



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

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

**Dydd Iau, 7 Hydref 2010
Thursday, 7 October 2010**

Cynnwys
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Procedural Motion

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

Marcus Hill	Ymgynghorydd Polisi Arbenigol, Llywodraeth Cynulliad Cymru Specialist Policy Adviser, Welsh Assembly Government
Natalie Lancey	Cyfreithiwr, Llywodraeth Cynulliad Cymru Lawyer, Welsh Assembly Government
Huw Lewis	Aelod Cynulliad, Llafur (Y Dirprwy Weinidog dros Blant) Assembly Member, Labour (The Deputy Minister for Children)

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

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

Dechreuodd y cyfarfod am 1.32 p.m.
The meeting began at 1.32 p.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

Nid oes recordiad ar gael o ddechrau'r cyfarfod.
No recording is available of the beginning of the meeting.

[1] **Mark Isherwood continues:** —fire alarm, please leave the room by the marked exits and follow the instructions of the staff. A test has not been scheduled for today. Please ensure that mobile phones, pagers and BlackBerrys have been switched off, as they interfere with the broadcasting equipment. The National Assembly for Wales operates through the media of the Welsh and English languages. Headphones have been provided for simultaneous translation, as required. That is on channel 0. Those who are hard of hearing can also use the headphones

to amplify the sound. Please do not touch the buttons on the microphones. The red light will shine automatically. If you press them, it could disable the system.

1.33 p.m.

**Mesur Arfaethedig ynghylch Hawliau Plant a Phobl Ifanc (Cymru)—Cyfnod 1:
Sesiwn Dystiolaeth 7**
**The Proposed Rights of Children and Young Persons (Wales) Measure—Stage 1:
Evidence Session 7**

[2] **Mark Isherwood:** The purpose of today's meeting is to take further oral evidence from the Deputy Minister for Children, Huw Lewis, on the Proposed Rights of Children and Young Persons (Wales) Measure. This week's meeting is our final oral evidence session to inform the work of the committee. I welcome, Huw Lewis, who is responsible for introducing the proposed Measure. Welcome, also, to his officials. Please introduce yourselves for the record.

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

[4] **Ms Lancey:** I am Natalie Lancey, from Legal Services.

[5] **Mr Hill:** I am Marcus Hill, and I am working on arrangements for implementation.

[6] **Mark Isherwood:** I will start with the first question, and then we will move on to the other Members.

[7] Evidence from witnesses and from consultation responses suggests general support for the proposed Measure, although there are concerns over whether, as currently drafted, it will take the children's rights agenda further forward. An example came from the United Nations Convention on the Rights of the Child monitoring group, which said that

[8] 'it appears that the law is being used to require Ministers to do something that they already have the power to do'.

[9] Witnesses such as Conwy children and young people's partnership suggested that the proposed Measure is weak in the way it is drafted. What is your response to those comments from witnesses?

[10] **Huw Lewis:** You will not be surprised, Chair, to hear me say that I do not really concur with that view. On the balance of the evidence that you have received and which I have managed to take a look at, it appears to be a minority view. Taking the evidence from UNICEF for example, you will see a positive response to the approach that we are taking and recognition of the fact that it is a common response in other parts of the world where this is happening. It must also be said that we are blazing something of a trail in Wales, as there are not many parts of the planet that are as far advanced as we are in bringing the United Nations Convention on the Rights of the Child into law. It is worth remembering, of course, that the United Nations committee itself asked the devolved administrations to do just this, namely to embed within their own legislative competence a requirement for Ministers to take account of, and pay due regard to, the UNCRC.

[11] **Leanne Wood:** Evidence co-ordinated by Swansea University School of Law states that the proposed Measure is

[12] ‘perversely, a step backward rather than forward, since it suggests a limitation on the existing apparent impact on Welsh Ministers of the UNCRC’.

[13] Do you share any of the concerns that the proposed Measure as currently drafted might weaken the current status of children’s rights in Wales rather than enhance and strengthen them?

[14] **Huw Lewis:** No, I do not. I assume that that is a legal opinion that the school of law has given, and legal opinions can be sought from several different directions at once. However, I do not think that it is supported by any direct evidence. For a long time now, we have effectively implemented, or worked towards compliance with, the UNCRC through the seven core aims that we have used in policy making.

[15] We, as a devolved administration, were asked—and this was highlighted by the United Nations committee—to take that further, to a legislative level within our devolved competence, and I think that it was general comment No. 5 of the UNCRC that asked us to do that as part of the framework for developing policy and legislation, which is precisely the issue the proposed Measure seeks to address.

[16] That policy making and legislation are the sharp end of what Ministers do. Those are the most important things that Welsh Assembly Government Ministers get to do with their time. The Measure, once approved, would mean that they would have to have due regard to all 58 substantive rights and obligations within the UNCRC. To my mind, that is way over and above what is already in place, which is that we are part of the UK, which is a signatory to the UNCRC. We are taking that forward in a devolved context to ensure that Ministers have due regard to the UNCRC in their most important work. So, I cannot see the interpretation of it being a backward step as being fair.

[17] **Leanne Wood:** Do you not accept that there is a limitation? The school of law is saying to us that the proposed Measure, as currently drafted, suggests a limitation on the existing impact. Are you saying that it is wrong on that point, and that there are no limitations?

[18] **Huw Lewis:** I think that it is, and the United Nations committee would agree, since it prompted the devolved administrations, with us as a trailblazer, to do just that. So, we are going beyond being part of the UK as a signatory to the UNCRC and so on. We are affecting the way in which we do policy and make law in a devolved context. Perhaps I could bring Natalie in to talk a little more about the international context.

[19] **Ms Lancey:** WAG is part of the UK state, and the UK state is bound by the UNCRC, which is an international obligation. The Welsh Ministers cannot, therefore, act in a way that is incompatible with international obligations. There is provision in the Government of Wales Act 2006 anyway for the UK Government to direct us to do or not do things with regard to compatibility with international obligations. If the Welsh Ministers were to try to do something clearly incompatible with the UNCRC, such as close down all primary schools in Wales, it would be subject to judicial review and it could be quashed. That position exists whatever this proposed Measure says.

1.40 p.m.

[20] The proposed Measure is actually making provision on top of that. It is saying that when Ministers develop policy, legislation and other strategic decisions such as strategies, they have to consider actively whether they can proactively give further effect to the 58 plus rights and obligations—and there are a lot of them—in the UNCRC. We strongly reject the argument that we are weakening the position. We are not changing the position; we are

putting something that is really quite novel on top of it.

[21] **Huw Lewis:** Marcus just wants to add something, if that is okay, Chair.

[22] **Mr Hill:** I just want to reiterate what Natalie was saying. What is not being picked up in the paper from the ad-hoc lawyers group is the significance of this duty and the difference that it will make. Many comparisons have been made to other legislative models, but what we are talking about here is not just looking at the UNCRC, but considering how further and greater effect can be given to those 58 substantive rights and obligations contained within it when considering strategic decisions, particularly covering policy and legislation, as the Deputy Minister has previously outlined in evidence. It is quite a different duty in that sense, and it requires that thought process to take the agenda forward, to consider how you can realise rights at a greater level than is currently the case.

[23] **Mark Isherwood:** On this point, I have three Members who wish to speak.

[24] **Andrew Davies:** Thank you for coming today, Deputy Minister. On the monitoring group and the paper by Jane Williams, I believe that Jane Williams was deputy Counsel General at the Assembly Government for some years before she went to the law department at Swansea University. In her, you have somebody who is a lawyer and who understands Government, so I am not sure that I would agree with Marcus's last point. Actually, I think that the lawyers' paper is very good.

[25] Deputy Minister, you quoted UNICEF and the UN committee and the fact that they applaud what is being done. Are you saying that they are applauding the Assembly Government for legislating, or that they are applauding the specific drafting that you have proposed? My understanding is that UNICEF applauded the Assembly Government's determination to legislate, but that it was not commenting specifically on the current draft of this legislation.

[26] **Huw Lewis:** My reference to the UN committee was to the fact that it was the initiator of the process of prompting devolved administrations to do the right thing within their competence as regards the UNCRC. I have met representatives of UNICEF, and they showed no nervousness or concern about the way in which the legislation has been drafted—at least, they did not when I had that conversation with them. I think that Marcus can add a little to that.

[27] **Mr Hill:** Just to reflect on that discussion with UNICEF and the evidence that it gave, it said that, where countries are looking to embed the UNCRC, the type of approach that we are taking is more the norm than just going full pelt at something. It has also said that, although some of the other groups have come forward and expressed nervousness, from the international studies that it has undertaken, it would say that that is quite normal and it can understand exactly where we are coming from and why we are doing it in this way.

[28] **Darren Millar:** The evidence was very strong and so I am surprised that you are dismissing it as you are, Deputy Minister. The evidence strongly puts it that, effectively, the way in which the legislation is drafted will restrict the application of the UNCRC in Wales. As we know, it is already incorporated into UK law, as the UK Government has signed up to it, and it therefore applies to Welsh Ministers and the UK nation state, of which Wales is a devolved part. Its evidence was clear, but you seem to be dismissing it with one hand. On what basis are you able to cast this evidence aside, because if it is right that you are restricting the application simply to strategic decisions and not to all decisions—and I am sure that Leanne will ask more about this in a few moments—and not having regard to this across the board, then you are, effectively, narrowing the application for Welsh Ministers, are you not?

[29] **Huw Lewis:** I hope that I have not given the impression that I am dismissing any of the evidence presented to the committee. I am here today confidently putting the Welsh Assembly Government's viewpoint on this piece of legislation, but I am also here to listen. I have been following the evidence that you have received, and I do not dismiss things out of hand at all.

[30] There is an issue to be addressed with regard to what the lawyers' group has said in this regard. However, there is a misunderstanding at the heart of what has been put to you by some of the witnesses. One is the idea that having due regard and talking about the strategic level of decision making somehow restricts things, because Ministers could perhaps pick and choose what are strategic decisions and therefore miss out functional areas of Government activity. That is not the case. All functions of Government—planning, health, transport, education, and the whole shebang—are covered by the proposed Measure. The duty applies to strategic decisions about how to exercise functions. My understanding of what the kernel of this disagreement is is that there is a proposal that we should have the duty applied directly to the exercise of functions, rather than to the strategic decision about how to exercise the function. Do you follow what I mean?

[31] **Leanne Wood:** No, I do not.

[32] **Huw Lewis:** In other words, it has been suggested that we should get down into not just legislating for the actions and priorities with regard to Ministers' law making and policy making, but the minutiae of Government decision making, and there are thousands of decisions made every day by officials and Ministers. My interpretation of what has been said is that, because we are not getting into the actual exercising of functions and are doing this at the strategic level, it is somehow limiting. My counter point to that is that the reverse is the case, because it is at the strategic level of policy making and law making that we can have the concentrated effect on change. If we start getting ourselves into an enormously complex situation whereby every function that the Welsh Assembly Government commits itself to, from writing a letter or cheque to making a phone call, is subject to that—

[33] **Darren Millar:** We are not asking about that, Deputy Minister. With respect, the Assembly Government has to pay regard to disability discrimination, equalities legislation and all of those things through all of its functions. We are not talking about the writing of cheques or how many paperclips to order from the stationer. We are talking about fundamentals here, are we not? Why are you taking this significantly different approach when it comes to children's rights and the implementation of the UNCRC in Wales? There is no question that we, and all witnesses, welcome the fact that there is legislation on the table and that you will be incorporating this into Welsh law. However, what many of the witnesses feel is that by narrowing it down in this way—you say that it is to concentrate its effect—and specifying strategic decisions, you are taking a step backwards because the UK is a signatory to this, and therefore it should apply across all decisions, but you are saying that it should not.

1.50 p.m.

[34] **Huw Lewis:** Welsh Assembly Government Ministers cannot act incompatibly with the UNCRC, because, as you say, as part of the United Kingdom, we are signatories to it. Therefore, what we are talking about here is how you add to this in a devolved context. How do you enhance the effect of the UNCRC to impact on children's lives in the most constructive way in terms of how we operate here in Cardiff bay day to day? There is a view that we should just follow the pattern of the equality legislation or disability legislation that is out there at the moment and so on. However, there is a danger in that regard of comparing apples and pears, because what we are doing here is something rather different. We are not just echoing the United Kingdom's commitment to this charter; we are trying to change the way that we work in order to add value to the fact that, in a devolved nation, we can do more

because of the action that we take.

[35] The question within that is how best to accomplish that. There is a practical problem with regard to the number of areas in the UNCRC, for instance. There are 58 and, within them, there are sub-sections—I forget the technical term—so there are more than 58, which is way more than the Human Rights Act 1998 would demand. There is also a built-up body of case law behind human rights legislation through the European Court of Human Rights, which does not exist in this regard. We are trailblazing in this regard, and it is important that we do not run before we can walk and end up in a situation where we become embroiled in complexity because of the number of areas that are listed in the UNCRC. This is legally absolutely novel.

[36] **Darren Millar:** You keep mentioning the word ‘trailblazing’, Deputy Minister, but it is not a word that has been used by any of the witnesses that have come before this committee so far. No-one has used that word. They welcome the fact that there is legislation on the table, but this restriction or perceived restriction—you say that is an enhancement or addition—is of serious concern to this committee.

[37] **Mark Isherwood:** We need to move on to other questions. The clock is against us and there are still Members who wish to speak on this issue.

[38] **Eleanor Burnham:** I understand that you do not want to micromanage, but you can compare this to other issues that are core to the Government’s functions, such as environmental sustainability, which is embedded in all that we do, and I am not sure whether the same application has been made by the Minister in that regard. Further to the issue of the use of ‘due regard’ in relation to the proposed Measure, the National Youth Advocacy Service recommends that your Government should explore the possibility of children and young people having the right to make a complaint if they feel that Ministers have not taken into account this ‘due regard’, which you have mentioned quite a few times. How do you respond to the concerns that children and young people might have difficulty in holding Welsh Ministers to account with regard to the commitments set out in the UNCRC and the optional protocols? Are you truly satisfied that the proposed Measure as drafted is an adequate and effective means of legal redress?

[39] **Huw Lewis:** I will bring in Natalie in a second to talk about some of the legal analogies that you drew with sustainability, for instance. The last time that I appeared before you, we talked about this idea of redress and complaint and so on. There was mention of the fact that there is always judicial review, which is the ultimate safeguard.

[40] **Eleanor Burnham:** However, it is slightly ironic that a young person could take you to a judicial review, and I suspect that there is no precedent for that in the whole wide world.

[41] **Huw Lewis:** That is the ultimate safeguard, obviously. However, there are numerous ways in which the Assembly operates where it is accessible for expressions of grievance, complaints and so on, through committees, complaints directly to Members, through the Assembly itself and, bypassing the Assembly, through someone such as the children’s commissioner. There are multiple avenues by which a grievance or complaint could be properly voiced and heard.

[42] **Mark Isherwood:** I remind Members that we are still on the questions on the need for legislation, but that has moved us on to our final section of questions. Alun, can you return to the earlier section?

[43] **Alun Davies:** I would like to return to some of the issues that you raised in your answers to Darren’s earlier question. You seemed to say that you wanted to focus on the

levers of change—you used the word ‘change’—that Ministers are able to use to create a strategic direction for the functions of Government, shall we say, whether that is in decisions or the delivery of services. There is merit in the evidence that we have heard, and this has been reinforced by a number of different witnesses, that it would be a more effective way of delivering the change—and I do not think that there is any doubt that witnesses and members of the committee believe in the outcomes desired from this legislation—if that change was delivered, not strategically by a Minister in an office in Cathays park or Cardiff bay, but by the decisions that are delivered by Ministers in exercising their executive functions or by officials in taking decisions, sometimes on everyday matters and, at other times, on wider issues. There is a concern that by delineating this proposed legislation to strategic decisions, you may well find yourself in a position where Government is not delivering change through its decision-making process, because there will not be a compulsion upon officials or Ministers to ensure that the conditions and demands of this convention are considered in taking decisions. I think that there is merit, Deputy Minister, in considering that further. When you come back to consider the debate that we have had this afternoon, it would be good if you were to look again at that to ensure that you are confident that the legislation as written delivers the ambition that you and everyone here shares.

[44] **Huw Lewis:** I will look at every aspect of the committee’s report and all of the concerns that you raise. I agree that there is a point of contention in this regard; we need to get this right together as an Assembly and an Assembly Government. It is important to remember, when we are talking about decisions of a strategic nature, that we will initially go through a process of consultation to build a children’s scheme, which will have a double lock. First, it will have an open consultation process in terms of defining what a decision of a strategic nature is and what is captured by that term. Secondly, the Assembly as a whole would have to approve that scheme, so the ultimate safeguard in terms of the interpretation of what is a decision of a strategic nature is the National Assembly for Wales. However, I am not dismissing this point because there is an issue at the heart of this concern.

[45] **Alun Davies:** I understand the demands of the proposed legislation in terms of the children’s scheme, and I accept that you do not want to gold-plate everything. However, would it not be a more effective safeguard if decisions of Government—all decisions taken via executive functions and others—were to have due regard to this in the exercise of those functions, which means that it is not simply reliant on the children’s scheme as accepted by the Assembly in 2011-12, or whenever it may be?

2.00 p.m.

[46] Instead, it is an ongoing and enduring duty that encompasses the functions exercised by Government in totality, and where people have confidence that even in a planning decision, for example, due regard is given to these matters by Government and officials, which I would have thought is a more comprehensive way of delivering the objectives that you have set.

[47] **Huw Lewis:** It is a valid concern. I do not know who did this wonderful piece of work—I must congratulate them on how they have reached this figure—but I understand that Ministers would make around 3,500 to 4,000 such decisions of a strategic nature every year, because they are made every day. My concern would be that, if we go beyond 3,500 to 4,000 decisions into hundreds of thousands of day-to-day decisions, we would be involving the institution of the Assembly Government as a whole in an enormously complex culture change with concomitant issues surrounding training, expense and cost and so on. If we are to take this seriously—which, of course, we should—it is something that we would have to get involved with.

[48] **Mark Isherwood:** I would like to bring Andrew in, but we need to get on with the

questions, so we will have to ration supplementary questions from now on.

[49] **Andrew Davies:** This goes to the heart of the problem. I thank the Deputy Minister for saying that he will look at this. I wish to refer to two sets of evidence that we have received, one of which was from the children's commissioner. The committee was genuinely perplexed by his view, and one of my colleagues asked him why he was supporting the legislation as it is currently drafted. I am paraphrasing him, but he said 'I have been told it is this or nothing'. He was saying that on the basis of discussions with officials. There is also an important section in the report of the UNCRC monitoring group, which analyses what it feels are the concerns of officials, based on discussions with Assembly Government officials. It goes back to your point about 3,500 decisions being taken every year, and if that figure became wider it would be a hugely complex bureaucratic process. The group argues that those fears are misplaced, and that the interpretation of Assembly Government officials equates to a tick-box approach—having been a Minister, I understand how officials think. So, I would be very grateful if you would consider this point and come back to us on it in due course. However, I would urge you to look at this particular concern, because all members of the committee feel that this goes to the heart of the advice that you have received from officials.

[50] **Huw Lewis:** I can see all members of the committee nodding, and that matters, so I will take a long, hard look at this. I was not present at the evidence session of the children's commissioner, so I was not aware of the subtleties of his comments, and it is not for me to interpret them. However, it is worth remembering that his overall acceptance of this strategic level intervention was also welcomed by UNICEF and the WLGA, so it was not just the children's commissioner who was making these points. Do you have anything to add to that, Marcus?

[51] **Mr Hill:** I cannot comment on what the children's commissioner said, as he has his independence to think of and he obviously said what he said for whatever reasons he said it.

[52] **Andrew Davies:** I presume it was based on conversations with officials.

[53] **Mr Hill:** I do not think that that is the case.

[54] **Andrew Davies:** That is what he said.

[55] **Mr Hill:** To refer to the point that you made about what the ad hoc lawyers' group said, if you look at the paper that the group presented, the discussion that we had with the lawyers was around why we are targeting this duty to gain greatest effect, as the Deputy Minister said, and the reason why we are using this concept of strategic decisions that relate to policy and legislation. The paper then goes on to discuss a scheme being removed; however, it recognises that you will need to put something else in place to guide what needs to happen at different levels of Government. Otherwise, the duty itself will be quite difficult to interpret, given the different levels of activity when different functions are being exercised. To a certain degree, there is an issue there, because it replaces one thing with something else, which could equally be described as being difficult and hard to understand. Returning to the conversation that we had with members of the NGO group, what we were asked to do was to explain our reasoning, and we have done that by explaining why we are targeting this and not just going for broke.

[56] **Leanne Wood:** The problem that we have is that we cannot work out what are 'decisions of a strategic nature'. You have talked about policy and law making, but would budgetary decisions fall within that, for example? I would like to hear whether you agree with many of the witnesses who have given evidence to us that it would be much clearer if it applied to all decisions.

[57] **Huw Lewis:** As I said, I cannot throw across the table right now a definition of ‘decisions of a strategic nature’. It would be arrogant of me to do so, and the procedure that we have talked about, in getting to an agreed—

[58] **Alun Davies:** You have written to the committee—

[59] **Huw Lewis:** Yes, I have given some illustrative examples, but the children’s scheme, on which we would go through a consultation process with all interested parties, would really put the flesh on the bones of ‘decisions of a strategic nature’. My letter, as Alun mentioned, gives some illustrative examples of my thinking at the moment.

[60] Would it be simpler to apply this to all decisions? Yes, it probably would be simpler, but would it be more effective? I do not know that making a law simpler to understand necessarily makes it more effective in the impact that it has on the real world—in this case, the lives of children.

[61] **Leanne Wood:** However, if all the time is spent debating what is and is not a decision of a strategic nature, it will not be effective.

[62] **Huw Lewis:** As has been said, we would still need to have some kind of scheme, guidance, discussion or debate, which would be very complex, about what happens at each level of Government, if we were to go beyond the strategic level and start talking about the day-to-day administrative decisions that are taken throughout the Assembly Government.

[63] **Leanne Wood:** Do you accept that there will be this debate, and does it concern you that it could end up wasting a lot of time?

[64] **Huw Lewis:** There is a concern. I am sure that everyone wants a piece of law that is good law, that is workable, and that has an effect in the real world. Yes, I am worried about delays, and I am worried about complexity leading to budgetary considerations that might overstretch what is realistic, and I am worried about getting ourselves into a situation where we would perhaps drift into that tick-box mentality—because that is the easiest thing to do when you are faced with enormous complexity. The first refuge from a difficult piece of bureaucracy is to boil it down to a tick-box list.

[65] **Darren Millar:** Or to boil it down to a strategic decision.

[66] **Leanne Wood:** So, you are concerned that time could be wasted in debating what this means, yet you say in additional evidence submitted to this committee that ‘decisions of a strategic nature’ carries a natural meaning in ordinary language. In evidence to this committee, nine consultees and witnesses put forward their own interpretations of what is meant by ‘decisions of a strategic nature’, and none of those interpretations were consistent with each other. So, do you accept the concerns put forward by the NSPCC, which has stated that the current wording of the proposed Measure is subject to differing interpretations and is unnecessarily confusing and complicated?

2.10 p.m.

[67] **Huw Lewis:** Differing interpretations of legal wording are par for the course. That is how law is made. The question is: how do we get to a consensus and a sensible and understandable interpretation of the wording? As I have said, the children’s scheme would be the way to do that. So, there is a vehicle for doing that. The body that makes the decision about what constitutes a decision of a strategic nature is not made up of Assembly Ministers. They do not make that decision; the Assembly as a whole would make it. If the Assembly was not content with the children’s scheme and its definition of a decision of a strategic nature, it

would throw it out.

[68] **Leanne Wood:** It will probably take quite a long time to draw up the scheme, then, will it not?

[69] **Huw Lewis:** Yes, but any alternative route would probably lead us to a similar issue or problem—perhaps more so.

[70] **Mark Isherwood:** I will bring in Alun, and then Darren.

[71] **Alun Davies:** I have completed my series of questions.

[72] **Darren Millar:** I wanted to make one small point. The Deputy Minister made reference to the evidence from the WLGA and said that it was content with the restriction to strategic decisions. I will just quote the additional evidence that it has provided, which is in the papers that have been provided to Members:

[73] ‘the Measure should be all pervasive and apply to all decisions of the Welsh Ministers and the First Minister.’

[74] **Huw Lewis:** I would say that it is all-pervasive.

[75] **Darren Millar:** That is at odds with your saying that it should be restricted to strategic decisions.

[76] **Huw Lewis:** It depends on what the WLGA is intending to mean when it says ‘all pervasive’.

[77] **Darren Millar:** It is saying that it should apply to all decisions of Welsh Ministers.

[78] **Huw Lewis:** I suspect that there is a fear that Ministers would be able to cherry pick what they would like the UNCRC to apply to. If there is a fear in the WLGA’s mind or in anyone else’s mind that the wording of the proposed Measure would allow Ministers to cherry pick, that is not the case. This is all-pervasive, and goes across all functions of the Assembly Government. The scheme would be clearly laid out and would define the level of decision making that comes under the consideration of the proposed Measure. So, there will be clarity. It would not be possible for a Minister to wriggle out of paying due regard to the UNCRC by saying ‘I do not regard that as a strategic decision’. It would be a very foolish Minister who tried to do that.

[79] **Darren Millar:** I just wanted to get on record the fact that the WLGA disagrees with the Deputy Minister on this point, because the Deputy Minister seemed to indicate before that it gave it its full support.

[80] **Eleanor Burnham:** Finally, the children’s commissioner says that

[81] ‘There needs to be a real and clear impact in terms of change of accountability, policy and practice as a result of this Proposed Measure. While a statement of intent...may be enough of a commitment...such a statement can be withdrawn or modified, and would not necessarily survive an election.’

[82] That is on page 3 of the written consultation responses. He then spends the whole of that page discussing why what we referred to earlier needs to be clarified; otherwise we cannot move forward.

[83] **Huw Lewis:** He is right; it does need to make a difference, and it does need to be clarified. I am arguing this afternoon that the wording would make a difference to the sharp end of the Government's work. Therefore, it would permeate throughout the system, not just through the Assembly Government, but through outside bodies as well, when we are making law and policy. I am sorry; I have forgotten the second part of your question.

[84] **Eleanor Burnham:** There is a whole page on why the commissioner does not believe that there is clarity on what a strategic decision is.

[85] **Huw Lewis:** With regard to survivability, we live in a democracy and Governments can change; no doubt, laws can be changed and the UNCRC could be modified over time, and probably should be. Situations will change and new issues will arise in terms of the threats to children and so on. However, by writing this into Welsh law, we are making it as capable of surviving as anything in a democratic system.

[86] **Mark Isherwood:** Looking at the potential impact of this, purely in laypersons' terms, you said in your additional evidence that this would catch strategic decisions taken by officials on, for example, staff recruitment processes. Would that include the recruitment of Welsh Government staff? Another example given to us last week related to bovine TB and a badger cull. Children could be upset by the thought of the implications for animals of which they are fond or to which they are particularly attached, and, theoretically, may have the right to have those concerns heard in the Minister's decision-making process. How do you respond to those two examples?

[87] **Huw Lewis:** Yes, they would have the right to have their concerns heard. At the heart of this legislative change is a change in attitude with regard to the voice of children and young people. However, the UNCRC is very clear that that does not mean that the rights of children and young people override the rights of other groups. The rights of different groups in society must be balanced with industrial or, as in that example, agricultural interests. There is a debate to be had, and the UNCRC is intended to ensure that that debate includes the young.

[88] **Mark Isherwood:** Do you wish to ask some questions about the children's scheme, Darren?

[89] **Darren Millar:** Evidence was co-ordinated by Swansea University School of Law that suggested that there is no need for a children's scheme and that it would be an additional and unnecessary requirement that would add an administrative burden. What do you feel about that piece of evidence? If you are going to have to define 'strategic nature' in a scheme, you will have to have a scheme, will you not?

[90] **Huw Lewis:** Yes. That particular point made by the ad-hoc lawyers' group confuses me. First, if we are to have this wording, 'a decision of a strategic nature', to my mind, it is obvious that we need to define what we are talking about and that we need as much consensus as possible on that definition. However, the lawyers' group then went on to say that it would do away with the scheme, and then, although it does not call it a 'scheme', it goes on to say that you would need a scheme—that you would need some other document that describes how, at different levels of decision making, the UNCRC would apply within devolved Government. So, without actually using the word, the lawyers are saying the same thing. They are having their cake and eating it on this point. I think that there is more transparency in what we are saying, because there will be a consultation process. The backstop is the permission of the Assembly on the wording of the scheme and so on, and what the lawyers' group is suggesting is a little obscure. It has not really defined what it means by another document that would describe how this works within governmental machinery.

[91] **Ms Lancey:** The first thing to say is that the scheme will set out not only the criteria

for determining which are decisions of a strategic nature, but our arrangements for compliance. So, how we comply is utterly transparent. If we lose the scheme, we lose those. What I think the Deputy Minister is saying about this reference to a document in Swansea University's evidence is that, if the due regard duty applied to the exercise of all functions, you would need to have arrangements in place for applying it differently at different levels. However, that would not be transparent, because no-one would know what they were other than WAG officials. So, we think that the scheme is an important component of the transparency.

2.20 p.m.

[92] **Darren Millar:** I will move on to ask a question about the duty to promote the knowledge of the convention. The UNCRC monitoring group states that article 42 of the UNCRC should be on the face of the proposed Measure, arguing that section 5 of the proposed Measure does not import article 42 in its entirety. Do you have a view on this?

[93] **Huw Lewis:** Yes. We have set the due regard duty separately in section 1, because I feel that it strengthens what we are trying to do here. We are ensuring that the duty is not just about promoting knowledge, but the understanding of the meaning of the convention. Does that answer your question?

[94] **Darren Millar:** There are certain words in article 42 that, if incorporated onto the face of the proposed Measure, would strengthen it. It mentions words and phrases from the full text that talk about it being widely known and that there should be active means to promote knowledge of the convention among adults and children alike. Are those things that you think might help to strengthen the duty?

[95] **Huw Lewis:** We are into the realms of legal drafting now, so I will turn for advice on this point.

[96] **Ms Lancey:** As we have mentioned, the UNCRC is an international convention and an agreement, not a piece of legislation, so it is not drafted like a piece of legislation. That is why, in many respects, it is quite non-specific in the way that some of the rights are drafted. If you are taking international obligations and converting them into a provision and a piece of domestic legislation, it is often not appropriate just to take the exact words and put them in the piece of domestic legislation, because our domestic legislation has to be clear and unambiguous, and it should not use phrases unnecessarily. For example, article 42 mentions the convention being promoted by active means; the Welsh Assembly Government cannot take inactive means, so the word active does not appear. So, the drafting counsel has taken article 42 and translated it into the language of domestic legislation. Then, as the Deputy Minister has said, it goes further because the duty to promote understanding has been bolted on, so it does not just mention knowledge.

[97] **Darren Millar:** However, are you satisfied that you would effectively get the same outcomes from the way that that duty is drafted in the legislation?

[98] **Huw Lewis:** That is certainly my legal advice.

[99] **Darren Millar:** We also took some evidence about the application of the UNCRC to young people aged between 18 and 24. There were a range of views from the witnesses. The UNCRC monitoring group, the Children's Commissioner for Wales, the NSPCC, Children in Wales and the WLGA all opposed the inclusion of young people aged 18-24 within the proposed Measure. They did not feel that it was appropriate. What is your view on their arguments?

[100] **Huw Lewis:** The arguments are understandable and are not foolish, but they miss the unique aspect of the way that we have done things in Wales for some considerable time now. Throughout our policy relating to children and young people, we have included that 18-24 age group. There are many current programmes and interventions happening in communities—the latest would be the Meic advocacy service, for instance—that are aimed at recognising the fact that someone does not necessarily become a fully functioning, independent, all-singing, all-dancing, totally confident person on their eighteenth birthday, as we have recognised in Wales almost since the dawn of devolution. In fact, there are significant groups of people that would face challenges up to the age of 24, particularly when it comes to people with educational needs, for instance. The children's commissioner's remit covers those from birth to 18 years of age, so the commissioner is right to say that those in that range are his concern: he is sticking to his job description and that is what he should be doing. However, I would like to give us in Wales the flexibility to apply the principles of the UNCRC to that wider age group, if we can affect young people's lives for the better by doing so.

[101] **Mark Isherwood:** If that is the case, why did your officials suggest in last week's meeting of the Finance Committee that you may be bringing forward a different proposed Measure to cover 18 to 24-year-olds, and that you may not consult on this matter? What are your intentions in this regard in relation to this proposed Measure? Do you have any plans to remove this at Stage 2 and address it in different legislation?

[102] **Huw Lewis:** I will hand over to Marcus to answer those questions.

[103] **Mr Hill:** I was at that meeting and a number of issues were raised on provision for 18 to 24-year-olds. We made the point that a lot of opposing evidence has come forward that has talked about why certain articles of the UNCRC could not be applied to an older age group. I do not think that we are disagreeing with that in any sense. When you are considering how to take something forward for that age group—I will talk about the reasons why that might be in a second—you are recognising that the UNCRC is widely acknowledged as one of the most comprehensive human rights instruments in existence. We are saying that we could use it as a starting point and consider how the provision could apply, possibly with amendments, or we could look at another way of strengthening the rights of that group. The point that we made at the Finance Committee meeting last week is that there are a number of options that we would want to consider before we bring forward an approach.

[104] It is clear that evidence has come forward from a number of people who support this provision or who wish to apply it to different groups. To give you an idea, the numbers of young people who are not in education, employment or training in Wales has reached a level of around 12 per cent among 16 to 18-year-olds, but it is far higher for the 19-25 age group. Similarly, the exploratory analysis of Welsh Assembly Government spend has also focused on different age categories. Although it is an exploratory analysis, it recognises that the 18-24 age group was the group for which the least amount of spend per head was occurring. Research and Estyn inspections have also highlighted that there appear to be gaps at a local level, particularly around youth support service, where this service is provided by local children and young people's partnerships to support young people aged from 11 to 25 in accessing education, employment and training.

[105] To finish, Estyn's overall inspection for 2008-09 acknowledged that young people over 19 do not have good access to all of the services that they need; too few young people were involved with youth support services. I hope that my answer has given a flavour of the evidence that suggests that we are not taking the UNCRC on board wholesale and trying to apply it; we wish to consider how we will take its provisions forward and what the options are.

[106] **Huw Lewis:** It is important to remember that we are making Welsh law here; we are

not taking the UNCRC and using tracing paper to copy it out. This is about affecting the way that Wales is run. All sorts of questions would be thrown up if we did not take the 18-24 age group into consideration; the role of children and young people's partnerships, for instance.

[107] **Mark Isherwood:** For the purposes of clarity and for the record, you are saying that you will not be seeking an amendment at Stage 2 to remove this section from the proposed Measure.

[108] **Huw Lewis:** I have no intention of doing so.

[109] **Darren Millar:** Deputy Minister, you made the point earlier that people do not suddenly become confident all-singing, all-dancing adults, if you like, at the age of 18, and that they may need some additional support, beyond that age.

2.30 p.m.

[110] **Huw Lewis:** Some of us are still trying at 46.

[111] **Darren Millar:** Of course, it does not stop on their twenty-fourth or twenty-fifth birthday either, as many people can demonstrate. Some of the witnesses have also talked about vulnerable adults and said that this should, perhaps, be restricted to vulnerable adults. There are many people, when they are 18, who are perfectly confident and able to get on with their lives independently. What would you think about a restriction to those who are deemed as vulnerable adults between the ages of 18 and 24?

[112] **Huw Lewis:** Once again, we would be making a break from what has been a relatively consensual basis of policy making in Wales, which has taken nought to 24 years of age as the definition of children and young people. Once you start trying to define 'vulnerable', it makes trying to define 'decisions of a strategic nature' look like a walk in the park. You are going to get yourself into all kinds of issues about what exactly is meant by vulnerable, and who you have left out of that definition and so on. So, if you want to put it in your manifesto, Darren, fire away, by all means.

[113] **Darren Millar:** I am simply putting points to you that have been raised by witnesses.

[114] **Huw Lewis:** Of course; I am just being a little facetious.

[115] **Darren Millar:** I am sure—as usual. [*Laughter.*]

[116] **Mark Isherwood:** Andrew, do you wish to ask anything?

[117] **Andrew Davies:** I do not have any on this area. It is true that there was not any consensus; there were varying views.

[118] **Alun Davies:** Wearing a slightly different hat, we discussed this at the Constitutional Affairs Committee on Tuesday. One of the concerns raised at that meeting was the method by which the legislation may be extended to include the 18-24 age group and the use of the super-affirmative method. Have you given any consideration to that?

[119] **Huw Lewis:** Not in detail. It is not something that would make me throw my hands up in horror. Perhaps Natalie can give more technical details about this.

[120] **Ms Lancey:** As the committee knows, there is no real concept of the super-affirmative procedure; there is no definite thing. Usually, it is a sort of procedure that builds in a longer timescale so that it gives the Assembly more time to consider an Order before it

gets to decide whether to approve or reject it. We have built a fair amount of consultation into section 7 at the moment. Welsh Ministers have to set up the children's scheme and the proposals for consulting. They then have to publish a report with their conclusions. Then, they have to do the consultation and then lay their report and conclusions before the Assembly. Then, if they decide to go ahead, and make an Order applying some part of the Measure to the older age group, they have to publish a draft Order and go through a consultation process. At the end of all that, the Assembly gets to decide whether to approve it or not. Therefore, there are things built into it that make it more than an affirmative procedure—it bolts on extra consideration mechanisms to the affirmative procedure.

[121] **Alun Davies:** It does, and I appreciate all that, but there is a difference between that and parliamentary scrutiny. At the moment, the Deputy Minister and the Executive are taking powers that they do not intend to use immediately. I do not have a principled issue with that per se, although I think that there should always be limitations to the powers that the Executive takes that it does not require immediately. If you move into the 18-24 age group without seeking primary legislation again, because you already have the power, perhaps the Government might wish to consider it in order to alleviate some of the fears expressed by people, not so much in terms of the policy, but the way in which a policy may be implemented.

[122] **Huw Lewis:** You make an important point, and it is something that I need to consider seriously.

[123] **Mark Isherwood:** Andrew, do you wish to question the Deputy Minister on non-devolved powers?

[124] **Andrew Davies:** Section 8 of the proposed Measure provides for a power and a duty to amend the proposed Measure by Order. In the legislation as it is currently drafted, section 8 of the proposed Measure effectively deprives the Assembly of the ability to scrutinise amendments. What is the thinking behind that?

[125] **Huw Lewis:** In essence, the thinking is that it would be inappropriate for the Assembly to be able to refuse to approve or annul the proposed Measure in order to keep it in line with the UNCRC. In other words, we are not the signatory to the UNCRC; we are signed up to the UNCRC through the United Kingdom. It would not be a matter for us to alter through that kind of mechanism. It is not within our remit so to do.

[126] **Andrew Davies:** I am confused, Chair, because I thought that the legislation, as it is currently drafted over 10 years, states that Ministers, and presumably the Assembly, are therefore bound by that original legislation and cannot do anything outside it in any case. Why, therefore, is the ability to submit amendments being omitted from the proposed Measure? I find it to be confusing if that is, in fact, the answer.

[127] **Huw Lewis:** The UNCRC, of course, can change over time. That is an international political agreement, which can change over time. We must have the ability to be able to comply with that. I think that I had better bring Natalie in on this.

[128] **Ms Lancey:** As the Deputy Minister said, WAG's view was that Ministers should have due regard for the UNCRC and the UK's international obligations under it, whatever they may be at the time. We put all of the substantive rights and obligations in the articles in the proposed Measure—one reason for that was that it makes it easier for people to use—but they may change, so we must have the power to keep them up to date. As the Deputy Minister has said, WAG considered that it was not appropriate for the Assembly to be able to refuse to approve or annul an Order that was merely keeping the Measure in line with the UNCRC. Otherwise, effectively, the Assembly could say, 'Actually, we do not like the new protocol

that the UK Government has signed up to; therefore, we will not allow our Measure to be updated in line with it', which would then mean that Welsh Ministers would no longer need to have due regard to something that is the UNCRC. That is why there is no Assembly procedure, other than laying the Order after it is made so that the Assembly can see what amendments have been made. The Deputy Minister wrote to the Constitutional Affairs Committee in the summer and indicated that he recognised the concerns about the lack of opportunity for Assembly scrutiny and that he was prepared to consider it further.

[129] **Andrew Davies:** This does concern me, Chair. I understand the explanation that the Government may want to submit amendments to update this in line with the UNCRC, but it could be the case that the Welsh Government may wish to amend it in other ways. Presumably, if that was the case, again, the Assembly is being deprived of the ability to scrutinise and challenge the Government in that decision.

[130] **Huw Lewis:** Okay. Let us take that away again and ponder on that, Andrew.

[131] **Andrew Davies:** The issue of non-devolved powers has been an area where there has been quite a lot of discussion and submission of evidence by witnesses. We must bear in mind, of course, that many of the breaches, alleged or real, of the UNCRC relate to non-devolved policy areas, and that is something that has come through in the evidence. You have a UK Government that may differ substantially from the Assembly Government in its policy priorities. I suspect that that will be the case over coming years. The proposed Measure is fairly silent on how that will be done with regard to challenging, liaising, discussing, negotiating or representing the views of the Assembly Government and the people of Wales to the UK Government, where children's rights may be significantly and adversely affected by its legislation or policy. How would you, as a Deputy Minister, and the Assembly Government want to respond to that?

2.40 p.m.

[132] **Huw Lewis:** I agree with you that Welsh Ministers need the discretion to be able to stand up and speak on non-devolved matters as they relate to the children and young people of Wales in this regard. However, as far as I can see, the Government of Wales Act 2006 already gives Ministers the power to be able to do that in any non-devolved subject area that they choose. Welsh Ministers have that discretion to make appropriate representations to the UK Government about any matter that affects Wales. So, I cannot see that including the wording would add anything to the proposed Measure because it is already in the Government of Wales Act.

[133] **Mark Isherwood:** The question was not whether the power existed, but whether there should be a duty on Welsh Ministers.

[134] **Huw Lewis:** We are sailing into difficult waters with regard to the discretion of a Minister to act as a Minister and to use their judgment in relation to the manifesto upon which they were elected, for example, as to what exactly they want to make a noise about in Westminster. A politician must still be allowed to be a politician, as a Minister must still be allowed to be a Minister. To have a legal duty to make representations, perhaps regardless of the expressed will of the Welsh electorate on an issue, because of the inclusion of this wording in the proposed Measure could lead to all kinds of difficulties and would be very unusual.

[135] **Eleanor Burnham:** Mae dau o'r ymgynghoreion wedi cyflwyno'r achos dros gyfeirio'n benodol at rieni yn y Mesur arfaethedig. Mae Gofal i'r Teulu, er **Eleanor Burnham:** Two of the consultees have made the case for an explicit reference to parents in the proposed Measure. Care for the Family, for example, references article 5

enghraifft, yn cyfeirio at erthygl 5 o'r CCUHP sy'n amlinellu sut y bydd yn rhaid i bartïon wladwriaeth barchu cyfrifoldebau, hawliau a dyletswyddau rhieni. Sut ymatebwch i'r dadleuon y dylid rhoi mwy o bwyslais ar rieni neu warcheidwaid ar wyneb y Mesur arfaethedig?

of the UNCRC, which outlines how state parties shall respect the responsibilities, rights and duties of parents. How do you respond to the arguments that there should be an increased emphasis on parents or guardians on the face of the proposed Measure?

[136] **Huw Lewis:** There is explicit emphasis on the important role played by parents; for example, there are specific areas in the Schedule to the proposed Measure. So, I do not think that we are detracting in any way from highlighting the importance of the role of parents, given that it is there in the Schedule.

[137] **Eleanor Burnham:** Fodd bynnag, os yw'r ymgynghoreion hyn yn pryderu, rhaid bod sail i'w pryder.

Eleanor Burnham: However, if these two consultees are concerned, there must be some basis for their concern.

[138] **Huw Lewis:** I am not aware of the detail of their concern, but I do not see that including the wording on the face of the proposed Measure would add very much to the way that this law would operate. Perhaps Natalie can comment on that.

[139] **Ms Lancey:** My translation unit was not working, so I did not hear the question.

[140] **Eleanor Burnham:** My question was on the role of parents. Two consultees—the Evangelical Alliance Wales and Care for the Family—have made the case for the explicit mention of parents in the proposed Measure. Care for the Family particularly referred to the UNCRC's articles 5, 14, 18 and 21 about the rights and duties of parents, the right of children to have parents, articles 7, 9 and 10, and so on.

[141] **Huw Lewis:** Yes, but such concerns are covered by the Human Rights Act 1998 in any case. As I said, the importance of the role of parents is explicitly mentioned in the Schedule.

[142] **Eleanor Burnham:** They strongly believe that the word 'parents'

[143] 'should be included in any consultations on the scheme and named as such in section 3(4) of the Measure.'

[144] You are not convinced, however.

[145] **Huw Lewis:** I am not convinced that it would add anything.

[146] **Darren Millar:** I want to support those two organisations in their representations. Section 3(4) talks about the stakeholders you will consult in revising and establishing the scheme. Children and young people and the children's commissioner are named, and then it states:

[147] 'such other persons or bodies as the Welsh Ministers consider appropriate.'

[148] I do not see that it would detract in any way to add 'parents' before 'such other persons or bodies'.

[149] **Huw Lewis:** Okay. I do not see that it adds anything. It also leads us into having to be careful about children who live in various other forms of family units or who are looked after. So, that also has to be considered.

[150] **Mark Isherwood:** I think that article 5 does go on to cover guardians and others with a degree of responsibility.

[151] **Mr Hill:** This discussion reminds me of the previous discussion that we had in the committee about other groups that had come forward and said, 'We should be on that list'. As we said then, we have set down what we consider to be the two headlines and beneath that comes anybody else that the Ministers consider appropriate. In the main, consultations are open and broad, so anyone can provide a response, and I do not think that it excludes in any way, although the point that you are making is that it is not explicit.

[152] **Darren Millar:** The argument is a powerful one. Parents are children's primary carers. It is important to mention anyone with parental responsibility, whether that is the state in its various guises, a guardian, or a grandparent, specifically on the face of the proposed Measure to ensure that they feel that they have a significant role to play in the development of the schemes.

[153] **Eleanor Burnham:** We received an interesting written consultation response, CR22, which goes even further with regard to parents and suggests that

[154] 'there is a need for a law that gives the opportunity and the obligation of the mother/and father to study and pass a course about learning basic skills of how to raise a child'.

[155] In the normal scheme of things, parents would be the primary people involved in raising kids. If you have the chance to read this, I urge you to do so. It came through Facebook from Tina Sava. It is salutary.

[156] **Huw Lewis:** I do not dismiss the sincerity of the points that have been made in evidence, but there are a few considerations there. First, I do not think that you can easily use the word 'parents', because there are children living in situations in which their parents are not their primary carers.

[157] **Eleanor Burnham:** We know that.

[158] **Huw Lewis:** Of course. So, you would have to get into another definition argument about who exactly we were talking about. The other point is that the rights of parents are protected by the convention on human rights. It is illegal for public authorities to act incompatibly with the rights of parents. So parents are protected there. The third point that I would make is that this law is about the rights of children and young people, not of adults.

[159] **Darren Millar:** However, with respect, the fact of the matter is that parents are significantly involved in supporting the implementation of the rights of a child—

[160] **Huw Lewis:** Not for all children.

[161] **Eleanor Burnham:** No, but primarily—

[162] **Mark Isherwood:** One at a time, please.

[163] **Darren Millar:** Whoever has parental responsibility, then. The UNCRC refers extensively to 'parents' in relation to the upbringing and development of children, stating that parents have a responsibility to provide adequate living conditions and so on. This is simply about ensuring that they are a part of the consultation process. I think that you are saying that they will of course be part of the consultation process and that parents will be able to

contribute, but an explicit reference to parents on the face of the proposed Measure, in whatever guise they can be, would be helpful.

2.50 p.m.

[164] **Mark Isherwood:** Please keep questions and answers short, as we are running late.

[165] **Eleanor Burnham:** Shall I ask the last three questions?

[166] **Andrew Daives:** Before that, I would like to put something on record. I understand that Darren and Eleanor feel strongly about this matter, but I, for one, do not, and I accept what the Deputy Minister has said. He has said that he will look at this, and I accept what he is telling us. I would not want the Deputy Minister to think that everybody on the committee feels the same way.

[167] **Mark Isherwood:** As the Chair, I am impartial, but I will consult my own children.

[168] **Eleanor Burnham:** Fine. I will ask the last three questions then, although I did allude to them earlier.

[169] Mae'r cwestiynau yn ymwneud â gwneud iawn a herio cyfreithiol. Yn ei dystiolaeth, mae'r Gwasanaeth Eiriolaeth Ieuencid Cenedlaethol yn argymhell bod Llywodraeth Cynulliad Cymru'n archwilio'r posibilrwydd o roi i blant a phobl ifanc yr hawl i gwyno os ydynt yn teimlo nad yw Gweinidogion Cymru wedi ystyried y math o sylw dyledus y cyfeiriasoch ato ddechrau'r sesiwn hon yng nghyswllt y Mesur arfaethedig.

The questions relate to redress and legal challenge. In its evidence, the National Youth Advocacy Service recommends that the Welsh Assembly Government explore the possibility of children and young people having the right to make a complaint if they feel Welsh Ministers have not taken into account the sort of due regard that you referred to at the start of this session in relation to the proposed Measure.

[170] Sut ydych yn ymateb i'r pryderon y gallai plant a phobl ifanc gael anawsterau—sylweddol, dybiwn i—wrth geisio dal Gweinidogion Cymru i gyfrif am yr ymrwymadau dan yr UNCRC a'r protocolau dewisol?

How do you respond to concerns that children and young people might have difficulties—substantial difficulties, I would think—in holding Welsh Ministers to account for the commitments set out in UNCRC and the optional protocols?

[171] A ydych yn fodlon bod y Mesur arfaethedig fel y mae wedi'i ddrafftio yn fodd digonol ac effeithiol o roi iawn o dan y gyfraith?

Are you satisfied that the proposed Measure as drafted is an adequate and effective means of legal redress?

[172] **Mark Isherwood:** I think that we have covered these questions.

[173] **Eleanor Burnham:** I thought that we might have missed them, because you said it was not appropriate to ask them at the time.

[174] **Mark Isherwood:** That was after the Deputy Minister had answered.

[175] **Eleanor Burnham:** Oh, he has, has he? Okay, if you think that he has answered.

[176] **Mark Isherwood:** Do you wish to add anything to your earlier comments, Huw, on this question?

[177] **Huw Lewis:** I am sorry, Chair, I did not catch that.

[178] **Mark Isherwood:** Near the beginning of the proceedings, we questioned you about the issue of redress and legal challenge, and you provided a number of answers. Eleanor has now added to the question put at that time. Are there any additional points that you wish to make?

[179] **Huw Lewis:** I would just reiterate that this is a law to modify the actions of Welsh Ministers. We are not writing a piece of law with the intention of enabling children and young people to go out and establish their rights through a legal process. This is intended to change the way in which the Government works. We have in Wales multiple avenues for voices to be raised if there are disputes, worries, or complaints, not least of all through the National Assembly for Wales.

[180] **Darren Millar:** In the response that you gave to this question at the start of the meeting, you rightly referred to the role of the children's commissioner. He will have an important role to play in receiving any complaints from people who feel that Ministers have not paid due regard to the UNCRC in the decision process. The difficulty there, as you rightly pointed out, is that the children's commissioner is responsible only for children up to the age of 18. If you are extending the provisions of the proposed Measure to young adults up to the age of 24, what action can they take to obtain redress and legal challenge? Where can they get advice, given that the children's commissioner does not have responsibility for them?

[181] **Huw Lewis:** The facetious answer would be 'in all the other ways'. Let us remember that we are going to look at this issue of 18 to 24-year-olds and think all the various permutations through very carefully. However, being denied the services of the children's commissioner as a young adult does not mean that you are silenced in Wales. Apart from anything else, every young adult has an Assembly Member.

[182] **Mark Isherwood:** Five Assembly Members, in fact.

[183] **Darren Millar:** Do you accept that it makes it more difficult, however? We have talked about the cost of judicial review, and the finances of your proposed Measure may hinge largely on this issue of redress and legal challenge and the cost implications of that. It is important, if Ministers are to take these duties seriously, that individuals who feel that their rights have not been given proper regard have an opportunity for redress and legal challenge. So, simply to say that there are other avenues, such as the political process, Assembly Members and other people—

[184] **Huw Lewis:** There is a legal process; it is open for people to seek legal redress. As far as avenues for grievances to be expressed are concerned, Wales is right out in front, in my view. We now have a national advocacy service for children and young people, for instance, which is a professional set-up for people aged up to 24 to seek advice on issues that may well come under the remit of the proposed Measure.

[185] **Mark Isherwood:** You will be pleased to hear, Deputy Minister, that Andrew's supplementary question is the final question.

[186] **Andrew Davies:** For me, this is one of the fundamental issues. I remember, Deputy Minister, that the last time that you came before us I asked you about the issue of redress. You were very clear and referred only to judicial review. I think that Members were somewhat surprised by that, because that really is the nuclear option. We did not feel that that would be available to a child—perhaps, in my constituency, a child living in Townhill, for example, which is one of the most deprived communities in Wales. However, we have

received other evidence since. In its submission, the monitoring group made it clear that:

[187] ‘Section 1 of the draft Measure is modelled on section 1 of the Equality Act 2010’.

[188] The evidence seems to be pretty compelling that the way in which that has been drafted makes legal challenge virtually impossible. On page 4 of its evidence, the monitoring group states:

[189] ‘No-one seriously envisages a legal challenge arising from this duty. Indeed its lack of legal enforceability was emphasised during parliamentary debates on the Equality Bill, and the UK Government’s own guide emphasised the rather mild impact the duty was anticipated to have in practice.’

[190] That view was reinforced for me by my experience, because I remember as a Minister for finance being given a submission on this when it was proposed over a year ago. There were five options presented to Ministers, and one, which was the preferred option, was that this would be an all-pervasive duty. Another option was more restrictive and was analogous to what is being proposed in relation to decisions of a strategic nature. One piece of advice that I remember clearly is that that option, if taken up, would make legal challenge virtually impossible. This is a very important issue, and I would like the Deputy Minister to have a look at it seriously. I understand your case, Deputy Minister, that there are the National Assembly and other avenues, but we are talking about the law here, which is the ultimate channel for citizens to seek redress if they feel that the Government has failed to undertake its duties. I await your answer, but the evidence that we have received since and my own experience in Government raise serious concerns for me.

[191] **Huw Lewis:** I did refer to judicial review last time, and my intention in mentioning it was to make it absolutely clear that it is always there and is always available. It is a last resort, of course, and it is a nuclear option, but it is very important that the door is not closed on judicial review—you cannot close it, anyway. With regard to whether the wording would make it impossible to go to law, I do not really understand the context of how that could possibly be the case.

[192] **Andrew Davies:** On that basis, Chair, I would suggest that the Deputy Minister might want to go away and seek advice, not just from Government lawyers but from others. The monitoring group is very clear in its advice in saying that the way in which the proposed Measure has been drafted and modelled on section 1 of the Equality Act 2010, in effect, makes legal challenge very difficult indeed, if not nigh on impossible.

3.00 p.m.

[193] **Huw Davies:** If you will forgive me, I will seek an initial legal view on that from Natalie.

[194] **Ms Lancey:** We heard Mr Davies refer to that document in one of the earlier evidence sessions. We recognised the document; it appeared to be taken from a Cabinet paper, and you have just confirmed that. It was advice on an option that was not pursued, so what you have quoted is out of context.

[195] **Andrew Davies:** I shall revisit that. That aside, the UN monitoring group is very clear in the evidence that it has submitted to us, Chair, that there is an issue to be addressed here, as I have quoted. All I am asking is that the Deputy Minister looks at this.

[196] **Mark Isherwood:** Certainly, we did receive evidence on this. Deputy Minister, can you confirm that you will look at it?

[197] **Huw Lewis:** Yes. We must get to the bottom of this.

[198] **Mark Isherwood:** Do you have any closing comments that you would like to make?

[199] **Huw Lewis:** I thank the committee for a proper and thorough testing of the wording of this proposed Measure. I reiterate that I am here today not just to give the Government view but to take away the comments that have been made and to consider them very seriously.

[200] **Mark Isherwood:** Thank you for your patience in staying with us, as we have run half an hour over time. A draft transcript of today's proceedings will be forwarded to you to be checked before being finalised. Other than that, it simply falls to me to thank all three of you for being with us for the last hour and a half and for your contributions.

3.01 p.m.

Dyddiad y Cyfarfod Nesaf Date of Next Meeting

[201] **Mark Isherwood:** I bring the formal meeting to a close by announcing that the date of the next meeting of the committee is still to be confirmed—this will, hopefully, be covered later—but it is currently scheduled to be either Thursday 14 October or Thursday 21 October at 1 p.m., when we will meet in private to consider the committee's draft report.

3.02 p.m.

Cynnig Trefniadol Procedural Motion

[202] **Mark Isherwood:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 10.37(vi).

[203] I see that Members are content.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 3.02 p.m.
The public part of the meeting ended at 3.02 p.m.*