Dyna ddiwedd trafodion Cyfnod 2 y Mesur Arfaethedig ynghylch Strategaethau ar gyfer Gofalwyr (Cymru). Byddwn yn cael egwyl fer tan 10.30 a.m..

*Gohiriwyd y cyfarfod rhwng 10.14 a.m. a 10.33 a.m.
The meeting adjourned between 10.14 a.m. and 10.33 a.m.*

**Y Mesur Arfaethedig ynghylch Hawliau Plant a Phobl Ifanc—Cyfnod 1, Sesiwn
Dystiolaeth 3: Comisiynydd Plant Cymru
The Proposed Rights of Children and Young Persons (Wales) Measure—Stage 1,
Evidence Session 3: Children’s Commissioner for Wales**

[154] **Mark Isherwood:** Welcome back to the meeting. This is the third evidence session to inform our work, and we will be taking evidence today from the Children’s Commissioner for Wales, Keith Towler. I welcome you to the meeting, Keith. Please could you introduce yourself for the record?

[155] **Mr Towler:** I am Keith Towler, and I am the Children’s Commissioner for Wales.

[156] **Mark Isherwood:** Some Members may choose to ask questions in Welsh. Headphones are provided through which instantaneous translation is available. That is on channel 1. The paper that you kindly submitted has been circulated to Members, who have a series of questions relating to it. I will start with the first question. Could you tell us why, as you state in your evidence, there is a need for this legislation?

[157] **Mr Towler:** I think that there is a need for this legislation, and we should not lose sight of the fact that this will be something of a first for the UK, if it happens. It would lead to a bold and progressive realisation of children’s rights in Wales. It pulls together in a clear way what has been a reasonably ad hoc, albeit positive, approach in relation to children’s rights, and brings everything together. There would be an acceptance in legislation in Wales that children are rights-holders as defined by the United Nations Convention on the Rights of the Child, and it provides an opportunity to implement clear recommendations from the UN committee. It goes as far as Wales probably can go, given the devolved settlement.

[158] The other point that I would make is that I have been in correspondence on the proposed Measure with the UN committee on the rights of the child, which welcomes the stance that the Welsh Government is taking, as do the other commissioners in the UK. People are focusing on, and are looking at, what Wales might do with the proposed Measure. So, I think that there is a need for legislation. I think that there are several pairs of eyes outside Wales watching what we are doing, and it could have quite an impact across the UK.

[159] **Mark Isherwood:** Eleanor, perhaps you could explore that further in your questions.

[160] **Eleanor Burnham:** Yes, that is really kind. Excuse me for being slightly delayed. You say that there is a need for a proposed Measure that would ensure that, as a nation, we move beyond an ad hoc and piecemeal approach to a robust and comprehensive approach that would lead to the realisation of children’s rights in Wales. Do you think that this proposed Measure will deliver what you require?

[161] **Mr Towler:** There is a welcome shift from the original proposal on relevant functions, although I watched something of the debate that you had with members of the monitoring group on the strategic decisions element of this, and no doubt we will come back to that in a bit. In relation to strategic-level thinking across Government in Wales, it can and should lead to, and be a catalyst for, positive policy change. So, I think that the proposed Measure can deliver in that regard, and I take a more optimistic view than the one that you were presented with by the monitoring group.

[162] **Eleanor Burnham:** However, we have had quite a lot of detailed questioning about the use of the word ‘strategic’. You say that details of what constitutes a decision of a strategic nature should be included in the proposed Measure itself rather than in the children’s scheme. Could you explore that further for us, please?

[163] **Mr Towler:** Sure. I think that we need some clarity within the proposed Measure about what constitutes a strategic decision. I have had a lawyer looking at this, and we have had endless fun describing and trying to define what a strategic decision might be. It seems to me that there could be all kinds of fun and games to be had. So, I think that we need some clarity in the proposed Measure on what a strategic decision would include. That would help me, and monitoring group members and others, in thinking through how we present this to children and young people so that they have some understanding of these issues and what they mean. I do not think that that is the job of the legislation. In one of your evidence sessions, there was a bit of a debate about whether children and young people would understand this legislation. The legislation itself needs to happen in a way that we understand and that will make it work. It is then my job and the job of Funky Dragon and others to think through how this can be understood by children and young people.

[164] However, I think that we need some baseline criteria in the proposed Measure that establish the parameters for strategic decisions. For example, I think that decisions about resource allocation are strategic decisions. Given the impact of a resource allocation in relation to services or a policy decision for children, it will be strategic. So, I would like some definition of the baseline for what constitutes a strategic decision, and I would like that in the proposed Measure.

[165] **Eleanor Burnham:** The UNCRC monitoring group suggested that the proposed Measure be amended so that the due regard duty applies to all functions of the Welsh Ministers. What is your view on that?

[166] **Mr Towler:** The due regard duty goes across all Ministers, as far as I can see, and that is really quite a significant step. All Ministers in the Welsh Assembly Government would have to have due regard to the convention and its protocols. In my mind, without question, if you are making decisions about transport and roads, the proposed Measure would apply. Ministers would have to think about the impact on children of what X bypass might do or of whether a pedestrian crossing is to be put up. How will children get to school and so on? They would have to consider all those sorts of issues. So, the due regard principle extends across all ministerial functions, as far as I am concerned, and I think that that is a really positive step. In other words, all Ministers in the Welsh Assembly Government—not just the Minister for Children, Education and Lifelong Learning and the Deputy Minister for Children—would have to have due regard to the UNCRC in their thinking.

10.40 a.m.

[167] **Andrew Davies:** We had a very interesting conversation over coffee in between the two sessions this morning, and I think that this relates to how you change culture, because we are trying to embed the concept of children’s rights in Welsh civil society, certainly within the

powers of the Assembly Government. I have raised issues about consistency, as you may be aware, but we will come back to the rights of redress later. I think that this is a philosophical issue. Clearly, we are trying to bring about pervasive change, and the question is how to do it. When we were looking at the carers' strategy earlier, there seemed to be a very different approach by Government, which was bringing about fundamental pervasive change across the Welsh public sector, the Welsh public service, or however you want to define it, but, here, it is very different, as it will be a matter of strategic priorities to be determined by Ministers. Can you comment on what, to me, seems to be a lack of consistency?

[168] **Mr Towler:** I have been thinking this through quite a lot. As the children's commissioner, my role is about holding Government to account. If this proposed Measure goes through—and I really hope that it does, because it is a significant step—the commissioner's role in holding Government to account will clearly be a part of what we have in Wales. This brings us back to my point about what children and young people perceive this to be. In achieving some level of consistency, we must all be singing from the same hymn sheet; otherwise, children and young people will start to get really confused about their status as rights holders, the things that are important to them, where they can have their voice heard, how that will be made real, and what they understand the Government and other people to be doing in relation to their rights. It is really quite significant. So, I see the proposed Measure as being really important in trying to bind all this. My staff team and I are now starting to think through what structure our annual report will have, what the annual report will need to do if the proposed Measure goes through, and how the commissioner will hold the Government to account. Part of that has to be about trying to promote a consistency of approach, pointing out any inconsistencies in delivery, and translating it all into outcomes for children. That is what the proposed Measure is all about: making sure that outcomes for children and young people are improved. That is what I think we all around this table want.

[169] **Andrew Davies:** To develop this discussion, would you say that there was an inconsistency or a contradiction in a Government saying that it is committed to citizen-centred services—or, in this case, child-centred services—and then saying that, actually, when it comes to the rights of the child, Government Ministers will decide the strategic priorities?

[170] **Mr Towler:** I think that there is an inconsistency in that. I made a bit of a song and dance about trying to get young carers identified in the Proposed Carers Strategies (Wales) Measure. If this proposed Measure had been in place at that time, you would hope that that level of inconsistency in thinking would not have applied, because, in thinking that through, the Ministers would have had due regard to the UNCRC. So, you would hope that that level of inconsistency in thinking would be addressed by this proposed Measure.

[171] **Andrew Davies:** Which do you think is the most effective way of bringing about cultural and systemic change? Is it the approach that has been the adopted in the proposed Measure for carers, or that in the proposed rights of the child Measure?

[172] **Mr Towler:** I think that this proposed Measure is the one that has the impact for doing that.

[173] **Andrew Davies:** Even with Ministers deciding the strategic—

[174] **Mr Towler:** Yes, even with that, because, when this filters down, it could have a significant impact on local authorities, health authorities, and all the thinking about what they are trying to deliver. Within this, there is a clear duty to promote awareness, which is a recommendation from the UN committee to which the UK Government, the Welsh Government and other devolved bodies have all nodded their agreement, but turning that cultural position around requires the Government to take a lead. That comes back to my role

of holding Government to account. I have powers, as the children's commissioner, to do that, so I need to think through how I use those powers. However, I think that this is a good start.

[175] **Andrew Davies:** I have one last question, Chair, because this is an important issue. You seemed to imply earlier that there was an inconsistency between citizen-centred or child-centred services on the one hand, which is the Government's clear philosophy, and this, which is about Government Ministers deciding the priorities. You seemed to imply that you agreed that there was an inconsistency.

[176] **Mr Towler:** There is an inconsistency, but you just have to accept that the Government will have to take a lead on it, and take that kind of initiative. This provides us with some framework to allow it to do that. However, we need clarity about what its strategic decisions are. That is the really important part of this. As long as we are clear about strategic decisions, the proposed Measure as drafted still has the potential to allow us to think through how this ad hoc stuff that has been going on in the past, which leads to inconsistency, can be done more centrally.

[177] **Andrew Davies:** So, you think that 'strategic priorities' should be the phrase, rather than 'due regard'?

[178] **Mr Towler:** Yes, absolutely, particularly in assessing what this means for children and young people and how we will communicate this. Children and young people already have rights conferred on them by the UN Convention on the Rights of the Child, which the UK Government ratified. This is not about establishing rights for children; the rights are there. This is about how we in Wales incorporate and embed the UNCRC into the way in which Government, and hopefully wider society, works. So, this is not about conferring rights, because the rights already exist.

[179] **Leanne Wood:** You have used phrases such as, 'This proposed Measure has the potential to...' and 'This could have a significant impact on the work of local authorities if it filters down'. So, you have said that it 'could' have an impact, but, conversely, it might not. One way to resolve the issue with decisions of a strategic nature would be to go down the road that you have suggested and state clearly on the face of the proposed Measure what a strategic decision is. Another way would be to amend it so that it applies to all decisions, not just strategic decisions. Do you think that it should apply to all Government decisions? Would that be a better way of ensuring that it filters right down to the local level?

[180] You spoke about revising the way in which you present your annual report. Is that because, after this is introduced, you consider your role as being the upholder of children's rights?

[181] **Mr Towler:** I have always seen that as my role.

[182] **Leanne Wood:** Will your role change?

[183] **Mr Towler:** That is what we are trying to think that through at the moment. There are clear implications for the children's commissioner, because there are only two things that define what I do: one is the UNCRC and the other is direct views of children and young people. Here we have a Government considering embedding the UNCRC in its decisions, which would definitely have an impact on the way in which my team and I work, so we need to think through how we do that. When I produce my annual report, I will need to make some analysis of how Government has undertaken its due regard functions, how ministerial decision reports are drawn up, how it evidences its exercise of due regard functions, and what impact that has for children and young people. Implicit within that is how local government and health authorities respond, and even how non-devolved bodies, such as police authorities,

respond to that. So, without any doubt, I will have to think through how I work in relation to this proposed Measure.

[184] **Leanne Wood:** If you discover that the Government has made a strategic decision without having regard to this, what, in reality, will you use to hold it to account? What could you do?

10.50 a.m.

[185] **Mr Towler:** On the powers of the children's commissioner, I was interested to hear the Deputy Minister for Children saying in Plenary that he felt that I had all of the necessary tools in my box, and we are having a look at that.

[186] The children's commissioner can review and make recommendations and representations as well as call the Government to account by asking it to explain how and why it made a decision and why it did not have due regard for something, if that were the case. So, I can make that happen—I can call the Government in and make recommendations and it has to decide how it will respond to me and tell me what it would do if it agreed with me. If it did not agree with me, it would have to outline its reasons for not doing so. So, I have the ability to do that with regard to any devolved function, but I do not have that ability with regard to non-devolved matters, of course.

[187] **Leanne Wood:** I want to come back to a question that I asked you earlier on whether or not you think that this proposed Measure should apply to all Government decisions as opposed to just strategic ones.

[188] **Mr Towler:** Ideally, the answer to that is 'yes'. I still think that this is a good starting point. My overall concern is to ensure that this proposed Measure goes through in some form in the time that we have. I do not want undue problems in relation to this proposed Measure to lead to it being thrown out. We have an opportunity here and there will be some risks to face if the proposed Measure does not go through. This is a reasonable start. Ideally, the answer to your question is undoubtedly 'yes', but that could delay things. My worry is that time is incredibly tight. The process has been quite speedy from the point when Rhodri Morgan first said that we would have this proposed Measure to this point. I am anxious to ensure that the proposed Measure goes through. The significance of this should not be overlooked.

[189] **Andrew Davies:** That is what I was trying to address earlier, so I glad that that is on record. The aim should be to produce the best possible legislation and not what is expedient.

[190] **Mark Isherwood:** That is a valuable point.

[191] **Alun Davies:** I agree very much with that and thank you for clarifying that, but what are the risks? You mentioned that there would be risks if this legislation is not passed.

[192] **Mr Towler:** My fear and worry is that something like this will never see the light of day again. This is quite a significant opportunity and when I have discussed it with fellow commissioners in the UK and in correspondence with the UN committee chair and with Kamel Filali, who wrote to me—if you would like a copy of that letter, I would be happy to make that available to you—they were all, without any doubt, talking about the significance of what was being proposed here. That makes me quite anxious to ensure that we see this through. I accept your point about ensuring good legislation, but I am anxious to see this through.

[193] **Alun Davies:** I think that we have agreed this morning that the proposed Measure, as it stands, is inconsistent and does not fulfil your ambitions. I think that it is fair to say that.

You would like to see the UN convention leading Government policy throughout Government and not simply being of an undefined strategic nature. I assume, therefore, that you would want to see that extended across Welsh Assembly Government functions, both within and outside the Welsh Assembly Government.

[194] **Mr Towler:** Ideally, that is absolutely what I would—

[195] **Alun Davies:** You keep saying ‘ideally’ and qualifying your answers.

[196] **Mr Towler:** Okay, I would like to see that happen. In terms of what local government and health authorities do, I think that there is an enormous amount of goodwill around the UNCRC and the rights of children in Wales. So, if we think about the context in which we are working, it includes doctors, nurses, teachers and social workers—a plethora of staff out there—who are completely behind a child-rights approach. You might say, ‘You’re the children’s commissioner, so when you meet people, they are hardly likely to say that they disagree with children’s rights.’ That may well be true, but the context within which we are working is a positive one. The willingness of all of those staff to develop their child-rights practice is unquestionable. However, what this does is provide some leadership from the Welsh Government. There is a real commitment to embedding the principles of the UNCRC into the way that Welsh Government works. That is a very significant development. So, yes, I agree that I want to see it being done across all functions. This provides us with a start to getting there.

[197] **Alun Davies:** You have said previously on the strategic nature issue, which we have discussed already, that your concern is that some issues are strategic and some are not, some are technical in function, but a lot of what Government does is somewhere in between. You have said that you want to see more detail on the face of the proposed Measure. Can you outline exactly what you mean by that?

[198] **Mr Towler:** I think that the strategic decisions are around policy decision making across all functions of Welsh Government, that is, everything that the Government does. To come back to raising awareness, how children and young people understand the strategic decisions of Government is a strategic decision. The allocation of resources is unquestionably a strategic decision, and I would like those things to be defined. When you think about the next stage of this, which is the scheme that is being proposed, unless you define up front what the strategic decisions are, the scheme will struggle to determine that. So, it needs to be on the face of the proposed Measure. It is about policy making, Government functions, the allocation of resources, children’s voices and thinking through how Government gets children and young people’s views. These are strategic decisions. The decision to hold a consultation is a strategic decision. So, those things need to be clear and they need to be on the face of the proposed Measure, otherwise the scheme will struggle. How the scheme is articulated is the real issue with regard to how children and young people understand what is being proposed. The language of the scheme needs to be understood by children and young people.

[199] **Alun Davies:** It would be useful, with your agreement, Mr Towler, if you could circulate a note to the clerk of the committee outlining the amendments that you would like to see to the legislation.

[200] **Mr Towler:** We can certainly do that.

[201] **Alun Davies:** It is important that, as a legislation committee, our discussion focuses on the legislation itself rather than the more abstract issues of policy. I would be grateful if you could provide that information. You said that you want the legislation to be all-encompassing in relation to the functions of Government. My assumption from that statement is that you want to see public bodies across Wales included in the scope of this legislation and

not simply Welsh Assembly Government Ministers.

[202] **Mr Towler:** You will hate me for saying this, but, in an ideal world, the answer to that would undoubtedly be ‘yes’. As currently drafted, and this might be a point on which you and I disagree, it would be filtered down. From looking at the way that local government, health authorities and others are working, I think that they would respond to what we currently have here. I take the point completely that I would prefer it. There is no doubt about that. As it is, this is a decent start. On coming back with a note, I am happy to provide that. Would you like a copy of that letter from Kamel Filali that I referred to earlier, Chair? Would that be useful?

[203] **Mark Isherwood:** We would appreciate that.

[204] **Alun Davies:** Your evidence this morning has been quite curious. You have been critical, in some ways, of this legislation and you have said that you would like a lot of different things and have listed those and the changes that you would like to see in the legislation in different ways in your responses, but you are almost like a drowning man holding on to a piece of driftwood, saying, ‘Please, don’t let us lose this legislation’. I am left thinking that you are damning it with faint praise. In your last response to me, you said that it is not perfect and not what you really want, but that it is all that we have, so let us not do anything that might impact on the legislative process. That seems to me a curious point of view for someone outside Government. If you were a Minister, then I would think it was fair enough, but for someone outside Government, whose purpose is to uphold the rights of children, among other things, and to advise Government on that, it seems a curious approach to take.

11.00 a.m.

[205] **Mr Towler:** I do not think that it is that curious. I am anxious to make sure that the Welsh Government does all that it can to embed the UNCRC in how it works. I think that what it has done here is a significant step in that direction. You are right that it is not ideal, but I do not feel like a drowning man clutching at driftwood; I feel that we are standing at a crossroads, and if we are brave enough to take this proposed Measure through, the impact will be quite considerable. The risk that I referred to earlier is that we do not have the courage of our convictions to see this through. I also think that we could build on this. If we had the ideal world that you and I were talking about, then I absolutely would draft something a bit stronger. However, let me finish by saying that we must not lose sight of the fact that this is a really significant step. My fear is that we will not see this through. We have to see this through.

[206] **Alun Davies:** I do not disagree with that. I stood for election on a manifesto that included this. However, we are not talking about building the new Jerusalem here—we are talking about a piece of legislation. It is possible for you to come to us in this committee, or elsewhere, and say, ‘Here are 10 amendments that I would like to see to strengthen this legislation’. It would be good if you could do that, because that would at least give us a basis for a conversation with the Minister, and among ourselves as legislators, about how we can improve the proposed Measure.

[207] **Mr Towler:** I am happy to do that. I know what your function is here, and you are right to ask the question, but I am also a pragmatist, and I want to see something significant happen for children, and this has significance.

[208] **Mark Isherwood:** Darren, Eleanor and Andrew all want to come in here, but I am conscious of the time, so I would be grateful if everyone could keep their answers as concise as possible. Darren is first.

[209] **Darren Millar:** I am equally bemused, to be honest, because you are a real champion of children's rights, and you come before all sorts of Assembly committees and ask for, frankly, huge revisions, sometimes, of proposed legislation, and make significant recommendations in order to further the cause of children and to extend their rights and opportunities. I cannot understand why you are not giving us a clear recommendation that this proposed Measure ought to extend to all ministerial decisions, not just strategic ones. You have hinted that you would like to say that, but you have not made a formal suggestion to us that that is what you would want to see happen. You have said that there is goodwill in local government and health boards, and no doubt there is, but if there is such goodwill, why would it be a problem to extend to them a legal obligation to pay regard to children's rights, and put that on the face of this proposed Measure? It just seems bizarre that you are not pushing us in that direction. If you are not doing that, as the children's commissioner, who is?

[210] **Mr Towler:** I suppose that I am being quite a pragmatist.

[211] **Darren Millar:** We can be pragmatic later.

[212] **Mr Towler:** We can. You will not be surprised to know that I want all devolved and non-devolved agencies to recognise the UN Convention on the Rights of the Child, to ensure that all children and young people have their rights delivered to them, that outcomes for children are improved, and that the voice of children is heard in all decisions that affect their lives. That is my job; that is what I do. However, the significance of this proposed Measure is quite startling in many ways. I take the point that Alun made about applying this to all decisions, because that is ideally what I want to see happening. I am also privy to discussions that have been going on with officials, and I know how difficult the drafting stages have been for this particular piece of legislation. It has not been an easy ride to get where we are. That is the point about the risk; that is what I am concerned about. This is not 100 per cent what I would draft, if I had the opportunity to draft it. We will definitely accept the invitation from Alun and the committee to give you those kinds of amendments. I am more than happy to do that.

[213] Let me take you back to the point about strategic decisions. That is where we need some clarity, because that is what drives the pragmatic nature of this. It is about what the strategic decisions of all Government Ministers cover. Given the impact that that will have on the scheme and how local government and others respond, I think that there is an opportunity to realise the vision that you and I would like. We have to ensure that we do not lose sight of the significance of this.

[214] I will take your suggestion away, and I will come back to you with the kinds of amendments that I would like to see. What I really do not want to happen, however, is to see this die. It is my duty as children's commissioner to point out the significance of what is being outlined here.

[215] **Leanne Wood:** Can you explain why you think this is going to die?

[216] **Darren Millar:** There is cross-party support for a Measure to extend these rights and embed them in Welsh law. Not only that, but when you were talking about strategic decisions earlier, you said that they would be policy decisions and decisions that allocate resources, which is a pretty broad-brush approach. That would not extend to decisions by a Minister for education, for example, on a proposed school closure, which seems ridiculous, given the impact that that would have on children. We need to nail this down this morning, so is it one of your firm recommendations that this should apply to all decisions made by the Welsh Ministers, just as equalities legislation, disabled rights legislation, sustainability and those sorts of things have to be considered in every decision made by the Welsh Ministers? Would

it not be appropriate simply to ensure that all the decision-making processes in Government—and local government authorities, and health boards, and other relevant authorities that act on the half of the Welsh Ministers—have to pay regard to the UNCRC?

[217] **Mr Towler:** Absolutely, yes. I think that we might be at cross purposes.

[218] **Darren Millar:** Well, make a clear recommendation to us this morning.

[219] **Mr Towler:** I think that I have.

[220] **Darren Millar:** Well, I do not think that it has been very firm or ‘oomphy’. Give it some welly. [*Laughter.*]

[221] **Mark Isherwood:** I just want to say that this will be the last time you are asked to clarify this position, as we want to move on to other questions.

[222] **Mr Towler:** Okay, well, we will do that. We will come back to you with some amendments on the relevant functions and strategic decisions.

[223] **Mark Isherwood:** Thank you. We will look forward to that.

[224] **Eleanor Burnham:** On a similar theme, my concern is that when you have sustainability, equality, and so on embedded in everything—which Andrew keeps pointing out, and we all agree with—it is no longer strategic; it is just in every decision. My worry is that the deliverers of this, namely local authorities, health boards, and others, as you pointed out, might look at the final Measure and think that it relates only to strategic decisions taken by a Minister. That is my concern.

[225] **Mr Towler:** I have that concern, too, which is why the link between the legislation and the scheme and how that would improve outcomes for children, which is what this is all about, is so significant. Maybe, in the paper that we will send to you, we will try to make those connections, because the critical thing is for children to see equality and improvements in their lives. At the moment, children do not experience equality, and improvements in their lives are sometimes not as we would want them to be. It is about the whole picture for me: the legislation, the scheme, and how that drives improvements for children.

[226] **Andrew Davies:** Mr Towler, I am a pragmatist but I am also an idealist, and I do not think that the two are incompatible. I have been a Minister for 10 years, so I think I know how Government works. I also know how the civil service works, and I know the thinking of officials, in many cases. Perhaps I was not clear earlier on, but when the Deputy Minister for Social Services was sitting in the same chair as you earlier today to answer questions on the carers strategy, you could not have found a more passionate proponent, defender, or champion of children in Government. I think that you would agree with that. She has taken a view to resist amendments that talk about specifying education or whatever, because she wanted it to be pervasive. What she said is that you also have to be pragmatic about how it applies. She was talking about having a phased introduction in social services and education. From our point of view, I think that everybody in this committee and in Government is committed to making sure that this piece of legislation is as robust as possible. I do not share your fear that it will be lost; my fear is that we will have a pretty meaningless piece of legislation, one that is just a notch on the belt and is tokenistic. Legislation is about holding not just Ministers to account, but also civil servants and officials. It is about bringing about fundamental change, and not just putting legislation on the statute book for the sake of it.

11.10 a.m.

[227] **Mr Towler:** I agree with that, and I do not have a problem with anything that you have just outlined. It takes me back to my answer to Darren just now, in that I think that there is a link between the legislation, the scheme, and how that drives outcomes for children. That is what I am concerned about.

[228] **Andrew Davies:** That was my point about consistency. You have a Deputy Minister who is passionate about the carers' strategy and wants to bring about change, and yet, here, the Government is taking a very different approach when it comes to the rights of the child.

[229] **Mr Towler:** I take the point.

[230] **Leanne Wood:** We will move on to the children's scheme. now The UNCRC monitoring group has suggested that external stakeholders be involved in the drafting of the scheme, rather than after it has been developed. Do you have a view on that?

[231] **Mr Towler:** I agree with the group on that. That is good practice. There is also a lot of expertise out there that needs to be drawn down. The monitoring group is right. Expertise is available and the Government would be foolish to ignore it.

[232] **Leanne Wood:** Okay, thank you for that. You also say that there is an argument that the proposed Measure should place a duty on the Welsh Ministers to have due regard to the findings of consultations on the children's scheme. However, the Deputy Minister said to us that the Government's existing consultation processes will ensure that regard is given to the views of respondents. In light of the Deputy Minister's statement, do you remain of the view that the proposed Measure needs amending?

[233] **Mr Towler:** I take the point about the public law duty, but I still think that the proposed Measure should be amended. Without going back to where we just were, there is a whole issue about how Government consults and listens. How children and young people understand that they have been listened to is a critical part of this, so I think that an amendment is required to make that happen.

[234] **Leanne Wood:** Okay, thank you for that. On the timing of reports, do you think that there is an issue with the lack of synchronicity, given that there is a five-year cycle when there is a four-year Assembly term?

[235] **Mr Towler:** Overall, I am quite comfortable with that. The five-year reporting cycle to the United Nations committee is pretty much set in stone, and there is not a lot that we can do about that. It is a worldwide movement of reporting every five years. Tying the monitoring cycle in with the UNCRC cycle makes sense, but I would be looking for something annual—and my annual report plays a part in that. That is to ensure that we are not waiting five years for this to happen. This is about what is happening in Wales, what improvements are being driven through for children, and that information is being held, managed and debated systemically. The commissioner's annual report is a part of that. As commissioners in the UK, we are already looking at an interim, mid-term report. We would like to do that to inform that five-year cycle, so that we do not get to the UN committee in Geneva every five years with a massive drafting task to do because we have not made this happen systematically. So, I am reasonably comfortable overall as long as there is work in place to ensure that we are systematically recording what we are doing, how we are doing it, and how children and young people are involved in it. So, I think that it could work.

[236] The significant aspect of this is that it formalises the Welsh Government's response to the UN committee, because it is the UK state party that is the signatory to the UN Convention on the Rights of the Child. So, this formalises the Welsh Government's role in that reporting.

[237] **Leanne Wood:** Okay, thanks. In oral evidence to the committee, the Deputy Minister indicated that the details of how the Welsh Government will monitor progress in complying with the duty to promote knowledge and understanding of the UNCRC had yet to be decided. In your view, should further detail on those mechanisms to monitor progress be specified on the face of the proposed Measure?

[238] **Mr Towler:** Yes, and there is a ready remedy for that, in fact. Section 5, which is about promoting knowledge and understanding, can be linked to section 4, which is about the reporting process, and the reporting process in section 4 links back directly to the duty to have regard to the UNCRC. So, there is a solution to that: add section 5 to the duties that are outlined in section 4, so that it links straight back to the duty to have regard to the UN convention.

[239] **Leanne Wood:** Okay. Thank you very much for that.

[240] **Andrew Davies:** In your evidence, you have commented on the proposal that the proposed Measure be extended to include young people above the age of majority, up to the age of 24. I have to say that I was surprised when I first saw that proposal, because my understanding is that that is outside the UN charter.

[241] **Mr Towler:** Yes, it is.

[242] **Andrew Davies:** Can you expand on why you think the proposed Measure includes those who are aged over 18?

[243] **Mr Towler:** I can understand why the Government has done this. When Government thinks about policy in relation to children and young people, it includes young people up to the age of 24. However, the UN Convention on the Rights of the Child relates to children up to the age of 18. The vulnerability of age is what defines the UN convention. For example, article 3 of the UN convention, which is about the best interests principle and the responsibility of adults to behave appropriately in relation to the protection and participation of children and the provision of services to them, cannot apply to 18 to 24-year-olds in anything like the same way. So, that seems to be completely at odds with the proposal. The UN convention is not designed for 18 to 24-year-olds, but for children up to the age of 18.

[244] However, many 18 to 24-year-olds are vulnerable, but it is the Human Rights Act 1998 and other legislation that is in place for them. If there is an issue about redress—and the proposed Measure includes 18 to 24-year-olds—it becomes incredibly confusing and does not stand up, legally. The UN convention is very clear about what it is attempting to do. So, I think that that proposal should be removed, as it does not help at all. I understand where the Government is coming from, and I can completely understand why it is trying to do this, but it will not work.

[245] **Andrew Davies:** Other organisations, such as Welsh Women's Aid, have submitted evidence and have argued that there are vulnerable young women, in its case, who are over 18. What is your response to that argument?

[246] **Mr Towler:** I think that you have to use the Human Rights Act when those situations arise. I completely agree that there are vulnerable 18 to 24-year-olds. The legislation setting up my role as children's commissioner is confined to the UN convention. So, while I have a lot of sympathy with Welsh Women's Aid's position, I do not think that including 18 to 24-year-olds in the proposed Measure is the right way to seek redress for those young people.

[247] **Andrew Davies:** So, clearly, you believe that it goes way beyond the UN charter. Do you think that the proposed Measure goes beyond the legislative competence of the

Assembly, in that it relates to young people as well as children?

[248] **Mr Towler:** I am not sure about that, to be honest. It probably does not. It is so odd in relation to the convention that, if the Government has a responsibility, as it does, to promote awareness about all that, many articles of the convention make no sense at all to a vulnerable young person. They just do not apply, so it will not work. As a tool to assist those vulnerable young people it will not work.

11.20 a.m.

[249] **Andrew Davies:** That is interesting. You say that you are pragmatic, but here you are saying very clearly that it will not work.

[250] **Mr Towler:** Not for 18 to 24-year-olds it will not.

[251] **Andrew Davies:** Okay.

[252] **Mr Towler:** Again, the whole convention is designed around vulnerability. Think about the way in which it is designed, how the articles are defined and what the responsibilities of adults—people over 18—are towards children. Those are clearly defined in the UN convention, and yet here we would have a proposed Measure incorporating the UNCRC that incorporates 18 to 24-year-olds, when in fact the convention imposes duties on people aged 18 to 24 towards children. Those two things are at odds. They do not really fit.

[253] **Andrew Davies:** That is very clear. Thank you.

[254] **Mark Isherwood:** I have a supplementary question. As your predecessor did, you have often highlighted issues to do with the transition phase—transition from child and adolescent mental health services to adult services and transition from care—and issues to do with intentionality in homelessness and all sorts of other issues. I am wondering whether the legal adviser can tell us, given the link between this proposed Measure and the rights and obligations in the convention, how legally valid the inclusion of this age group would be.

[255] **Ms Roberts:** Thank you for the question, Chair. I would like to go away to look at this in more detail. It is a relevant issue, so I would like to come back to the committee with a paper that confirms the position.

[256] **Mark Isherwood:** Thank you very much indeed. That would be very much appreciated. Andrew, you have completed your questions for the time being. Thank you.

[257] **Darren Millar:** Mr Towler, earlier you made reference to the fact that not all matters are devolved to the National Assembly for Wales. Many people have argued that the breaches of the UNCRC that have occurred in the UK have generally been in non-devolved areas, such as the detention of asylum seekers, the age of criminal responsibility, and so on. How can that be addressed? Do you think it can be addressed in some way through the proposed Measure? It has been suggested that there could be some requirement in the proposed Measure on Welsh Ministers to make appropriate representation to the UK Government on non-devolved matters.

[258] **Mr Towler:** My powers do not extend to non-devolved matters, but that does not prevent me from making representation on those matters. I think that the proposed Measure should include a duty on Ministers to make representations on non-devolved matters.

[259] **Darren Millar:** That is pretty clear. These obligations on Ministers would be worth nothing unless people were able to challenge them and there was some way to redress the

situation and hold Ministers to account to fulfil those legal obligations in future. Given that children and young people are the ones who may not be served well by a Minister, how will they be enabled to do that? There is nothing in the proposed Measure about this. How would they be able to challenge a Minister where appropriate?

[260] **Mr Towler:** You have put your finger on one of the significant issues in this. Consider the vulnerable children LCO in relation to the competence afforded to the Welsh Government to do with smacking children. My understanding is that there was cross-party support for doing away with smacking children, but not having competence for criminal justice was a real and significant point. You could sense Members' frustration in the Senedd; you could sense the frustration of the Government in Wales, so the issue of legal redress is really significant. We have a bit of a problem with that in the proposed Measure.

[261] **Darren Millar:** How do you think that can be tackled? How on earth could a child take on the Government if he or she feels that his or her rights are not being upheld? There has to be some kind of advocacy and resource put in place to challenge a judicial review or a decision made by a Minister. They can be extremely expensive and complicated matters. How will a child be able to access the support necessary? We will discuss resources soon, but I do not see any information in the explanatory memorandum about cash being available to support children in being able to challenge the Assembly Government.

[262] **Mr Towler:** Absolutely; neither do I. It is a concern that I share. The only person that they can come to at the moment is me. The children's commissioner has powers in relation to making representation, supporting children and acting as an advocate. In some circumstances, he or she can provide financial support. At the moment, it hardly works in terms of financial support, for example. It has not happened during my time as commissioner. If it happened when Peter Clarke was commissioner, it must have been a rare event. However, the only place that they could come would be the children's commissioner.

[263] **Darren Millar:** Therefore, what do you think needs to be changed in the proposed Measure?

[264] **Mr Towler:** The way in which the proposed Measure is drafted means that it tends to look at systemic awareness raising, trying to engender some ownership of a way of working things through. Again, in relation to the powers of the children's commissioner—to use that as an analogy—I hardly ever have to write letters saying that I am using powers under, for example, the Care Standards Act 2000 to go to see someone to do whatever I want to do. To go back to my point about willingness in local government, health authorities and others, if I make some kind of approach, they will respond. I very rarely use those powers. Nevertheless, there is still a weakness in what you are putting your finger on here. In relation to the amendments that we referred to earlier, perhaps we could have another think about that.

[265] **Darren Millar:** That would be helpful.

[266] **Mr Towler:** As currently drafted, this does not go anywhere near that at all

[267] **Andrew Davies:** I think that we all identified this. In fact I raised this two sessions ago and I asked the Deputy Minister about it then. His answer was that a young person or a child could seek redress through judicial review. I think that there was a collective boggling of minds at that.

[268] I also made another point about consistency. Another committee is looking at the Proposed Welsh Language (Wales) Measure. There is a very extensive system of ways in which people can seek redress through the Welsh language commissioner, including the provision of financial assistance. It struck me that there was a very sophisticated and

extensive system being established where people have the freedom to speak Welsh. However, here we are talking about a right, and basically the only offer is a judicial review. I get the feeling that the Government understands that there is a big issue to be addressed here. I would hope and expect you, as the commissioner, and your office to contribute to that because—coming back to you being pragmatic—I think that this is a very big area.

[269] **Mr Towler:** Absolutely. I have been looking at the proposed Measure for the Welsh language and the commissioner. I know that breadth is not everything, but if you look at the legislation for the children's commissioner, which is a very thin little document, and you look at the powers, role and function of the Welsh language commissioner, you will see that they are like chalk and cheese in how it is all drafted. That does not mean that I want to go around imposing fines on everyone, but there is a significant shift in terms of what is happening with the Welsh language commissioner that does not relate comfortably with the legislation for the children's commissioner, nor indeed for the older persons' commissioner.

[270] **Eleanor Burnham:** This perhaps shows up the difficulties that we have in the Government of Wales Act 2006 as it stands in terms of how we can move forward. We have done a piece of work on youth justice in another committee, which you are aware of. There are many issues, but you are obviously of a mind to do your best as a pragmatist, idealist or whatever to ensure that we do our best to improve this proposed Measure.

11.30 a.m.

[271] **Mr Towler:** Absolutely. I work within the constraints of the legislation for the children's commissioner. My office will hate me for saying this, but sometimes I push and stretch it as far as possible on non-devolved matters, until such time that someone may say, 'Why on earth are you stepping outside your remit to do that?'. However, I do not think that making representations is standing outside my remit. My view, as you know, is that every child and young person who finds themselves in Wales ought to be able to come to the children's commissioner and know that any issue that they want to raise can be supported and that representations can be made by their commissioner. I am their commissioner, but I cannot currently do that. Within the competence of this proposed Measure, we find ourselves similarly hampered, which is probably where some of the frustration reigns. In my two and a bit years as the Children's Commissioner for Wales, I have done everything in my power to ensure that children get their voices heard, whoever they are and wherever they have come from. It is not always easy, but that is my job and that is why I am the champion for children; that is why I do it.

[272] Welsh Government Ministers, such as Gwenda and others, are passionate about children and about what we are attempting to do for children, which is the point that Andrew made. However, we recognise the constraints that we work within, uncomfortable though they are.

[273] **Mark Isherwood:** The final questions are from me on the regulatory impact assessment applying to the proposed Measure. Are the financial implications identified in the regulatory impact assessment realistic? If not, what are its shortcomings and how would you like to see those addressed?

[274] **Mr Towler:** With regard to the debate that we have just had, they are perhaps not realistic, but, as the proposed Measure is currently drafted, my understanding is that there is £300,000 for training, toolkits, raising awareness, and all of those kinds of things, which is okay. That money would go further if the 18 to 24 issue was nailed; that is, whether it applies there. However, with regard to how the proposed Measure is currently drafted, it seems a reasonable budget for raising awareness and staff training, but with regard to the debate that we have just had around redress and other points, then it probably is not. So, the way that it is

currently drafted seems okay to me.

[275] **Mark Isherwood:** Finally, in that context, given the lack of available quantitative data on levels of current awareness, knowledge and understanding of the convention, do you have a view on the financial implications arising from the duty to promote knowledge and understanding of the convention among children, young people and adults in Wales?

[276] **Mr Towler:** The last time that we really had a level of understanding of awareness among children was from the Funky Dragon ‘Our Rights, Our Story’ report, which stated that 8 per cent of children knew about their rights. With regard to the lack of quantitative data, my feeling—and this is completely anecdotal—is that awareness of the UNCRC among professionals working in Wales has risen considerably since that report was drafted. It is not universal awareness, so we have a long way to go. Awareness among children and young people is still very low, and it is clear, with regard to the UN committee’s concluding observations, that the responsibility around that rests with the Government.

[277] This proposed Measure, as currently drafted, notwithstanding our debate about what we ideally want to see, could have quite an impact on raising awareness levels and could be quite a good way of ensuring that Welsh Government at least takes its responsibility to raise awareness seriously. To return to a point that I made at the beginning, that could happen by ensuring that Welsh Government does what it can to recognise and promote children as citizens and as rights holders, as defined by the UNCRC. That is what this proposed Measure could deliver.

[278] **Mark Isherwood:** Before we bring the meeting to a close, are there any other issues that we have not covered that you would like to raise, or any closing remarks that you would like to make?

[279] **Mr Towler:** No, thank you.

[280] **Leanne Wood:** I know that you want to come to the end of the meeting, Chair, but I am unclear about something that was discussed earlier, and I would like some more information. You are clearly enthusiastic about this proposed Measure. You told us that, in the way that it is currently drafted, it will have a significant impact. We have talked about what we would have in an ideal world. You have said that there is a risk that the proposed Measure would be lost, and you alluded to some discussions with officials that you have witnessed and have almost given us the impression that it is a miracle that we have got to where we are. So, can you explain that fear? Why do you think that it will be lost and why do you not think that we, as a committee, can strengthen this legislation and be a bit more ‘ideal world’ about it?

[281] **Mr Towler:** I do not underestimate your abilities as a committee to strengthen this. I have witnessed the struggle that officials have had to draft a piece of legislation that sits comfortably with Welsh Government lawyers. Part of the point that Darren, Andrew and Alun raised around redress and how strong this legislation should be is about getting lawyers lined up with what Ministers and officials would like to do. I am no lawyer, so I do not understand all of that, but I have witnessed some of the anxieties that have been felt to get us to this point. A lot of work has been done to get to this point.

[282] **Andrew Davies:** I think that we will cut to the chase at this point, and again I refer to the fact that I was a Minister for 10 years. When you and I go to a lawyer in our private lives as citizens, we want the lawyer to give us advice on how we can do things. Government lawyers do not work like that. They will, on the whole, say why you cannot do things. That is why, as a Minister, I often said that we were making the wrong statements and that we should say, ‘We want to get to x, so tell me how to get to x’, rather than, ‘Tell me why I cannot get to

x'. From what I have heard about discussions, I think that Leanne has put her finger right on the pulse of the issue. The problem is not Government intention so much as the culture within the civil service and the Legal Services Department of the Assembly Government.

[283] **Mark Isherwood:** Do you wish to comment on that?

[284] **Mr Towler:** I think that if we are to be frank and honest, that is a really good assessment.

[285] **Mark Isherwood:** May I suggest that certain opposition Members have also shared your frustration about that on occasion, at national and local level? I will stop at that point.

[286] You kindly volunteered to provide us with further information in the form of proposed amendments and the letter that you referred to. I would be grateful if we could have those as soon as is practicable. You will be provided with a draft transcript of today's proceedings, which will be sent to you by the clerk for your correction, if required, before being finalised. Thank you for attending at short notice, for you paper and also for your contribution today.

[287] **Mr Towler:** It has been a pleasure.

[288] **Mark Isherwood:** The next meeting of the committee is scheduled for Thursday, 15 July at 9.00 a.m., when we will take evidence from UNICEF. If you have no further points, I declare the meeting closed.

*Daeth y cyfarfod i ben am 11.38 a.m.
The meeting ended at 11.38 a.m.*