



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

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

**Dydd Iau, 1 Gorffennaf 2010
Thursday, 1 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

Mohammad Asghar	Ceidwadwyr Cymreig (yn dirprwyo ar ran Darren Millar) Welsh Conservatives (substitute for Darren Millar)
Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Jeff Cuthbert	Llafur (yn dirprwyo ar ran Andrew Davies) Labour (substitute for Andrew Davies)
Alun Davies	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Leanne Wood	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Naomi Alleyne	Cyfarwyddwr Cydraddoldeb a Chyfiawnder Cymdeithasol, Cymdeithas Llywodraeth Leol Cymru Director of Equalities and Social Justice, Welsh Local Government Association
Trudy Aspinwall	Achub y Plant a Grŵp Monitro Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn Save the Children and United Nations Convention on the Rights of the Child Monitoring Group
Darren Bird	Y Ddraig Ffyni a Grŵp Monitro Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn Funky Dragon and United Nations Convention on the Rights of the Child Monitoring Group
Sean O'Neill	Plant yng Nghymru a Grŵp Monitro Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn Children in Wales and United Nations Convention on the Rights of the Child Monitoring Group
Daisy Seabourne	Rheolwr Tîm Polisi Dysgu Gydol Oes, Cymdeithas Llywodraeth Leol Cymru Lifelong Learning Policy Team Manager, Welsh Local Government Association
Jane Williams	Ysgol y Gyfraith, Abertawe a Grŵp Monitro Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn School of Law, Swansea and United Nations Convention on the Rights of the Child Monitoring Group

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

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

*Dechreuodd y cyfarfod am 9.00 a.m.
The meeting began at 9.00 a.m.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[1] **Mark Isherwood:** Good morning and welcome. We have received apologies from Darren Millar, who is being substituted for by Mohammad Asghar, and Andrew Davies, who is being substituted for by Jeff Cuthbert. Welcome to you both. As normal, 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 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 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.

9.01 a.m.

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

[2] **Mark Isherwood:** The purpose of today's meeting is to take further oral evidence in connection with the Proposed Rights of Children and Young Persons (Wales) Measure. This is our second evidence session to inform the work of the committee. We will be taking evidence from the United Nations Convention on the Rights of the Child, UNCRC, monitoring group and then from the Welsh Local Government Association. On the basis of equality for acronyms, that is the WLGA.

[3] I welcome the UNCRC monitoring group. I would be grateful if you could introduce yourselves for the record.

[4] **Ms Aspinwall:** I am Trudy Aspinwall. I am a policy officer for Save the Children, and it is part of my role to co-ordinate the UNCRC monitoring group.

[5] **Ms Williams:** I am Jane Williams. I am a member of the UNCRC monitoring group and an academic lawyer at Swansea University.

[6] **Mr O'Neill:** Good morning. Bore da. My name is Sean O'Neill. I am the policy director for Children in Wales.

[7] **Mr Bird:** Good morning. I am Darren Bird, the chief executive of Funky Dragon.

[8] **Mark Isherwood:** We have been advised that Jane Williams will also be giving evidence as part of the ad hoc lawyers group. Is that correct?

[9] **Ms Williams:** We hope that that will be done in the September meeting. We hope to be able to assist the committee then. Who will represent the group is the subject of discussion among us at the moment, but, yes, I look forward to that very much.

[10] **Mark Isherwood:** Thank you. Similarly, Darren, you will be giving evidence separately as a representative of Funky Dragon, so thank you for that.

[11] Some Members may ask questions in Welsh. I referred to the translation facilities available in my introduction. The paper that you submitted has been circulated to Members. We have been advised that the UNCRC monitoring group has concerns about question 3 of the consultation paper that was submitted to young people. You may wish to refer to that in your contribution. I think that that question related to the proposals to include young people between the ages of 18 and 24 in the proposed Measure.

[12] The first question is from me. The proposed legislation would impose a duty on Welsh Ministers and the First Minister to have due regard to the rights and obligations in the UNCRC and the optional protocols when making decisions of a strategic nature about exercising any functions exercisable by them. Why do you believe that such legislation is needed, assuming that you do?

[13] **Ms Aspinwall:** As the committee will know, the UN convention on children's rights is an international human rights treaty that grants all children and young people under 18 the most comprehensive set of rights of all the international treaties. It has been almost universally ratified by all countries in the world. As we stated in our evidence, it is important to remember that the convention already applies in Wales in the sense that the UK Government's signing up to it meant that it applied to Wales, along with all of the other international treaties that the UK Government has signed up to. That means that the convention is meant to be followed and should be referred to by courts, tribunals and in other administrative processes when decisions are made that affect children and young people. We know that good progress has been made in Wales and that Wales has been unique in the UK in showing a commitment to promote children's rights through policy making and, more recently, through referring to the United Nations Convention on the Rights of the Child in legislation. The UN Committee on the Rights of the Child has welcomed the progress specifically in Wales, but has also made it clear that further incorporation is necessary to ensure the progressive realisation of children's rights. That is what the UK Government agreed to when it signed up to begin to incorporate the UNCRC into legislation.

[14] We know that despite the positive developments and intentions in Wales, children and young people around the UK and in Wales still do not have adequate protection for their rights across all areas of their lives. The committee will be familiar with some of these examples: the UK still has the second worst infant mortality rate of the 24 wealthiest countries in the world. There is a lack of protection for children and young people from physical punishment, a lack of access to complaints mechanisms, high levels of mental health problems and a lack of services to support children along with unacceptable levels of child poverty, poor life outcomes for looked-after children and a growing trend in discrimination and negative attitudes towards children and young people.

[15] As the Welsh Assembly Government has already recognised in its explanatory memorandum in particular, the steps that it has taken to date have not been enough. They have not resulted in making a real difference to all areas of children's lives and children are still not in a position to hold Government to account for the promises that were made in the UNCRC. So, we very much see a need for this legislation. We welcome the original statement by Rhodri Morgan to embed the UNCRC into Welsh law and we think that, 18 years after the UNCRC was signed up to by the UK Government, taking these steps to protect and promote the human rights of children in Welsh legislation is well overdue.

[16] **Eleanor Burnham:** Yr ydych wedi dweud na fydd y Mesur arfaethedig yn gwella nac yn cryfhau hawliau plant a phobl ifanc yng Nghymru. A oes modd ichi ddweud mwy am hyn? **Eleanor Burnham:** You have said that the proposed Measure will not improve or strengthen the rights of children and young people in Wales. Could you say more about this?

[17] **Ms Williams:** I will answer that. What we say is that it will not improve or strengthen the rights of the child as such, because no new rights or obligations are contained in the proposed legislation. That much is also said by the Government in paragraph 1.11 of the regulatory impact assessment in the explanatory memorandum, which states that:

[18] ‘This duty will not confer any new rights directly on children and young people.’

[19] So it is not the intention of the proposed Measure to expand the rights of children. It is about implementation and the question is to what extent it will improve and strengthen children’s access to their existing entitlements. To quote again from the regulatory impact assessment in the Government’s explanatory memorandum, paragraph 1.12 describes the general thrust of the legislation as being to raise

[20] ‘the level of knowledge and expertise in relation to the UNCRC within the Welsh Assembly Government and in turn how this informs the Ministerial strategic decisions, is intended to improve the approach and ultimately the benefits achieved for children and young people in Wales.’

[21] It sees the benefits as enhancing wellbeing and generally improving

[22] ‘social capital and economic prosperity within Wales’.

[23] So, it is clearly an attempt to try to achieve some broader goals by somehow improving performance in terms of the implementation of and support for children’s rights. What it will do in its present state is to improve public awareness of children’s rights as recognised in the UNCRC.

[24] We have some issues with section 5 of the proposed Measure and its precise approach, but the direct duty on Ministers to promote understanding and knowledge of the convention is potentially very useful in this regard.

9.10 a.m.

[25] However, the core of the proposed Measure is the duty to have due regard to the UNCRC when making decisions of a strategic nature on how to exercise ministerial functions; that is the core mechanism. The positive effect that that will have is that WAG officials will begin to refer to the relevant provisions of the convention routinely when advising Ministers. This may mean that the need to protect and respect children’s rights is considered routinely in drafting strategies, developing broad areas of policy and making decisions about the planning of future business; that is, of course, a good thing. However, as we have said in our evidence, we feel that it is not a very big step forward in terms of affecting what Ministers do and how they can be held accountable for it.

[26] **Eleanor Burnham:** Fodd bynnag, o **Eleanor Burnham:** However, if you gymharu’r mater hwn â’r ffaith bod materion compare this matter to the fact that amgylcheddol a materion sy’n ymwneud â environmental matters and those relating to chydreddoldeb wedi’u seilio yn neddfwriaeth equality are enshrined in the Assembly’s y Cynulliad, sut y byddant yn cael eu legislation, how will these be differentiated? gwahaniaethau?

[27] **Ms Williams:** The difference in the proposed Measure, as it is currently drafted, is the introduction of the notion of decisions of a strategic nature, which seems to confine or restrict the provisions in some way. If you look at the provisions in the Government of Wales Act 2006, those that affect the way in which Ministers are supposed to exercise their functions are all slightly different. There is a provision on the Welsh language, which is about

adopting a strategy and setting out how Ministers propose to promote and facilitate the Welsh language. The provision on equalities in section 77 is about making appropriate arrangements with a view to ensuring that functions are exercised in a way that has due regard for the principle that there should be equality of opportunity. The provision on sustainable development states that Welsh Ministers must make a scheme setting out how they propose to promote sustainable development in the exercise of their functions. None of those provisions are confined to decisions of a strategic nature.

[28] **Eleanor Burnham:** That is the key point; we challenged the Deputy Minister about why the provisions made in the proposed Measure were confined to decisions of a strategic nature.

[29] Yr ydych yn dweud, yn eich sylwadau ynghylch dyletswydd Gweinidogion Cymru a'r Prif Weinidog i roi sylw dyledus i hawliau a chyfrifoldebau Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn a'i brotocol dewisol wrth wneud penderfyniadau strategol eu naws, fod hyn yn amhriodol ac yn annoeth, ac yn ymateb afresymol i broblem ganfyddiadol sydd wedi chwyddo'n fawr; a oes modd i chi esbonio hyn ymhellach, os gwelwch yn dda? Commenting on the duty on Welsh Ministers and the First Minister to have due regard to the rights and obligations in the United Nations Convention on the Rights of the Child and its optional protocols when making decisions of a strategic nature, you say that this is inappropriate and ill-advised, and an irrational response to a much-exaggerated, perceived problem; can you explain this further, please?

[30] **Ms Williams:** We have used strong language and have been quite critical on this issue. Before I back up that criticism, I will say that we have regarded ourselves throughout this process as the Government's critical friend. It is a very inclusive group of observers—the children's commissioner, local government and Assembly officials are all involved—and we work together constructively. On and off, during the development of this policy, there have been periods when we have not been as engaged, as the Government has worked things out behind closed doors. However, we make these criticisms in a constructive spirit, and we also had the advantage of being able to watch the proceedings of this committee last week. What we heard from the Deputy Minister and his advisers exacerbated our anxieties rather than reduced them; it is important that we engage with the Government frankly at the beginning of the process.

[31] Moving on to the substance of our criticism, we took the view from the outset that an administrative law duty to have due regard, rather than a judicial mechanism of individual complaints was probably the right way to proceed at this point in the development of devolution in Wales and having regard to the nature of the functions that Welsh Ministers carry out and the nature of the convention itself. So, as far as we are concerned, the duty to have due regard is fine; in fact, it is an idea that we fed in at a very early stage of the process.

[32] It is the strategic nature bit that we are concerned about. First, it is not clear to us that putting this into law actually makes very much difference to what can happen without any legislation. So, we have a concern that I suppose is at the heart of this committee's remit, which is whether this is good legislation, whether it makes a difference in practice. Essentially, it seems that the proposed Measure would require Ministers to do something that they can already do, namely to seek advice and information on how the exercise of their functions could further or undermine or otherwise have an impact on the implementation of the UNCRC. Of course, we know that Welsh Ministers, in their former incarnation under the Government of Wales Act 1998, made this commitment to the UNCRC as an overarching policy framework back in 1999-2000, starting with the framework for partnership with local authorities. The National Assembly passed a resolution in Plenary in 2004 to adopt the UNCRC as an overarching source of principles when dealing with things that affect children

and young people in Wales. So, in a sense, it is a little bit startling, now, in 2010, if Welsh Ministers are thinking that law is required in order to follow that through. That raises some questions.

[33] The next thing is that it seems to be deliberately confined to that high level of strategic decision making. Of course, Welsh Ministers should have due regard to the UNCRC when engaged in strategy writing, broad planning and so on. However, what it leaves out is the bit that is tangible from outside—the actual exercise of powers and duties, which is what ‘functions’ means under the Government of Wales Act 2006. It leaves out the actual decisions and actions that comprise the exercise of functions. So, it is almost as though this proposed Measure will bite in the back room, the unseen bit, and not the bit that actually has an impact on people outside the Assembly. No doubt, the hope is that that back-room function will have an impact on the ultimate exercise of functions, but the duty is not actually biting there.

[34] **Eleanor Burnham:** So, are you suggesting that this is a superficial gesture, rather than something that will have a real impact at all levels, where you would wish to see it?

[35] **Ms Williams:** Yes. I think that there is a serious danger of it being perceived and received in that way, whatever the intention within the Welsh Assembly Government. We have tracked the development so far as we can from the outside, and it seems that there has been movement away from an initial idea that we should have a pervasive, simple, straightforward duty that attaches to the exercise of functions, to a kind of fear about the implications of that for the way in which, at the moment, business processes are organised within the Welsh Assembly Government. So, there was a move in the pre-legislative draft to confine the impact to what were called relevant functions. This is what a whole range of bodies, including all of us, responded to during the period of that pre-legislative consultation. We were arguing that it could not work because the functions exercised in one bit of the operation cannot be carried out in isolation from the other and that it needs to have a pervasive effect across everything that the Assembly Government does—a sectoral approach is not appropriate.

9.20 a.m.

[36] Subsequently, while accepting that principle, there has been an attempt to slice the cake differently. I had an image of a tower block, with the Assembly Government and its functions inside the tower block. The first version was trying to divide the functions vertically, so that only people working on areas on one side of the vertical line would be affected by this duty, while the rest would not. Having been persuaded that that would not work, the Government has now tried to have a cut-off point at the top two floors, where it is making the strategic decisions. The people lower down—I am thinking of the references that the Deputy Minister made to day-to-day functions, answering correspondence and that sort of thing—would not be affected. What worries us about that is that, of course, the people outside this tower block engage with and relate to, on the whole, people lower down. That is almost like the situation with a GP and the receptionist, is it not? The receptionist needs to understand the ethos as well.

[37] **Eleanor Burnham:** I find that fascinating.

[38] I symud ymlaen— Moving on—

[39] **Leanne Wood:** Chair, may I come in on this first?

[40] **Mark Isherwood:** Yes, Leanne.

[41] **Leanne Wood:** I just want to come back to the issue of decisions of a strategic

nature—the bit about relevant decisions in the proposed Measure. Would your concerns be overcome if the word ‘strategic’ was taken out—if the definition of a relevant decision was amended? It states,

[42] ‘A relevant decision is a decision of a strategic nature’.

[43] If that was removed, would your fears be overcome?

[44] **Ms Williams:** Forgive me, but I do not want to get into drafting on the hoof, because it is never a very clever thing to do. Our little ad hoc group of lawyers offered an amendment to the pre-consultation draft legislation that would have had the effect of removing the word ‘relevant’, meaning that the duty was simply to have due regard when exercising functions.

[45] **Leanne Wood:** Would that be all functions?

[46] **Ms Williams:** Yes. All functions. That is right. The perceived difficulties with that, as I understand it, from WAG and from what I heard last week, are, essentially, twofold. One is that, every time a power or duty was exercised, regardless of whether it had anything to do with children and young people, a sort of tick-box exercise would have to be gone through. To my mind, that underplays significantly the words ‘due regard’ and how a duty to have due regard would operate. ‘Due regard’ means what is sensible, what is appropriate. If the issue, whether it is strategic, miniscule or somewhere in the middle, has nothing to do with, or could not have anything to do with, children’s rights under the UNCRC it would be appropriate not to have to think about it, research it and so on. The converse of that is that, when you exercise a power or duty, whether on a big strategic issue, a miniscule issue or something that is somewhere in the middle, if it does engage those rights, you should be thinking about the UNCRC.

[47] To take the example of correspondence, which was mentioned, suppose the correspondence is a complaint from a child or on behalf of a child and directly engages article 12, say, because the child has not been heard in some process or another, are we really saying that, because that might not be dealt with personally by a Minister on the top floor of this tower block, due regard will not be given to those rights in that situation? I do not think that that is what Ministers mean, so I think that this needs to be thought through a lot more.

[48] **Eleanor Burnham:** Chair, in that case, I wonder whether it would be possible to put the witness on the spot and ask what their form of words would be.

[49] **Ms Williams:** It would be what we offered at the pre-legislative stage—

[50] **Eleanor Burnham:** The committee might not have seen that—

[51] **Ms Williams:** I am sorry. It did go to the Children and Young People Committee after that.

[52] **Eleanor Burnham:** I do not think that it came to this committee.

[53] **Ms Williams:** Going back to the pre-legislative consultation, the draft stated that Ministers were to have due regard to the UNCRC in the exercise of relevant functions. We would just remove the word ‘relevant’.

[54] **Eleanor Burnham:** Could the committee have that in writing, please?

[55] **Ms Williams:** Certainly. That is no problem at all.

[56] **Eleanor Burnham:** Is that all right, Chair?

[57] **Mark Isherwood:** Yes, of course.

[58] **Eleanor Burnham:** This is what engaged us last week for a good three-quarters of an hour, if I remember correctly, in terms of the business of strategy.

[59] Hoffwn symud ymlaen drwch I wish to move on slightly. In your view, blewyn bach. Yn eich barn chi, a ddylai should detail on what constitutes a decision manylion ynghylch yr hyn sydd yn of a strategic nature be included on the face benderfyniad strategol ei naws gael ei of the proposed Measure, rather than in the gynnwys yn y Mesur arfaethedig, yn hytrach children's scheme; or should the proposed na'i gynnwys yn y cynllun plant; neu a ddylid Measure be amended so that the due regard diwygio'r Mesur arfaethedig fel bod y duty applies to all functions of Welsh dyletswydd i roi sylw dyledus yn berthnasol i Ministers? You have discussed this briefly, holl swyddogaethau Gweinidogion Cymru? but as this is a specific question, I should ask Yr ydych wedi trafod hyn ychydig, ond am it. fod hwn yn gwestiwn penodol, dylwn ei ofyn.

[60] **Ms Williams:** We think that this business of asking what is a decision of a strategic nature is quite opaque. In searching around to try to identify what it might mean, we do not get very far; therefore, in that sense, there is the argument that it does need to be brought out more. We think that that would be a very valuable function of this legislative process. I suspect that it comes from section 1 of Equality Act 2010, which is a Great Britain Act—much of it applies to England and Wales, but some of it is only for England. This is a duty on a much wider and disparate group of public bodies to have due regard to the desirability of exercising functions in a manner designed to reduce inequalities in outcome due to socioeconomic disadvantage. Here is a general aim of social and economic policy that local authorities, health bodies, the councils, the Isles of Scilly, and all of these different people are being asked to introduce into their strategic processes, whatever that means to them. It is a different aim, and it involves all of these different bodies. I do not really understand why that is being followed here when we have our own Government of Wales Act 2006 model within which we can operate. It would have been more fruitful to look at those inclusively.

[61] **Eleanor Burnham:** Chair, I think that the next two questions have been answered.

[62] **Mark Isherwood:** They have. Thank you. I now call on Alun.

[63] **Alun Davies:** Mrs Williams, you describe yourself as a critical friend. I suspect that you are more critical than friend at present. Reading through the evidence that you have submitted, I notice that the language is quite colourful at one level. To me, your written evidence indicates a certain lack of confidence in this legislation. We have already discussed what is meant by 'strategic nature', but you describe it as,

[64] 'inappropriate and ill-advised: an irrational response to a much-exaggerated, perceived problem.'

[65] In the earlier part of the evidence, you said that you welcomed the legislation. Do you not have confidence that this legislation will actually improve the situation of children in Wales?

[66] **Ms Williams:** We are very worried about whether it will work in the way that we understood was originally envisaged, when it is in its current form with a limitation to the decisions of a strategic nature. It is strong language, but it is intended to highlight the degree

of concern, rather than the degree of hostility, that we have about how it will operate. We say that it is inappropriate because, how much of a difference does it really make? We should be making law that is only self-referential within the Assembly and gives a little bit more of an impetus to do what could be done in any case. When we say that it is ill-advised and irrational, the 'irrational' relates to whether it is actually achieving what Ministers want to achieve. This is the example that I just gave in terms of whether it applies to the right sort of category. There can be decisions of a strategic nature, presumably, that do not have anything to do with children. Why are we including those and leaving out some that are to do with children, possibly undermining some good work that is already being done under the established policies? Perhaps it is ill-advised and irrational from that point of view.

[67] **Alun Davies:** In paragraph 4.11, you describe the Deputy Minister's hopes as being 'wildly optimistic'. You state that you,

[68] 'anticipate incredulity, confusion and disillusion on the part of consultees'.

[69] On what basis do you make that claim?

9.30 a.m.

[70] **Ms Williams:** On the basis of our knowledge of reactions, the pre-legislative consultation, and our own discussions and contacts, we have imagined ourselves in the situation where the Assembly has passed a Measure that is ostensibly about furthering the principles of the UNCRC and children's rights in Wales—that is what it is supposed to be about. In the course of the consultation on implementing this legislation, I would imagine that we would be talking about what children's rights mean in Wales and what they mean to the Government and for the Government's relationship with children and young people. Yet, as far as one can see, the emphasis of the consultation will actually be on defining a decision of a strategic nature. We will all engage in that, but that is something that is best known to those inside the operations of the Welsh Assembly Government. Will it be a case of the Government educating us about the way in which the process operates, and teaching children and young people the difference between 'strategic' and 'non-strategic', or will it be about rights? Our worry is that this process could produce a very negative effect when, at the moment, the Assembly Government is on to a winner in terms of children's rights.

[71] **Alun Davies:** Do you have any evidence for any of this?

[72] **Mr Bird:** We have carried out three consultations: two on behalf of the Assembly Government—one in north Wales, one in south Wales—and one by ourselves. Bear in mind that we have worked with a lot of young people and talked to them about the convention and the fact that it is not technically legislation in this country because of our dual estate, whereas in a country like Belgium, with its mono-estate, it is legislation. Their first question is whether this will turn the convention into legislation, and we have to say 'no'. They then ask, 'What's it doing then?', and we have to say that it will ensure that Ministers pay due regard to the convention when making decisions of a strategic nature. You can imagine the conversations that have come up around that, about what 'due regard' and 'strategic nature' mean. To echo all that Jane has said, the young people have spun around. The Assembly Government has done some great work in bringing young people into the foreground—we exist, for a start—but how are young people to hold Ministers to account for having due regard to the convention when making decisions of a strategic nature? In article 12—

[73] **Jeff Cuthbert:** Surely you translate that into the language of the street. You do not pose the questions to the young people in that way, do you?

[74] **Leanne Wood:** What is the language of the street?

[75] **Jeff Cuthbert:** The witnesses will best know that through their dealings with particular young people.

[76] **Mr Bird:** This is technical terminology and it does not often get translated into the language of the street. When you type ‘due regard’ into Google, you do not get many useful answers. You get the nursing and midwifery council, and some stuff about ‘due regard’ for students, but as for getting an explanation, there is nothing. I am married to a lawyer and the night before doing the consultations, I asked her, ‘How do I translate “due regard”?’, and, being a lawyer, she said, ‘Carefully’.

[77] **Alun Davies:** I made a very successful career out of translating legislation into real language before I was elected as a Member. When dealing with legislation, you write it in a particular way in order for it to be effective in a court of law. You do not then take that out and put it on a leaflet. You write it in such a way that people will understand it. That happens every day of the year, using the different legislative tools that exist to help you communicate different concepts and issues to lay people. I do not believe that that is necessarily difficult—it should not be—and, if it is, I think that there are more fundamental problems to discuss, and I do not want to go down that road this morning.

[78] My concern is that you have given us written evidence that makes a lot of assertions without necessarily containing the evidence to sustain them. Reading through the evidence that you have provided, I see comments like,

[79] ‘we think the formula is unclear, incomplete, opaque and will tend in practice to frustrate proper scrutiny and accountability’.

[80] There is no evidence to sustain that. In paragraph 11, you use the phrase ‘wildly optimistic’; that is great language, but there is no evidence to sustain that. My concern is that we are discussing legislation; this is not a consultation on policy. This is part of the legislative process. I am not convinced that you have grasped the difference between the two, quite honestly. In response to the question that Leanne asked earlier on what you would put in its place, I would have expected a stronger analysis of what is written in the proposed Measure, your critique of it, the evidence to sustain that critique, and then your alternative proposals. That is what I would have anticipated. We have not seen that in your written evidence or in the oral evidence that you have given so far. This is assertion rather than evidence. From a committee point of view, we want to see your critique of it, why you think that it is incomplete in all sorts of different ways—your views are entirely valid on that—and we then want to see the evidence to sustain your arguments. I am not sure that we have had that yet.

[81] **Ms Williams:** If I may respond to that, we are all looking at the future, are we not? We are looking at how process this will impact upon people, and how people will react to it. I am not sure how one can produce evidence on something that has not happened yet. What we can do is look at the language and judge how it is likely to be received, knowing what we know about the concerns and the issues that people have raised in the course of the pre-legislative consultation—Darren has given examples of the reaction of children and young people, but a whole range of organisations were engaged in that process. We are fairly near the beginning of a process, and we will certainly engage with that, but we think that this needs further discussion and analysis. We are holding a special meeting at Swansea University next week, which I think that members of the committee are aware of, to try to bring together, as we did in the pre-legislative consultation, an inter-disciplinary, inter-organisational group of people who can workshop some of these issues, consider some real examples and analyse what this proposed duty about decisions of a strategic nature means. We are fully engaged in that.

[82] However, I cannot accept the criticism that there is a lack of evidence to support our comments on something that we are suggesting will happen in the future. Those comments are simply based on our knowledge and experience of what has happened in the past. Evidence will come when the events unfold.

[83] **Alun Davies:** If you are making an assertion, you should be able to sustain that with evidence, I would anticipate. We will not agree on that. In terms of taking this process forward, you discussed in your previous answers the impact that this legislation could have on the provision of services and support for children, and you discussed other public bodies that could be affected by it. In legislation, it is the Welsh Ministers who are affected. Should I interpret your evidence as meaning that you would like to see other public bodies included within the remit of the proposed Measure?

[84] **Ms Williams:** This is something that we have thought about in the past. We would welcome the application of such a duty to public bodies generally. However, we have reached the view that, given that Ministers appear to want to do something relatively quickly, and given that, at the moment, there is no legal duty on the Ministers themselves, it would probably be appropriate to limit the scope of the duty to the Ministers themselves.

9.40 a.m.

[85] Imposing the duty on local government and other public bodies throughout Wales really ought to be proposed only following full consultation and engagement with those bodies, I would think, and, so as far as I am aware, that has not happened in this process, so I do not think that we would be pushing for an amendment to broaden the scope in that way within the timescale that is envisaged.

[86] **Jeff Cuthbert:** My question is on that point. Regarding other public bodies, such as local authorities and the NHS, for example, which will be delivering the implementation of this at the front line, have you thought through whether the likely scenario of substantial public expenditure cutbacks will impose further difficulties in making this a reality?

[87] **Ms Williams:** One has to bear in mind that the convention itself contains a recognition of economic realities. If you look at article 4, to which this duty to have due regard would apply, together with all the rest of the convention, you will see that it deals with achieving the realisation of rights to the maximum extent of available resources. That is both an exhortation and not an excuse for inaction, but a recognition of limitations. The convention is worldwide, and the provision also deals with the way that international aid operates. That recognition is there. The other thing is that, if you look at the way that the jurisprudence of the convention has evolved—that is to say, the general comments, the concluding observations and the body of information on the interpretation and implementation of the convention—you will see that there is frequent reference to the need to look at resources for implementation, not just in terms of what Government spends, but in terms of how it engages with civic society, with non-governmental organisations, families, children and young people themselves. In that way it becomes an inclusive, partnership-based approach to making the changes that are promised in the convention. It is not just about money.

[88] **Mark Isherwood:** Before we move on, would you like to comment on the proposed revised deadline and consultation for the children's scheme?

[89] **Ms Aspinwall:** Certainly. We have discussed this, and we do not have a problem with the revised deadline. We think that it is important to have adequate time for the children's scheme to be prepared, consulted on, developed and scrutinised. Given that this is, potentially, a new piece of legislation, we do not want to see that work rushed, and we do not have a problem with a revised date of March 2012.

[90] **Mark Isherwood:** In your evidence, you said that you felt that it was too late to consult once the draft scheme had been settled. Do you hold to that?

[91] **Ms Aspinwall:** Sorry, could you repeat that?

[92] **Mark Isherwood:** In your evidence, you stated that it was too late to consult once the draft scheme had been settled. You felt that there should be input before that.

[93] **Ms Aspinwall:** Yes, in our response to the pre-legislative consultation we said that we felt strongly that only consulting with children and young people and the public after the scheme had been settled was too late. We would like to see a more inclusive approach, as reflected in the Government of Wales Act 2006, with children, young people, adults and appropriate bodies involved in the development of that scheme. In a sense, that is why we said that it was too late; we would like to see something that ensures that children, young people and appropriate agencies are involved in developing the scheme.

[94] **Leanne Wood:** On this issue of consultation, the Children's Commissioner for Wales has raised concerns that there is no obligation to have due regard for the commissioner's views or those of other consultees, and when we asked the Deputy Minister about this last week, he said that the existing process for Welsh Government consultation was already robust enough to ensure that regard was given to the views of respondents. Do you think that the proposed Measure should include a requirement for the Welsh Government to have regard to the views of those with whom it consults?

[95] **Ms Williams:** We agree with the Deputy Minister on this. Ordinary public law, that is, case law that is under judicial review, has established that where there is a duty to consult, the statutory consultee must take some notice of the responses to the consultation and show that they have had regard to them. Otherwise, there are issues about process and perhaps about the rationality of the ultimate decision that could undermine its legality in terms of judicial review. My response as a public lawyer would be, 'Yes, you do have to, so maybe you don't need to have a specific statutory duty'. However, there are examples, which I do not have to hand, elsewhere in the statute book of an express duty to have regard to the responses of consultees.

[96] **Leanne Wood:** Do think that that case law is what the children's commissioner would be referring to?

[97] **Ms Williams:** The commissioner may want statutory force to emphasise the impact of that, but I have not had an opportunity to see the commissioner's point on this. However, that is what we thought about the issue when we heard the evidence last week.

[98] **Leanne Wood:** Thank you for that. In the oral evidence that the Deputy Minister gave in respect of the duty on Welsh Ministers to publish a report every five years to show how they have complied with the due regard duty, he indicated that this time interval was frequent enough given that that the National Assembly and AMs could ask for reports within that five-year period. Do you have a view on that?

[99] **Ms Aspinwall:** Yes, we do. Again, we concur broadly with the Deputy Minister on the five-year reporting cycle. In our view, that is the minimum requirement to fit in with the reporting process of the UN Committee on the Rights of the Child, and it makes sense for the reporting cycle of the Welsh Assembly Government to fit in with that. However, we note, as you did last week, that this is likely to extend beyond the term of office for Ministers and it feels like a long time, both in Government and externally. We think that this is where the Assembly's scrutiny role has an opportunity to be bolstered and developed. Again, in line

with the Deputy Minister's comments, we believe that within the five-year period there should be an opportunity for the Assembly to call for additional reports. Similarly, civic society, children and young people and adults can also engage with the Assembly scrutiny process and request reports on specific issues that might come up.

[100] **Leanne Wood:** So, would you like to see provision for groups of children and young people, through an organisation such as Funky Dragon, to be able to trigger a process that would call for a report?

[101] **Ms Aspinwall:** We are currently saying that we are looking for the Assembly scrutiny process to trigger it and for other bodies to go through that process. At this stage, it seems important to develop the Assembly's role in scrutinising this process and the implementation of the proposed Measure.

[102] **Leanne Wood:** That is fair. Do you think that the proposed Measure will ensure that the National Assembly scrutinises Welsh Government progress in a way that is co-ordinated with and complementary to the UNCRC monitoring system?

[103] **Ms Aspinwall:** We would echo what we said in response to the last question. It is broadly complementary to the UNCRC reporting and monitoring process. It is particularly important to look at the national action plan that the Welsh Assembly Government has developed, in line with concluding observations from the committee. Committee members will be aware that this is a rolling five-year action plan, which sets out to be clear about how the concluding observations will be taken forward within the next five years. That was developed last year, and so it is still in its early stages, but we would see the action plan linking in with the reporting process. As long as things are joined up, it would link in with the reporting process in that way. We think that thought has been given to that, and we would be looking to ensure that those reports join up.

9.50 a.m.

[104] **Leanne Wood:** Thank you for that answer. Moving on to the duty to promote knowledge of the convention, you say that you remain concerned that section 5 does not import article 42 of the UNCRC in its entirety into the proposed Measure. Can you explain what impact the inclusion of the full text of article 42 would have?

[105] **Mr O'Neill:** We welcome the commitment to working above and beyond article 42 in respect of the commitment to ensuring that all adults and children know about the UNCRC and have a clear understanding of it. As we know, and as many reports have found, basic awareness of the UNCRC is lacking in many quarters. We have said in our evidence that we feel that article 42 should be placed explicitly in the proposed Measure in order to ensure that it is implemented fully. Article 42 talks about a clear effect on the direction of Government, so we feel that putting phrases such as 'widely known', 'active means' and 'adults and children alike' in the proposed Measure would strengthen it. The target should be that all children know about the convention, and we feel that there should be an obligation to assess progress on that. It is very clear what article 42 is trying to get Governments that have signed up to the convention to do. Therefore, we very much want to see it being included in the proposed Measure; we see no reason why it should not be.

[106] **Mark Isherwood:** Before we move on, I just want to insert a brief question on the children's scheme. Section 3 of the proposed Measure places a duty on Welsh Ministers to consult relevant parties, including the children's commissioner, on the children's scheme. Do you believe that any other relevant parties should be specified, and, if so, which?

[107] **Mr O'Neill:** We accept that the list of bodies could grow and grow. It is a question of

differentiating between what is on the face of the proposed Measure and the organisations that should be part of the consultation process. We would hope that many of the external structures are already in place to ensure that many external bodies that have expertise with regard to the convention, as well as specialist expertise on specific articles of it, would also be engaged in the process of consultation. We also feel that, because the nature of organisations will change and structures can change fairly rapidly, if there were a list of organisations, we would all be able to pick out one or two that were missing or one or two that would become dated as things change, particularly if you consider the recent reorganisation of the health service, and the move away from trusts to boards. Including too much detail on the face of the proposed Measure at this stage could hamper implementation at a later date, but we would hope that Welsh Ministers would engage with external stakeholders as they have done, and as they do currently.

[108] **Jeff Cuthbert:** This question is about how one will assess the impact that the proposed Measure will have in due course. In oral evidence, the Deputy Minister for Children has said that he has yet to decide on how he will go about measuring success in complying with the duty. Do you think that the mechanisms that may be necessary ought to be included on the face of the proposed Measure, or do you think that that is neither possible nor desirable at this stage?

[109] **Ms Aspinwall:** As Jane has said, it still feels as though we are at an early stage of the process, so this is something that we think needs to be looked at further. Obviously, it is crucial that there are ways of measuring what effect the proposed Measure has on the rights of children and young people as it is implemented. It is an area that we would highlight as a weakness that needs further work in relation to the work that is already going on with children's rights and the UNCRC. For example, in the national action plan, there are some clear targets and policy statements, but there is very little about how those are going to be measured and how the Welsh Assembly Government will know when it has achieved those. I guess that that is reflected here. It is crucial that the scrutiny process looks at ensuring that targets and outcomes are achieved and at ways of measuring those, and it is crucial that children and young people and external agencies can be brought in to that. Whether that should be on the face of the proposed Measure is something that we would probably want further discussion about. How the Government is going to be held to account and how the impact will be measured should certainly be in the children's scheme.

[110] **Jeff Cuthbert:** Would it be fair to summarise that by saying that you would argue, quite logically, that there must be rigorous methods of assessing the impact but that you are not yet convinced of the need for that to be on the face of the proposed Measure? Would that be fair?

[111] **Ms Aspinwall:** Yes.

[112] **Jeff Cuthbert:** Thanks. Moving on to the issue of the application of the proposed Measure to young persons aged 18 to 24, some agencies, and in particular the Young Women's Christian Association and Welsh Women's Aid, support the inclusion of that age group. Welsh Women's Aid said that it would help to ensure a more consistent approach to the treatment of young people, citing shortcomings in current approaches to young women experiencing domestic abuse, young women who are sex workers and young women who are the victims of trafficking. So, Welsh Women's Aid is clear that it would be the right thing to do. On the other hand, you are not convinced. In fact, you say that it is simply not possible, although you then say that you understand why it is being proposed. On the face of it, there appears to be a contradiction here. So, what is your response?

[113] **Mr O'Neill:** We fully understand. Many other organisations have picked up on this, and there seems to be a split in views on this. Essentially, we need to go back a bit and

understand that the United Nations Convention on the Rights of the Child was developed to offer additional protection to children and young people's rights for those under the age of 18. So, it is for those in society who are deemed more vulnerable and deemed to require additional support and protection who have not reached the age of majority. So, particularly when we are dealing with younger children, we rely very heavily on adults for additional protection and the provision of services. The current Welsh policy context for young people covers people from birth to 25, as we know. It recognises that, many young adults, on reaching the age of 18 and during that transitional phase, moving from dependent child to independent adult, will still require additional support and services. That is particularly true for the most vulnerable people, and particularly for disabled young adults, care leavers and young adults with mental health issues. So, we think that it is right and proper, and it is widely supported, that attention should be given to people in that age group as well.

[114] Clearly, the needs of very vulnerable children do not evaporate on their eighteenth birthday, and it is accepted that we need to put in place policies and programmes to support that age group. However, we already have these seven core aims that have been set out for people from birth to 25. Those were developed as a framework for realising these principles. However, the UNCRC in itself is an instrument to safeguard and protect those aged under 18. It cannot be applied to people over 18, and it would be wholly inappropriate to put it within this legislation. I wish to recount some of the examples that we have given in our evidence. If we look at article 3, which is one of the four general principles, and covers the issues of the best interests of the child, we see that those interests are a primary consideration in all actions undertaken by adults with concern for children. This is widely used by professionals, particularly in the fields of social care, social services and in the area of child protection. When decisions are being made, they are about identifying solutions that will protect groups such as unaccompanied or separated asylum-seeking children, looking at care arrangements for very young people who can no longer live with their parents or, in cases of separation or divorce, where private arrangements are being made and the focus is on the best interests of the child. It is unclear to us how the best interests of a child can then apply to an adult who is, perhaps, aged 23 or 24.

10.00 a.m.

[115] Equally, without going into a great deal of detail, if we look at several of the other articles, it appears to us to be very difficult to apply these key articles on the rights of children, which should be seen collectively, to those over 18 years of age. Article 37, for example, is concerned with the detention of children and states that children should not be put in adult prisons or tried in adult courts, and article 40 states that the Government is required to set a minimum age for children to be held criminally responsible. Article 9 talks about separation from parents and the right to stay in contact with those parents, and article 10 talks about family reunification. When we move on to explaining and promoting knowledge and understanding of the United Nations convention, we feel that it is going to lead to a lot of confusion if people ask relevant questions on how those articles can apply to a 23 or 24-year-old; it is problematic. To add to that, there is no clear definition of what a 'young person' is. Looking to our colleagues across Europe, their youth models often include young people up to the age of 30, and sometimes beyond. It is very difficult to categorise young people, but the UNCRC is an instruments for those between birth and 18 years of age, and it was set up to protect the specific rights of those who have not reached the age of majority.

[116] **Jeff Cuthbert:** I understand your point of view on the convention, but the proposed Measure is about the rights of children and young persons. Please tell me if I am being unfair, but while you say that it would be difficult to apply the requirements of the convention to anyone over 18 years of age, you are not opposed, in principle, to the proposed Measure being a little wider than that.

[117] **Mr O'Neill:** The principles of the UNCRC currently cover those over 18 years of age through the seven core aims of Welsh Government policy, for all of the reasons that I have outlined, such as the vulnerability of many young adults. Those policies and services need to be safeguarded, because we are talking about very vulnerable young adults. We are not disagreeing with that, but we are saying that, if this proposed Measure is a framework for embedding the UNCRC into the activities of the First Minister and Welsh Ministers, it cannot apply to the convention, specifically those articles that I have just outlined.

[118] **Ms Williams:** It is difficult to make a distinction between the proposed Measure and the convention, because the former refers to the latter all of the time. Section 7(1) talks about the extent to which the requirements of Part 1 of the convention may be relevant to young persons, and with what amendments this can be achieved. It is, therefore, an exercise of looking at the text to see how it can be amended or adapted for this age group; it is not about the rights of young persons to a great extent, but is related to the UNCRC. One other thing that has bothered us is that this section states that a position on this needs to be taken in the first children's scheme, and that it will include a statement of the proposals to be consulted on. The process of thinking about this has to happen in the time span available for the publication of the first scheme, so we wonder what additional burden the Government is letting itself in for.

[119] **Jeff Cuthbert:** Moving on to a specific issue that relates to the convention, the proposed Measure includes a Schedule, which is Part I of the convention and articles 1-7 of the optional protocol on the rights of children involved in armed conflict, except article 6(2), and articles 1 to 10 on the rights of the child, specifically on the sale of children, child prostitution and child pornography. Should those optional protocols be included within the specific provisions of this proposed Measure, or should they merely be referred to?

[120] **Ms Aspinwall:** I will lead on this one. Yes, we think that they should be included on the face of the proposed Measure. The optional protocols are part of the convention. I know that the convention can seem like quite a confusing set of documents to people who are not familiar with them, but the optional protocols are part of the convention, and I think that it is really important that they are on the face of the proposed Measure.

[121] Concerns have been raised that the Welsh Assembly Government perhaps does not have the kind of powers to implement some areas of the optional protocols. It is really important that one way of looking to implement the UNCRC is to ensure that no-one is expected to do everything at once—if you do not have the powers to do it, you cannot do it. However, we believe that the Welsh Assembly Government has powers to implement certain articles, and that it certainly has the powers to influence the implementation of other articles within the optional protocols.

[122] For example, let us look at the articles within the optional protocol on the rights of the child relating to the sale of children, child prostitution and child pornography. We know that there are concerns—and evidence—that children and young people are being trafficked in Wales. We know that children and young people under 18 are involved in child prostitution and are being exploited through child pornography. Research and evidence on that is fully documented, and our safeguarding services are already dealing with these issues on a daily basis. It is our view that the Welsh Assembly Government has a very clear remit to effect the implementation of this optional protocol, ensuring that knowledge, awareness, policies and procedures for individual and inter-agency working are in place to ensure early recognition; making sure that children and young people are aware of their rights, so that they are more able to avoid becoming involved in abusive and exploitative situations; and ensuring that children have recourse to support services and rehabilitative services, if they have been abused and exploited in this way. All of those things are in the power of the Welsh Assembly Government. It is really important that, in terms of raising awareness of the convention, if

these optional protocols are on the face of the proposed Measure, people will have a sense of what can be done to promote children's rights in this area.

[123] Similarly, we could look at the optional protocol on the rights of the child relating to the involvement of children in armed conflict. As we said in our evidence, we have urged the Government not to underestimate the contribution that Wales could make in this area. There is a clear role to protect and promote the rights of children and young people. Article 7, for instance, makes provision for the rehabilitation of those who are victims of violations of the protocol. A lot can be done through education and awareness to ensure that young people understand the contract that they are entering; for example, ensuring that they understand that signing up for military service is voluntary and that under-18s have special protection, in keeping with the provisions of the protocol. I believe that all of those items are within the power of the Welsh Assembly Government. So, we would strongly support their staying on the face of the proposed Measure, rather than being referenced separately.

[124] **Mohammad Asghar:** My question relates to non-devolved powers—immigration, youth justice and welfare benefits. Maybe we are shouting at the wrong end. In its written response to the Welsh Government consultation on the draft proposed Measure, you said that you

[125] 'believe that children and young people's rights should be fully incorporated into the law across the UK but welcome this development in Wales as an important step towards full incorporation'.

10.10 a.m.

[126] To your knowledge, has the Welsh Government undertaken any work to influence the incorporation of the UNCRC at a UK level as a means of progressing its policy objectives in respect of children and young people's rights?

[127] **Ms Williams:** We are not aware of any approach or any lobbying that has been carried out by, or on behalf of the Welsh Ministers to the UK Government on this issue. However, we are aware of the development of a private Member's Bill last year, which fell for lack of time before the general election. This Bill was introduced by Baroness Walmsley in the House of Lords, which was the result of a coalition, called the ROCK coalition—the Rights of the Child UK—which attracted a broad range of support, including from statutory bodies in England, such as local authorities. Local authorities endorsed this, and it has attracted support from individual members of the House of Commons and the House of Lords. There is a remarkable swell of support. That Bill adopted a Human Rights Act model for children's rights. It really adapts the whole of the Human Rights Act with a few alterations to accommodate the UNCRC. Therefore, you would have those judicial as well as administrative and political mechanisms that are incorporated in the Human Rights Act 1998.

[128] I do not know whether any Assembly Member or Welsh Minister individually or collectively supports that or indeed what will now happen. I know that the idea is to continue that work, but it remains to be seen whether that results in another private Members' Bill and what reaction the UK Government would have to that. I notice that the Liberal Democrats in their election manifesto had a commitment to some form of incorporation of the UNCRC. Therefore, one does not yet know what impact that might have in terms of the UK coalition Government. However, we fully support the ROCK initiative for a children's rights Bill at UK level.

[129] **Mohammad Asghar:** Given that the UK Government is the state signatory to the UNCRC, do you envisage any potential constitutional difficulties for Wales, as part of the United Kingdom, to attempt to embed the UNCRC into its law?

[130] **Ms Williams:** No, certainly not with this proposed Measure and with this sort of approach because it is confined to the exercise by Welsh Ministers of devolved functions. There cannot be any conflict between the Welsh Ministers striving to implement the UNCRC in Wales and the position of the UK Government because it is the state signatory. There is provision in the Government of Wales Act 2006 that states that the Welsh Government must not do anything to undermine the international obligations. Far from undermining, this would be seeking to further the implementation practice within the devolved sphere of the obligations under the UNCRC. From what I have been able to glean about the policy development process, I am not aware of anyone at the Whitehall end raising issues about this, and I am aware that the drafting of this proposed Measure has occurred in Whitehall, not in Cardiff. I suspect that it is not an issue.

[131] **Mohammad Asghar:** Arguably, some of the most significant breaches of the UNCRC, as identified by the UN concluding observations of 2007, relate to non-devolved policy areas such as the detention of children for immigration purposes; the age of criminal responsibility; and the level of welfare benefits. Should the Welsh Government have considered the possibility of including any requirements within this proposed Measure for Ministers to make appropriate representation to the UK Government where children's rights in Wales are affected by reserved matters?

[132] **Ms Williams:** Again, this is one of those areas where this clearly can be done now. Representations can be made to the UK level in the course of ordinary processes that are established for communications between the UK and the Welsh devolved level. It is for consideration whether, on top of that, one would want a statutory requirement with regard to this specific thing. Our current view, subject to further thought, is that it is probably not necessary, and possibly not desirable, to identify this as something on which they are required to make representations, as opposed to a range of other non-devolved matters, on which, no doubt, they are in daily communication with the UK Government.

[133] **Mohammad Asghar:** How might the proposed Measure be amended to achieve this?

[134] **Ms Williams:** It could be done through a freestanding requirement to make representations. However, we have not given detailed consideration to that.

[135] **Mohammad Asghar:** Okay. I will move on to the legal challenges. If Welsh Ministers fail to have due regard to the UNCRC when exercising their functions, are you satisfied that those with a sufficient interest in the matter will be able to challenge and hold Welsh Ministers to account?

[136] **Ms Williams:** We felt from the outset that judicial review, because that would be the only feasible mechanism, should be available. However, the main mechanism for accountability in the proposed Measure should be parliamentary. That is why we did not seek to promote the introduction of any specific new judicial remedy that would be equivalent to section 7 of the Human Rights Act 1998, which enables you to take a claim to court for an alleged violation of a convention right under the European convention on human rights. So, it is just judicial review.

[137] If you had a duty to have due regard, which attaches to the exercise of a function—the exercise of a power or a duty—then that is very visible. When the power has been exercised, after the duty has been carried out, it is visible to the outside world; that is, those affected by it. Therefore, one can see how the administrative law challenge, which must be taken forward within three months of the date of the decision being made and so on, could operate quite effectively where necessary. However, one would anticipate, given the lack of evidence on this, that that would be rare, given what is known about the numerous barriers

preventing children and young people from pursuing legal remedies for issues or violations that may affect them. However, the function is there.

[138] Our concern with the strategic nature formula is that it becomes quite a remote possibility, because how do we on the outside know when a decision of a strategic nature about how functions may be exercised in future has been made? The Government thought process and the communication between officials and Ministers—their meetings and deliberations—are not made public. Cabinet minutes are published and when a specific power or duty is exercised there would be some sort of public record, but these internal, planning and strategy-writing type things are not so visible. So, there is a concern about accountability in relation to such judicial mechanisms perhaps being appropriate, but there is also a concern about how the Assembly is also going to exercise its parliamentary scrutiny role.

[139] **Mohammad Asghar:** Are there any difficulties that might specifically affect children and young people in holding Welsh Ministers to account for the commitments set out in the UNCRC and the optional protocols?

10.20 a.m.

[140] **Mr Bird:** To echo Jane's last point, in order for children and young people to issue a challenge, they need to know what strategic decisions have been made and whether due regard was given to those decisions, but how will they know this? If that is what this proposed Measure is about, and that is what they have to challenge, my question is: what will these Ministers be publishing regularly that says to children and young people, 'These are the decisions that we have made'?

[141] **Mohammad Asghar:** What changes, if any, would you like the proposed Measure to make in respect of legal claims and legal redress?

[142] **Ms Aspinwall:** Following on from what Jane and Darren have said, we are not calling for any additions to the proposed Measure in respect of legal redress. As well as the transparency of the processes that children and young people may want to challenge, the committee will also be aware that judicial review is not the most child-friendly of legal processes and it is highly unlikely that large numbers of children and young people are going to challenge the Government through judicial review.

[143] We discussed whether this had happened elsewhere and the children's commissioner in Northern Ireland—and the children's commissioner was set up, to a certain extent, to challenge the Government—took on two cases of judicial review and had to drop both of them because of a lack of finance. So, it is important that children and young people get support from agencies and from their elected Members and can depend on the scrutiny role of the Assembly to really hold the Government to account on the rights of children and young people. In addition, if they were to use the method of legal redress open to them, a lot of support would need to be given to ensure that that was possible.

[144] **Leanne Wood:** What you are saying is that judicial review is the only process that a child could use, but that that is very difficult, if not pretty much impossible, given the financial problems with going down that road. However, at the same time, you do not propose any other legal remedy for children to issue a challenge if their rights are violated.

[145] **Ms Aspinwall:** We are supporting the Assembly scrutiny role to hold the Welsh Assembly Government to account. So, I am not at all saying that children and young people have no part in that, but that this administrative law and proposed Measure mean that children and young people are not in a position to see exactly what decisions are being made. We believe that the Assembly should develop its role to ensure that the Welsh Assembly

Government is promoting and protecting the rights of children and young people and the duty that the proposed Measure applies to Ministers does not give children and young people individual rights in a sense. It puts the duty on Ministers to promote, think about and take into account the impact of their actions on children and young people's lives. If we were looking at a different kind of Measure, then we would clearly want a sense of legal redress.

[146] **Leanne Wood:** If the proposed Measure was worded in such a way that it did not just apply to decisions of a strategic nature but was all-pervasive, would your position be different then?

[147] **Ms Williams:** No. All we are saying is that, in practice, that would make accountability easier, we think, because it would be clearer when a power or duty is being exercised. I am aware of time being limited, but this whole issue about accountability is an interesting one and one which we would like to look into more. Andrew Davies, last week, referred to the role of the commissioner and made a comparison with the Proposed Welsh Language (Wales) Measure. That is a big and important issue. One could think about the role of the children's commissioner, but we are not just talking about the one issue of one cultural right in terms of the Welsh language and how to promote and facilitate that; we are talking about a whole range of rights.

[148] The question is whether the commissioner route is the right one to take. There are various methods of enforcement: there is the international level, the parliamentary level, including the various Parliaments in the UK, the judicial level, and then there is the commissioner-type role. It would be useful to look at all of those, which I know that we will do. With the commissioner, as with the judicial enforcement, there are complexities and there is a feeling that we need to think carefully about the UK implementation as a whole in relation to these individual complaints mechanisms.

[149] **Leanne Wood:** Thank you for that.

[150] **Mark Isherwood:** We have to move on, because we only have two-and-a-half minutes left of this session. We will move to the final question and I ask you to keep your answer as brief as possible. What views, if any, do you have on the assessment of the financial implications in the regulatory impact assessment in general, and specifically if we were to include 18 to 24-year-olds or the duty to promote knowledge and understanding?

[151] **Ms Williams:** It is difficult for us to scrutinise adequately the sums and projections that have been done by the Government. However, we note that the actions that it talks about include training and development; the systems for monitoring and evaluating the development of those; staff resource for developing the children's scheme, such as setting up a team and so on; and maybe paying for external expertise. We can agree that all those actions are indicated in the implementation of a proposed Measure of this nature. It is not clear to us how much of that is genuinely new, rather than simply doing what is already being done in a different way, and bringing into that different thoughts and resources, in the broadest sense. That is all that we would say.

[152] **Mark Isherwood:** You have one minute if you have any closing comments that you want to add that we have not already covered.

[153] **Ms Aspinwall:** We briefly want to raise an issue around training. Last week, when the Deputy Minister gave evidence, one of his reasons for promoting the strategic-decisions model was the idea that everyone having to learn about the convention was considered to be a barrier and a problem. We wanted to raise that because the proposed Measure puts a direct duty on Ministers to ensure that everyone knows about and understands the Convention on the Rights of the Child. We assumed that that would not exclude Assembly Government

officials, Ministers and other people who need to know about the UN Convention on the Rights of the Child. We felt that that point was a red herring.

[154] Secondly, we are aware that the Welsh Assembly Government has done good work to date in developing systems to ensure that its officials are beginning to know about the Convention on the Rights of the Child. Save the Children's children's rights group is working directly with Welsh Assembly Government officials to roll out policy seminars for WAG officials all over Wales on the UN Convention on the Rights of the Child. We know that training on participation is now mainstreamed as core induction training for all staff. We do not see this as a barrier; it is important that the Welsh Assembly Government builds on the models that it is working on to raise awareness positively among officials and others on the rights of the child. We wanted to make that point, because it was something that came out strongly for us last week.

[155] **Mark Isherwood:** Thank you very much for that. I will conclude by saying that a transcript of today's proceedings will be sent to you for correction, if appropriate, before the final version is published. We will pursue your proposed wording on 'due regard' with the Children and Young People Committee. Otherwise, it falls to me to thank all four of you for your contribution in this long session this morning.

*Gohiriwyd y cyfarfod rhwng 10.29 a.m. a 10.32 a.m.
The meeting adjourned between 10.29 a.m. and 10.32 a.m.*

[156] **Mark Isherwood:** I call the meeting back into session and welcome representatives from the Welsh Local Government Association for our final session this morning. I ask you to introduce yourselves for the record.

[157] **Ms Alleyne:** I am Naomi Alleyne, director of equalities and social justice.

[158] **Ms Seabourne:** I am Daisy Seabourne, policy manager for education and lifelong learning.

[159] **Mark Isherwood:** I ask you to note that Members may choose to ask questions in Welsh, and simultaneous translation is available via the headsets. I will start with the first question. Do you believe that there is a need for the legislation that we are considering today, and if so, why?

[160] **Ms Alleyne:** The WLGA very much supports the intention to bring forward legislation in this area. We think that it demonstrates leadership and a clear intention to enshrine the UNCRC in legislation as regards the work of Ministers. It certainly strengthens and protects the rights of children and young people in Wales, and will increase transparency around strategic decision making, ensuring that the rights of children and young people are adequately reflected in that policy making.

[161] **Leanne Wood:** You said that it will strengthen the rights of children. Could you give us an example of that, please?

[162] **Ms Alleyne:** We say that it strengthens the rights of children and young people in that it will ensure that there is adequate consideration in all policy making of how the UNCRC could have an impact. There are some aspects of this that are already being taken forward through the seven core aims, but when we talk about strengthening, it is making sure that those considerations have occurred across all those strategic decisions. So, rather than giving a specific example, this strengthens the rights of children and young people more generally by ensuring that those considerations take place.

[163] **Eleanor Burnham:** We have just heard the contrary view and the analogy used was that of a tower block. At the top of the tower block you have the Minister and senior officials. The question was asked: what is strategic? We were told that if this expression is used, it could undermine the whole nature of the intent to improve the rights of the child. What is your view on that, and what might constitute a decision of a strategic nature?

[164] **Ms Alleyne:** The issue regarding what constitutes strategic decision making is going to need more debate and discussion. Our understanding of what that would encapsulate is that it would cover the identification of priorities and clear objectives, and the development of policies.

[165] I am sorry, but could you repeat the bit about the tower block again?

[166] **Eleanor Burnham:** Yes, the analogy used was that of a tower block. The strategic decisions are taken at the top of the tower block by Ministers. I love visual analogy because a tower block is a tower block: at the top you have the Minister and the important policy makers, mandarins and what have you. The issue concerns the use of the word 'strategic', which is seen as a block to progressing with the core of this proposed Measure, which aims to help to define and improve the rights of the child. If you remove the word 'strategic', that would clarify the situation according to the last testimony that we had. In the view of the previous witnesses, the use of the word 'strategic' is muddying the waters. I do not know whether you were watching the last bit of testimony that we had—

[167] **Ms Alleyne:** No.

[168] **Eleanor Burnham:** You have missed it all; it would have revealed all. In the opinion of the last set of witnesses, it would help if we did not have the word 'strategic'. It is the use of the word 'strategic' that is seen as the block.

[169] **Ms Seabourne:** Taking your analogy of the tower block, looking at what local authorities have to do—

[170] **Eleanor Burnham:** They are way down.

[171] **Ms Seabourne:** Yes, we are near the bottom of the tower block.

[172] **Eleanor Burnham:** Yes; they are not even there.

[173] **Ms Seabourne:** They are somewhere in the car park, outside the tower block.

[174] **Eleanor Burnham:** Probably.

[175] **Ms Seabourne:** Local authorities have to consider the UNCRC through the seven core aims in the children and young people's plans, and that is on a level of strategic decision making. What this does is to put the Assembly's strategic decision making on the same level. As far as we are concerned, it is important that all decisions that are made at the strategic level keep the UNCRC in mind to protect the rights of children and young people.

[176] As Naomi said, there is a debate to be had around what is meant by a 'strategic decision', but I think that that should be left quite flexible, to look at decisions as and when they come up, because some decisions will relate more closely to children and young people and to the protection of their rights than others. It is quite important to ensure that there is a flexible approach to how we look at what a strategic decision is.

[177] **Eleanor Burnham:** Let me put it another way. The gentleman from Funky Dragon

asked how young people will know what a strategic decision is, when it is made by Ministers in their tower blocks. It is the word ‘strategic’ that is being questioned.

[178] **Ms Alleyne:** Obviously, there has been some discussion of the idea of strategic decisions, or you cover all functions within that. I think that some of the language that will be used to explain the impact of the requirements of the proposed Measure to children and young people will probably need to change. Some of the language that we use daily is not the most accessible to children and young people. However, if you are talking about affecting all decision making, so that you are talking about moving the strategic in terms of that, it would broaden out the proposed Measure—

[179] **Eleanor Burnham:** What, the use of the word ‘strategic’?

[180] **Ms Alleyne:** No; if you took away the use of the word ‘strategic’.

[181] **Eleanor Burnham:** Thank you.

[182] **Leanne Wood:** I was going to ask you that next. Do you think that this should apply to all decisions that Ministers make as opposed to just those of a strategic nature? I think that that is the point that they were trying to make to us in the previous session.

[183] **Ms Alleyne:** It is difficult, because Ministers make decisions on a daily basis in that way, and the proposed Measure needs to be practical and applicable and we need to be clear about its scope. I can understand the concerns about the word ‘strategic’ and what it will encapsulate, but there are also difficulties in saying ‘all decisions’.

10.40 a.m.

[184] There was a Plenary debate on the legislation—which we will get on to later—on whether it was of a technical nature, but it is a debate to be had. It has many similarities to the equality legislation with regard to how you assess the impact of all the decisions that are made, or all the strategic decisions that are made.

[185] **Leanne Wood:** Am I right in saying that the duty on equality is all-pervasive, and that it has to apply to all decisions? You cannot say ‘That is a strategic decision, so it only applies there’.

[186] **Ms Alleyne:** There are different parts under the Equality Act 2010, so you have the strategic decision-making as it impacts on socioeconomic factors, but then you have the more general duty that refers to all functions as well.

[187] **Eleanor Burnham:** Then there are environmental issues, which are enshrined in the Government of Wales Act 2006. Andrew Davies asked in last week’s meeting about the similarities between this and the Proposed Welsh Language (Wales) Measure. So, whether we should have the word ‘strategic’ or not has been heavily discussed.

[188] I shall move on to the issue of due regard. You advocate that all decisions of the Assembly relating to children and young people are relevant. You go on to say that you would welcome a clear definition of what decisions are classed as strategic, and that Welsh Ministers should not be able to set these criteria themselves. In your view, should detail on what constitutes a decision of a strategic nature be included on the face of the proposed Measure, rather than included in the children’s scheme, or should the proposed Measure be amended so that the due regard duty applies to all the functions of Welsh Ministers?

[189] **Ms Seabourne:** We have just had a discussion and we think that it should apply to

more than strategic decisions, or that there needs to be clarity around what a strategic decision constitutes. I would go back to the point that it needs to be quite flexible. Sometimes, having something on the face of a Measure means that you lose a little flexibility. We do not want to see the previous incarnation of this legislation, which listed many policies to which it applied, because you then automatically exclude policies and we certainly do not want that to happen. We want to see the UNCRC being taken into account in a broad range of policies that will impact on children and young people, and not exclude one policy over another.

[190] **Alun Davies:** Thank you for your written evidence. In paragraph 7 of that written evidence, you say that the WLGA would welcome a clear definition of what decisions are classed as strategic. Therefore, I presume that you have a definition of that. The committee would be interested in having a written note on it, subsequent to the meeting.

[191] In order to take this forward, you say in paragraph 14 that

[192] ‘the WLGA does not envisage that there will be any major additional burdens on local government as the duty stands at the moment’.

[193] I would have anticipated that there would be additional burdens. In paragraph 12, you discuss how the objective is to ensure that those requirements will have even greater prominence in respect of devolved matters in Wales, and that it cuts across all areas of the Welsh Assembly Government’s work. Therefore, I would have anticipated that local government would be impacted by this.

[194] **Ms Seabourne:** In terms of the impact on local government, I have previously stated that, in terms of planning for children and young people, we already must have regard to the UNCRC through the seven core aims in the children and young people’s plans. So, in a direct relation there, we already have to do a lot of that work within local government in any case. There might be some impact in relation to section 5 of the proposed Measure on the duty to promote the UNCRC if that is passed on to local government as a duty, rather than be taken up by the Assembly. The direct impact of the proposed Measure will come when the decisions of the Assembly are impacted upon by the proposed Measure, and it will be during the next step down that local government will be impacted upon. We read that question as asking what the direct impact of the proposed Measure will be on local government; it will come another step down the ladder, when the Assembly makes decisions on the proposed Measure, if it is passed.

[195] **Alun Davies:** So, you assume that there will be an impact on local government—although I do not want to put words in your mouth.

[196] **Ms Seabourne:** We could envisage there being an impact on local government, if decisions are made by the Assembly that relate to this. As I have said, we already have regard to the UNCRC in our planning for children and young people through the children and young people’s plans. So, we would hope that marrying those two up would not place a great burden on local government.

[197] **Alun Davies:** Therefore, how would you see this legislation impacting on the work of local authorities?

[198] **Ms Alleyne:** When the strategic decisions are made, the vision and expectations are set as to the policy and the priorities and the relationships in their delivery. There would be an indirect impact. There would be clearer expectations about the roles of other public bodies in delivering certain policies where there has been consideration of the UNCRC at the strategic level. So, in a way, there will be an indirect impact as the policies, procedures and expectations come down to local government and other public services.

[199] **Leanne Wood:** At the moment, the proposed Measure places duties on Welsh Ministers only, and in order to ensure that children and young people's rights in Wales are fully met, do you think that there is an argument for imposing duties through the proposed Measure on other bodies, such as local government and the NHS?

[200] **Ms Alleyne:** No, not at the moment. We think that the seven core aims are working very well in the way that they affect planning and the delivery of services. All the discussions have been about placing that duty on Welsh Ministers. As I said, we do think that there will be an impact, but it will be indirect. So, at the moment we feel that there is no need to place that duty on public bodies.

[201] **Leanne Wood:** Would you argue against it from a resources-related perspective? The Deputy Minister has told us that, if other bodies were to be included, there would be implications for resources, which could mean having to start the whole thing all over again. Do you share that view?

[202] **Ms Alleyne:** I suppose that we have not considered that in great detail, because that is not what the proposed Measure is looking at. We would have to look at the implications of placing a duty on local government. There could be additional burdens, as Daisy said, and there is a resource implication now associated with the issue of knowledge and understanding. We would probably have to do some more work on what the implications of such a proposal would have been. At the moment, resources would be a big issue for us.

[203] **Leanne Wood:** That is understandable. In the proposed Measure, the children's scheme was to be laid before the Assembly no later than 1 November 2011, but that deadline has now been revised to 31 March 2012. Do you have any concerns regarding the revised deadline?

[204] **Ms Alleyne:** It is important to get the scheme right. The argument for aligning it with the UN committee's reporting mechanisms makes sense, even if it takes more time to align timescales appropriately and to ensure that we get the first scheme right. That will be important in setting the tone, and doing that a few months later does not seem to be a problem.

[205] **Leanne Wood:** The UNCRC monitoring group, in response to the Government consultation on the proposed Measure, stated that external stakeholders should be consulted prior to the draft children's scheme being published. Do you have a view on that?

[206] **Ms Seabourne:** Again, I think that it is entirely proper to do that. We work closely with the Welsh Assembly Government on a variety of issues, and it consults us and we co-produce some work. We are entirely happy to be involved with that, and I think that other stakeholders probably should be involved as well.

[207] **Leanne Wood:** Do you think that it is too late to consult after its publication?

[208] **Ms Seabourne:** No, not necessarily; it depends on how you handle the consultation before publication. Both consultations are probably appropriate.

[209] **Ms Alleyne:** Sometimes, when consultation documents come out, people can have a view that it is the finished article. Having an opportunity to shape and influence what comes out for consultation means that, sometimes, you can get it as right as you can by the time it is ready for consultation. Obviously, there were concerns about the first draft of the proposed Measure, and those concerns have been addressed in taking this forward. Having that early engagement means that some of those concerns and issues can be addressed at an early stage

rather than after the fact. It enables you to tease out some of the more difficult issues that sometimes cannot have a full airing as part of a consultation process.

10.50 a.m.

[210] **Ms Seabourne:** It is still important to have a consultation after the legislation has been published, because that offers a very wide scope. It is a public consultation, so everybody gets a chance to respond. As Naomi said, we need to be able to do both.

[211] **Leanne Wood:** So you are saying that we should consult prior to publication and then again on the published legislation.

[212] **Ms Alleyne:** Yes. That also means that you can bring the expertise in at the early stage.

[213] **Jeff Cuthbert:** My next questions are about consultation. I will group them, as I think that that will be more effective. Section 3 of the proposed Measure places a duty on Welsh Ministers to consult with relevant parties, including the Children's Commissioner for Wales. Do you think that the proposed Measure should specify other relevant parties? If so, which ones? In respect of children and young people's participation, you say that the proposed Measure does not set out any commitment to the views of children and young people being meaningfully sought and listened to. So, are you saying that you do not believe that WAG will try to get young people's views or that it will not listen to them if it does? Or do you just feel that it is an omission from the proposed Measure that needs to be corrected? What needs to be done?

[214] **Ms Seabourne:** With regard to the consultation with the children's commissioner, I think that that is right and proper. Obviously, that is where children go if they have concerns about some of these issues, so it is absolutely right that he should be consulted. The danger with listing other consultees is that you could then exclude other people. If you keep it as broad as possible, referring to external stakeholders, for example, that leaves enough scope for people to be consulted. You have also got to bear in mind that, hopefully, this legislation will stand the test of time, and new organisations for children and young people may spring up that we would certainly not want to exclude from the consultation.

[215] With regard to consultation with children and young people, all we want to do is ensure that, enshrined in this, is a commitment to listen meaningfully to what children and young people have to say about it. We are certainly not saying that the Assembly Government is not doing that now. It has a variety of schemes through, for example, the participation unit, and it is quite used to consulting children and young people, as is local government. However, we want to ensure that it is not just a tick-box exercise in which you can just say that you have talked to children and young people. We want to ensure that it is a key part of this and that they are meaningfully engaged in the process.

[216] **Jeff Cuthbert:** To take local government as an example, I am aware that there are youth councils. Are you in a position to give us examples of good practice? I do not mean necessarily at this moment, but could you send us examples of good practice that we could look at more closely?

[217] **Ms Seabourne:** Yes, I am more than happy to do that. There are also schools councils and other means that local government use to engage children and young people. We are looking at the UNCRC in relation to the children and young people's plans. Children and young people are now getting quite used to being consulted on these sorts of issues.

[218] **Ms Alleyne:** An example that springs to mind is the work that Wrexham youth

council did on the health, social care and wellbeing strategy for the area. It looked at developing a children and young people's version so that it could consult on that more widely. So, there are many examples of work where people are proactively undertaking different methods of consulting children and young people and getting feedback. However, we can provide you with an additional note on that.

[219] **Leanne Wood:** Do you envisage any difficulties in consulting children and young people on this because of this issue with the words 'decisions of a strategic nature'. We have just had representatives from Funky Dragon here telling us that that is a complicated concept. It is complicated for me to understand, so it is difficult to put that into language that young people can properly engage with. Is that something you have a view on?

[220] **Ms Alleyne:** As I said earlier, a lot of it will come down to the language used and how well you can translate complex language into examples that people can understand clearly. To refer again to the Equality Act 2010, a children and young people's version of the Act has been produced, which has pictures and examples of what the requirements of the Act are, and it is a good example of how to explain difficult concepts to children and young people. I understand the issue with strategic decision making; if we had further clarity on what that meant then we could probably give better examples of it. It is about a step-by-step approach, translating what we are talking about in a way that is meaningful. We will have to look at the different age ranges of children in order to do that, so that we can cover all ages, and so that all children can feed into the process as appropriate; part of that is to do with language and how we explain the content.

[221] **Jeff Cuthbert:** I have a final question, on reporting. At the moment, the proposal is that Welsh Ministers should publish a report every five years, although there would be opportunities for interim reports, if needed. Do you think that the five-year formal reporting arrangement is satisfactory?

[222] **Ms Alleyne:** That is in line with the reporting requirements of the UN committee, so it makes sense. There will be a need for regular feedback and updates on progress, but that does not necessarily need to be included in the proposed Measure. Five years is a reasonable timeframe for formal reports.

[223] **Mohammad Asghar:** Section 7 of the proposed Measure includes provision about consulting on the possible application of the proposed Measure to young people aged 18 to 24. In your written evidence, you have argued that this element of the proposed Measure should be removed. Could it be argued that such an objection to the inclusion of young people aged 18 to 24 stands in the way of the Welsh Assembly Government progressing its policy objective to protect some of the most vulnerable young adults in Wales?

[224] **Ms Alleyne:** We certainly do not think that we should not be protecting vulnerable young adults. This is more of a technical or legal issue, as the UNCRC, as it stands, only provides for those up to the age of 18. The Human Rights Act 1998 then kicks in for adults aged 18 to 24. Time and again, when we have looked the Assembly Government's work, we have seen a constant confusion, with different age ranges for different policies, and I think that this would add to that confusion. We need some clarity here. As I said, the key issue here is that as soon as someone turns 18, the Human Rights Act 1998 kicks in; before that, they are covered by the UNCRC. It could get very confusing if we were to look at extending the UNCRC's provisions to cover those aged 18 to 24.

[225] **Mohammad Asghar:** Some agencies, such as the YWCA and Welsh Women's Aid, have supported the inclusion of young people aged 18 to 24 in the proposed Measure, specifically citing its potential impact in protecting the most vulnerable. For example, Welsh Women's Aid say that it will

[226] ‘help ensure a more consistent approach to the treatment of young people’,

[227] citing shortcomings in current approaches to young women experiencing domestic abuse, young women who are sex workers and young women who are victims of trafficking. How do you respond to these views?

[228] **Ms Alleyne:** It is the same issue; we have existing legislation that covers those women. In terms of what a local authority would do, the children and young people’s plans cover people up to the age of 24, so any operational work that is undertaken at a local authority level covers that age range; therefore, I do not think that there is, necessarily, a problem in operational terms. We have other legislation that is designed to protect those specific vulnerable groups, and we need to ensure that those pieces of legislation are working properly, rather than extending another piece of legislation to cover those people.

[229] **Mohammad Asghar:** The second part of my question relates to non-devolved powers. Given that arguably some of the most significant breaches of the UNCRC relate to non-devolved policy areas, such as the detention of children for immigration purposes, the age of criminal responsibility, and the level of welfare benefits, should the Welsh Government be working to influence the incorporation of the UNCRC at a UK level as a means of progressing its policy objectives in respect of children and young people’s rights, rather than introducing a proposed Measure, which, it could be argued, will have limited impact in the devolved context?

11.00 a.m.

[230] **Ms Alleyne:** The National Assembly is the first legislative body within the UK that is looking to enshrine the UNCRC within legislation. We would want the other administrations to look at the work that is being undertaken in Wales, the progress that we have made to date and the progress that this proposed Measure gives us an opportunity to achieve. In ongoing discussions, it would be useful to try to influence the UK Government and other administrations as to the benefits this could generate.

[231] There are some concerns relating to non-devolved issues, particularly immigration. When children come to Wales, even if they have been dispersed to Wales under immigration policy, we would expect those children to be afforded the rights afforded to all other children in Wales. There is therefore potential for policy clashes in future. The UK Government is looking at ending the detention of children for immigration purposes, and today is the deadline for feeding in to that process. One issue that we have raised in our submission is the need to look at different policy contexts and for them to be taken into account when children are dispersed. We want our expectations to be understood in that regard. So, this is something that we could and should promote.

[232] However, if you look at the Children and Families (Wales) Measure 2010, the UK Government brought in the Child Poverty Act 2010 afterwards. So, as administrations, we are learning from each other in terms of how we progress legislation and the principles that we want to enshrine within law.

[233] **Mohammad Asghar:** My final question is to do with legal challenges. If Welsh Ministers fail to have due regard to the UNCRC when exercising their functions, are you satisfied that those with sufficient interest in the matter will be able to challenge and hold Welsh Ministers to account?

[234] **Ms Alleyne:** We do not think that the process for holding Welsh Ministers to account is clear in the proposed Measure. We would probably want to see some more clarity around

that. We are assuming that there would be the right to seek a judicial review. However, that is a very complex process for a child or young person to understand with regard to how they could challenge that and what support mechanisms would be available. It is an area where further thought is needed in terms of how Ministers are held to account.

[235] **Mark Isherwood:** Thank you for being so concise, the consequence of which is that I am going to ask the last question. Does the WLGA have a view on how realistic the assessment of the financial implications is within the regulatory impact assessment? On a related note, are there any financial implications for local government?

[236] **Ms Seabourne:** There will be some immediate financial implications in terms of promoting knowledge and understanding of the UNCRC among external stakeholders and the public. Also, I am sure that WAG will have to do some internal training and up-skilling on what the UNCRC could mean for decision making. I think that that is realistic in terms of the financial implications.

[237] With regard to local government, if the duty to promote knowledge and understanding of the UNCRC is passed on to local government, that will have financial implications. However, we will be covered by the new understanding between national and local government, and we will have a discussion about that issue as and when it arises.

[238] **Ms Alleyne:** I would like to make a final point, which is not related to the question. We have heard today that there are similarities between this and equalities legislation. We need to learn lessons from what has worked well in the context of equalities legislation and what has not worked well. The other work to which I would refer you is the work that the Equality and Human Rights Commission did when it undertook an inquiry into how public bodies have responded to the Human Rights Act 1998. There are some really good messages in that report on how you obtain leadership and commitment, and also how you ensure that the work that you undertake at the top of the tower filters down to other levels. There are some really good messages there. To be fair, Wales came out of the EHRC inquiry very well compared to other parts of the UK. However, we know that we have a long way to go before human rights are embedded in public services in the same way as the progress that we are already making on the UNCRC.

[239] **Mark Isherwood:** Alun wants to come in briefly.

[240] **Alun Davies:** I just wish to confirm that I asked for a written note on paragraph 7, on what you consider to be strategic.

[241] **Ms Alleyne:** Yes, and on examples of good practice around engagement.

[242] **Jeff Cuthbert:** Yes.

[243] **Mark Isherwood:** Thank you. Obviously, we would be grateful if we could have the written note as soon as is practicable. Do you have any issues that you would like to address that we have not covered in our questions?

[244] **Ms Alleyne:** No, I do not think so.

[245] **Mark Isherwood:** Okay. As usual you will be sent a transcript of today's proceedings for you to correct, if necessary, before it is finalised. Otherwise, it just falls to me to thank you both for being with us this morning and for the helpful contributions that you have made. Thank you.

11.05 a.m.

**Y Wybodaeth Ddiweddaraf am Adolygiad y Cwnsler Cyffredinol o Brosesau a
Gweithdrefnau Deddfwriaethol Llywodraeth Cynulliad Cymru
Update on Counsel General Review of the Welsh Assembly Government's
Legislative Processes and Procedures**

[246] **Mark Isherwood:** I met the Counsel General last week to discuss his review of the Welsh Government's legislative processes and procedures. We covered issues that are covered in the chairs of legislation committees meetings, but also issues that you specifically raised, particularly regarding the benefits of referring proposed Measures to the legislation committee that scrutinised the relevant legislative competence Order. I am pleased to say that John was in very much a listening mode, and I think that it was quite a constructive meeting. It is apparent that all of the different legislation committees are coming forward with exactly the same points, concerns and proposals. We shall see what results.

11.06 a.m.

**Dyddiad y Cyfarfod Nesaf
Date of Next Meeting**

[247] **Mark Isherwood:** The next meeting will be held next Thursday, 8 July at 9 a.m. As you have probably noticed from your notes, it will be a long meeting. It is scheduled to finish at midday. Therefore, please keep your diaries free accordingly. We will be considering amendments tabled to the Proposed Carers Strategies (Wales) Measure, followed by a further evidence session on the Proposed Rights of Children and Young Persons (Wales) Measure with the Children's Commissioner for Wales. I ask you, and remind myself, to remember to arrive for 9 a.m. promptly so that we can start on time.

[248] If there are no further points to be raised, I declare the meeting closed. Thank you.

*Daeth y cyfarfod i ben am 11.07 a.m.
The meeting ended at 11.07 a.m.*