



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

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

**Dydd Iau, 15 Gorffennaf 2010
Thursday, 15 July 2010**

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Procedural Motion

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

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
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

Dragan Nastic	Materion Cyhoeddus, UNICEF UK Public Affairs, UNICEF UK
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Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

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

Dechreuodd y cyfarfod am 9 a.m.
The meeting began at 9 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

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

[2] We welcome Jeff Cuthbert, who is substituting for Andrew Davies. I will start with the normal health warnings. In the event of a fire alarm, Members should leave the room by the marked fire exits and follow the instructions of ushers and staff. There is no test forecast for today. Please switch off all mobile phones, pagers and BlackBerrys, as these interfere with the broadcasting equipment.

[3] The National Assembly for Wales operates through the media of the Welsh and English languages, and headphones are provided to hear the instantaneous translation. They may also be used to amplify the sound, for people who are hard of hearing. Please do not touch any buttons on the microphones, as that could disable the system. Please ensure that the red light is showing before speaking.

**Mesur Arfaethedig ynghylch Hawliau Plant a Phobl Ifanc (Cymru) Cyfnod 1:
Sesiwn Dystiolaeth 4
The Proposed Rights of Children and Young Persons (Wales) Measure Stage 1:
Evidence Session 4**

[4] **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 week's meeting is our fourth evidence session to inform the committee's work. Today, we will be taking evidence from UNICEF. I am, therefore, pleased to welcome its representative, and I ask you please to introduce yourself for the Record.

[5] **Mr Nastic:** Good morning, everyone. My name is Dragan Nastic. I am from the public affairs team of UNICEF UK, the UK representation of the United Nations Children's Fund. Thank you for your invitation. It is wonderful to be here with you.

[6] **Mark Isherwood:** Welcome again and thank you for submitting a paper to the committee, which has been circulated to Members.

[7] We will now move to our questions for you this morning, which I hope we will get through quite painlessly and efficiently. I will start with the first question. In your written evidence, you state that UNICEF UK welcomes this proposed Measure and the general duty on the Welsh Ministers to have regard to the UN Convention on the Rights of the Child. Why do you believe that there is a need for this legislation?

[8] **Mr Nastic:** The general need for implementation stems from the ratification of the United Nations Convention on the Rights of the Child by the UK Government, so there is an obligation there on every state party to implement all the rights from the convention according to the principles of international law. Then, specifically, there is also a recommendation by the UN committee on the rights of the child, issued after the last reporting process in October 2008, urging the UK Government to progress implementation, especially in the area of law reform where we think that this proposed Measure belongs.

[9] We see this proposed Measure as a part of the process that started some time ago in Wales, and we recognise and appreciate the leading role that Wales has been playing within the UK context when it comes to promoting child rights as a concept. I always like to quote the words of Lucy Smith, who was a member of the UN committee and a UK rapporteur. She visited Wales a couple of times before the reporting round. At the end of the examination meeting with the UK Government, she acknowledged the progress that had been achieved since 2002, and then she summarised it all by saying that the UK Government is not hostile to child rights anymore but it has yet to embrace the concept fully. When it comes to Wales, I think that child rights have been embraced fully, and we see that as one step in that process of moving forward with the full realisation of the convention. That is why we have welcomed it.

[10] **Mark Isherwood:** Thank you very much. I will continue with the questioning for a moment. Regarding what might constitute a decision of a strategic nature, you state that concerted effort will have to be made to achieve consistent interpretation, understanding and practice by all those who are involved in the implementation process. How confident are you that the proposed Measure as presently drafted is sufficiently clear to comply with the pervasive effect required by the general principles of the UNCRC?

[11] **Mr Nastic:** Yes, indeed; you are right. The obligation to implement the convention refers to and affects all actions and decisions. In our submission, we quote, for instance, the best principles of the child because article 3 explicitly says that, in all actions concerning children, whether they are made by public or private bodies, the best interests of the child

have to be a primary consideration. So, as I said, we see this moving the implementation onto a higher level for some decisions. The duty is limited to strategic decisions to be taken by the Welsh Ministers. Through that, we hope and expect that there will be an impact on all functions, because the statutory decisions will constitute a framework and a foundation on which further decisions will be made.

[12] So, we see value in the duty to have due regard, as it has been formulated here. We see it as a step forward. In one of your previous sessions, somebody used the phrase ‘an opt-out’. This should not be an opt-out, and the duty should not relate only to strategic decisions because the obligation to implement the convention refers to all decisions and to all bodies, not just the Ministers and their strategic decisions. We see this duty introducing a more vigorous mechanism of harmonising Welsh legislation with the convention.

[13] **Alun Davies:** Thank you very much for your evidence, Mr Nastic. In your paper, you go some way towards defining a decision of a strategic nature as one that sets a direction, a course of action, or parameters for how to exercise ministerial functions. I understand where you are coming from when you do that, and the descriptions that you use, but are you at all concerned that use of phrases such as ‘of a strategic nature’ can be interpreted in other ways, which might not be as comprehensive and as positive as the interpretation that you have given those words in your written evidence? There is no definition in law of ‘a strategic nature’. Does that concern you at all?

[14] **Mr Nastic:** You are right. It is all in the eyes of the beholder. Introducing this kind of duty can be open to various interpretations. What is important now, if the proposed Measure is passed as it has been proposed, is that you ensure that there is a consistent interpretation of ‘strategic decision’, so that there is consistency within the Government when implementing it.

9.10 a.m.

[15] I understand that the criteria and the definition for that will be included in the scheme, so we think that it will also be important that the process is transparent and that there is good consultation included with all the relevant stakeholders for the purpose of achieving a shared understanding of the definition.

[16] **Alun Davies:** You are very optimistic in this sense. Further on in your evidence, on page 3, you say:

[17] ‘Although the due regard duty applies directly only to “decisions of a strategic nature” it will be still impacting on all ministerial functions’.

[18] That is not what the law says. Do you believe that the proposed Measure should be more tightly written, if you like, to ensure that all ministerial functions are explicitly noted on the face of the legislation? Again, this comes to your interpretation of it here, which is, I think, quite an optimistic interpretation.

[19] **Mr Nastic:** Probably what you define as my optimism comes from the fact that I represent an inter-governmental organisation, so that is the kind of approach we have with Governments, which we see as partners. However, in our first submission on the draft of the proposed Measure we did suggest that what is called in Wales an all-pervasive duty be adopted, not just because it avoids this problem of different interpretations, but because, as I said before, the obligation to implement the convention applies to all decisions. We expect nothing less than that, so we would certainly monitor very closely the implementation of this proposed Measure and the general implementation of the convention by the Welsh Government.

[20] We recognise that as the proposed Measure stands now it is a step forward. We hope that in the remaining phases of the legislation procedure, and maybe later on when the scheme has been drafted, things could be improved and an all-pervasive duty introduced. My impression is that the limit to just strategic decisions is for pragmatic reasons, because the mechanism is supposed to be rigorous. So, the Government seems to be opting for a gradual, step-by-step approach, and this is something that we see all over the world. It is probably also one of the reasons for our approach of showing understanding. Our research, which was completed recently in more than 60 countries, shows that this gradual approach prevails and is the norm.

[21] **Mark Isherwood:** Thank you. Do you want to continue or are you satisfied, Alun?

[22] **Alun Davies:** I am happy.

[23] **Mark Isherwood:** Leanne, I call on you to pick up your questions.

[24] **Leanne Wood:** The UNCRC monitoring group has suggested that the external stakeholders should be involved in the developing of the draft children's scheme instead of being consulted once the draft scheme has been developed. Do you have a view on that?

[25] **Mr Nastic:** I would support that view. It will be very important not only to consult with all relevant stakeholders but to consult them early. It would be ideal to start consulting them as early as when the scheme is being developed. In general, the convention and the UN committee emphasise very strongly that there must be collaboration between civil society and government. One reason for that is the nature of this document. It is so comprehensive and covers all aspects of the life of a child, like no other international instrument, and therefore to just expect one duty holder—the central government—to make sure that the whole convention is implemented is not realistic. So, collaboration between different parties, and that includes families and local communities, is absolutely necessary. Consultation is very important so that collaboration can be exercised. So, yes, we absolutely support wide, early and transparent consultation.

[26] **Leanne Wood:** If the consultation is done after the scheme is developed, are you telling us that it is unworkable and will not work in that way? Does it have to be done earlier? You did say it is absolutely necessary.

[27] **Mr Nastic:** Not necessarily. If I understand your question correctly to be whether, if the consultation happens afterwards, it would automatically result in a bad outcome, it might not from the substantive point of view, but it would still be bad. One reason why an early and wide consultation is important is that consultation is more than just discussing the text. It is also a way of disseminating and sharing information and knowledge about the convention as a kind of training, and also of raising awareness and creating new attitudes and values in society towards children and child rights. That is also a very important objective. So, I think that there are a number of reasons why best practice in consultation should be adopted and we would certainly advocate that.

[28] **Leanne Wood:** Thank you very much for that. Regarding the duty to promote knowledge of the convention, which you just touched upon, you say that a child-rights-based approach to legislative reform depends on building capacities, such as training civil servants and law enforcement officials, which will allow the institutions then to function effectively. Given the importance that you attach to such capacity building, do you think that there should be further detail to require that on the face of this proposed Measure?

[29] **Mr Nastic:** I would not go into that specific policy detail. I would leave that to the legislators. We as UNICEF do not usually go into specific policy suggestions. If you insist, I

would probably say where it is laid out is not the most important point. It is more about ensuring that there is indeed the process of capacity building, monitoring, training and information sharing.

[30] **Mark Isherwood:** How do you respond to the view that the proposed Measure should impose duties on other relevant bodies such as the national health service and local authorities?

[31] **Mr Nastic:** These other bodies are absolutely indispensable in implementing the convention. The Deputy Minister was talking in his evidence about the ripple effect of the strategic decisions on those bodies, so the duty would not have a direct impact on them. However, their role, as I said, is vital, so the question is how to ensure that there is full implementation. The UN committee suggested that co-ordination and monitoring is absolutely vital.

9.20 a.m.

[32] A good example, for instance, is Sweden. A couple of months ago, when the UN committee examined the Swedish report, it noted that there were great disparities in the implementation of the convention between various local authorities. There was not only poor and bad implementation, but the wellbeing of children was very good in some areas and not that good in others, and there were also some serious gaps. It recommended that the Swedish Government strengthen the co-ordinating mechanism so that the Government department that leads on the implementation of the convention makes sure that it goes all the way down the line.

[33] The second example is the monitoring to see what the problem is. Is the problem with the legislation not being adopted properly, with a child rights based-approach, or is it with the implementation—the law is good but some authorities are not picking it up, transmitting it or realising it properly? So, these mechanisms of co-ordination and of monitoring are vital.

[34] **Mark Isherwood:** Do you believe that they should be in this proposed Measure, or do you prefer more the pervasive effect that you referred to?

[35] **Mr Nastic:** It should certainly be considered in the near future, if not in this proposed Measure then maybe when the scheme is discussed or when the first report is being planned. I would say that it comes under the whole question of the harmonisation of legislation. There must be a constant process of reviewing the existing and new legislation and, during that process, of addressing the question of co-ordination and monitoring.

[36] **Jeff Cuthbert:** My question is about its application to young people aged 18 to 24, because we have had conflicting views about whether they should be included. You are quite clear in your evidence that to extend the proposed Measure to that age group in a blanket way would not be desirable, and that a targeted use may be more appropriate. You referred, for example, to young people being trafficked, disabled young people, and young people in care. Are you suggesting that specific groups of vulnerable people be included rather than all young people? If so, what would you want to include in that way?

[37] **Mr Nastic:** One thing that our global research shows is that, in every country, there are some specific conditions and situations. The legal and administrative systems also follow their own traditions; hence the different ways of implementing the convention. One thing that we notice here is that it has been public policy for some time to look at least at some aspects of welfare for children from birth to 25, and I understand that some entitlements are the same for those aged from 11 to 25. So, within that context, we can see the rationale and why you would want to align some of those policies with this proposed Measure.

[38] As I mentioned, there is a similar example in Belgium, where they are trying to better integrate their policies for children and young persons. Indeed, the UN committee also suggested that the age of 18 should not be a cut-off date. When you undertake long-term planning for a child, you look beyond the age of 18 and you take that into consideration when deciding what is in the best interests of the child and what it calls the ‘durable solution’. Refugee children are a good example because when you decide about the legal status of such a child, you do not just look to the age of 18, but also a little beyond.

[39] So, there are these situations of continued vulnerabilities, and the spirit and principles of the convention could be a useful background. What I think always needs to be clear is that the basis for the status, entitlements and rights of those up until the age of 18 is the convention. So, if there is a breach of their rights, it is a breach of the UN Convention on the Rights of the Child. When it comes to somebody who is above 18, that person has full legal capacity, so we are talking about human rights. If there is a similar breach, it would be a breach of their human rights and not a breach of the convention rights. It would be good to keep conceptual clarity about the origin and the nature of rights. Otherwise, we see the rationale of wanting to integrate better the policies for children and young persons, and some concentration on the thinking and principles of the convention might be useful in that.

[40] **Jeff Cuthbert:** Okay. Just to clarify, do you agree with the Children’s Commissioner for Wales who has broadly similar views, I think, and appears to believe that there are other ways of providing support for vulnerable adults aged 18-plus? As you say, we can still apply the spirit of the proposed Measure to those, but they would be able to claim through a range of human rights. So, you and the children’s commissioner would broadly agree. Is that a fair statement?

[41] **Mr Nastic:** Yes. I am aware that a number of stakeholders and non-governmental organisations, especially those dealing with vulnerable children, support that approach for the proposed Measure. It is important to appreciate and recognise their intentions and efforts. If this approach is taken, I see no obvious damage being done to children’s enjoyment of the convention. What is also good about this proposed Measure is that it envisages everything as a process, and there will be a constant review of its implementation but also of legislation in general. So, it will always be possible to revisit this particular issue and see how it works in practice.

[42] **Alun Davies:** That is very interesting. In your written evidence, and in answering one of Jeff’s questions, you referred to Flanders as an example of where there is an integration of pre and post-18 policy. Could you give us examples of how rights-of-the-child legislation as we see it here might be affected by the post-18 Flemish example? You discussed the example of Flanders, but I do not think that you gave us any detail about what that means in practice. What does it mean in practice?

[43] **Mr Nastic:** I do not have the details right now. The information that I got was from the Belgian report, which was examined by the UN committee only the other day, in early June.

9.30 a.m.

[44] This is the information that was provided by the Government of Belgium in its state report, but the report does not give any more detail so I would have to obtain it via the UNICEF office in Belgium.

[45] **Alun Davies:** Could we have a written note on that, please, after this meeting?

[46] **Mr Nastic:** Yes.

[47] **Jeff Cuthbert:** I have a question about the problems we have sometimes between devolved and non-devolved policy areas. For organisations like local education authorities and the NHS, the National Assembly for Wales has some competence. However, many of the issues that affect children are not devolved matters; they are reserved to Westminster, such as immigration, criminal responsibility and welfare benefits. Do you think that, on the face of the proposed Measure, there should be a requirement for Welsh Ministers to make appropriate representations to UK Ministers where children's rights could or are being affected by these reserved non-devolved matters?

[48] **Mr Nastic:** I would expect the Welsh Ministers to be even more proactive and use other methods, not just representations. I think that there are various ways in which they can influence the overall UK implementation of the convention. After all, there is now a co-ordinating mechanism and all the civil servants and also Ministers meet regularly to discuss the implementation of the convention, common points and objectives. So, there are many ways in which Wales can also make sure that the progressive attitude that we can see here is taken by other Governments.

[49] A good example is the Scottish Government and its policy towards refugee children, which is a reserved area and ostensibly within the jurisdiction of the Westminster Government and the UK Border Agency. For quite some time now, the Scottish Government has been able to exert influence to ensure that some elements of the policy are implemented in what it sees as a more progressive way; for instance, detention. The Scottish Government has been piloting alternatives to the detention of refugees—not just children—for some time. The other pilot it started early this year is to introduce guardianship for refugee children, which is something that the UN committee has been recommending for quite some time but has not been taken up here in the UK.

[50] It has shown that it is possible. Even without formal jurisdiction, things have moved forward because there was political will and activity, and probably various methods of discussion and negotiation involved, not just formal representations. So, I would not limit it to just that methodology. I am not sure whether it needs to be here. It may not, but I would definitely say that there is great scope for the Welsh Government to influence the implementation, even in those areas that are reserved.

[51] **Eleanor Burnham:** Yr ydych yn cyfeirio at ddefnydd Llywodraeth Fflandrys o asesiadau o'r effaith ar blant ac yn dweud y bydd angen i Lywodraeth Cymru sefydlu rhyw fodd sydd â digon o adnoddau i sicrhau y caiff pob mesur deddfwriaethol a gweinyddol sydd yn bodoli eisoes a'r rhai y caiff eu datblygu yn y dyfodol eu hadolygu yn drwyadl er mwyn cydymffurfio â Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn. A ddylai'r defnydd o asesiadau effaith ar blant neu fethodoleg gymaradwy arall gael ei nodi ar wyneb y Mesur arfaethedig? **Eleanor Burnham:** You refer to the use of child impact assessments by the Flemish Government and say that the Welsh Government will need to set up a well-resourced mechanism to ensure that all future and existing legislative and administrative measures are systematically reviewed to achieve compatibility with the United Nations Convention on the Rights of the Child. So, should the use of child impact assessments or other comparable methodology be specified on the face of the proposed Measure?

[52] **Mr Nastic:** We think that the proposed Measure is just the beginning of wider law reform with the objective of full harmonisation of Welsh legislation with the UNCRC. That will involve a review of all existing and future legislation, and for that you need rigorous child rights impact assessments and a proper mechanism. That requires resources, expertise

and knowledge and it is quite demanding. I thought that it would be useful to quote the example of Belgium, where the convention has been incorporated into domestic law right from the very beginning, but it still seems to be a challenge and the Belgian Government was very open in saying that there were a lot of failures and that it had to reform the whole process and mechanism after several years.

[53] So, it is a challenge, but that is what we think the duty implies and should mean and what it should lead to in the future. Our understanding was that this is going to happen because the document talks in a number of places of the legislation being amended and new legislation perhaps being introduced and so on as a result of this ongoing process. It would be even better to spell out that there is a need for a formal process of a children's rights impact assessment. It might be an idea to consider.

[54] **Eleanor Burnham:** We have been exercised about the issue of strategic decisions, which was touched upon earlier. There is, perhaps, some concern that, as the definition of 'strategic decision' stands, it might not percolate throughout everything. You might feel you have answered a question on this before, but if you consider, for instance, that equality and environmental issues are enshrined in everything that we do in Wales, this would seem to some people as if it is just sitting in a little box called 'strategic decisions at ministerial level'.

[55] **Mr Nastic:** Well, it should not. I think that is clear. There are a couple of issues here. One that you mentioned is comparing the situation with another piece of legislation and a similar duty there. That raises the issue of consistency and why then there is no consistent interpretation and implementation. My impression is that there are two reasons for that. The first is that the Government has decided on a gradual approach. It wants to make sure that it is able to fulfil what it is committed to here and does not want to go for something covering all decisions as it is not sure whether it can implement that.

9.40 a.m.

[56] The second is the specific nature of the UN convention and article 4, the so-called progressive realisation of rights, although that concept should not be used as an excuse. That does not mean that there is a reduced obligation. The obligation is still there and it is clear. It also does not mean that you can spend as few resources as you wish. The implementation of this convention is that child rights must be a priority and a priority in the budget. Then, within that, you apply the maximum available amount of resources for the implementation. Perhaps that specific nature of the convention is another reason why this step-by-step approach is being adopted.

[57] **Leanne Wood:** Do you think that there could be a danger of disagreement as to what a strategic decision is and is not, given the way that this proposed Measure is worded?

[58] **Mr Nastic:** Theoretically, there is always a risk of that, so it is important to ensure that there is a clear definition and clear criteria in the scheme, and then after that that there is good training and capacity building to ensure that everyone who is involved in implementing this duty shares the same understanding and definition, so that a consistent approach is taken.

[59] **Eleanor Burnham:** Yr ydych yn dweud mai un peth sydd yn arbennig o bwysig ar gyfer pwyllogor y Cenhedloedd Unedig ac ar gyfer hyrwyddo ac amddiffyn hawliau plant yn gyffredinol yw'r angen i sicrhau bod y pedair egwyddor gyffredinol yn cael eu hymgorffori mewn deddfwriaeth Gymreig sydd yn ymwneud â phlant, gyda **Eleanor Burnham:** You say that especially important for the UN committee and for the promotion and protection of children's rights in general is the need to ensure that the four general principles are incorporated into Welsh legislation that deals with children, with particular stress placed on freedom from discrimination, making the best interests of

phwyslais arbennig ar ryddid rhag gwahaniaethu, sicrhau mai budd pennaf y plant yw'r ystyriaeth bennaf, a pharchu barn plentyn. A ydych yn fodlon bod y Mesur arfaethedig yn ddigon cadarn o ran egwyddorion cyffredinol Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn?

the children a primary consideration, and respecting the views of the child. Are you satisfied that the proposed Measure is sufficiently robust in respect of the general principles of the UN Convention on the Rights of the Child?

[60] **Mr Nastic:** We expect nothing less than for it to be robust. The reason why we elaborated so much about the general principles in the paper was two fold: first, to show the holistic nature of the convention and that the rights are indivisible, and, secondly, to make it clear that these principles need to be reflected and implemented in all actions and decisions not only of the Welsh Government but of other public and private bodies dealing with children.

[61] So, even if the proposed Measure remains as it is now and the duty refers only to strategic decisions, we expect that the convention should be reflected and implemented through all decisions in order to make it clear that there is this absolute obligation to implement the convention. So, the concept of the duty referring only to strategic decisions can be seen maybe just as an extra layer, where there will be a more vigorous mechanism for the implementation of the convention, but it should not be taken to mean that there is a reduction in the duty or obligation in other decisions and actions.

[62] **Eleanor Burnham:** One analogy about the strategic nature was that it is like a high-rise building and that this would be at the top of the building and nothing would be happening underneath. Do you have a view on that?

[63] **Mr Nastic:** Yes. As I mentioned before, we did argue from the very beginning—even in the communication sent to your First Minister by our head office in New York—for an all-pervasive proposed Measure and that the duty should be applied to all decisions. That was, first of all, for reasons of clarity, but, more importantly, for the better implementation of the convention. However, we do recognise there is an issue of resources and we appreciate that there is that balance to be struck. As I said, the burden, let us say, of implementing the duty is not to be underestimated. If we consider it in the light of the expectations from the UN committee, UNICEF and others, we see this as starting the process of full harmonisation of the legislation, a review of legislation, monitoring child rights, impact assessments and so on. All of this is demanding of resources and so on, so we recognise that there is a balance to be struck. There is still a possibility of enlarging the duty to cover other decisions, but, on the other hand, we need to take into consideration limited resources. I think that it is something that is still worth exploring, and there may be time to explore it before the proposed Measure is passed or perhaps afterwards when the scheme is developed.

[64] **Eleanor Burnham:** Diolch. Yr ydych yn amlinellu gwaith sydd yn mynd rhagddo ar brotocol dewisol arfaethedig i Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn, a fyddai, o bosibl, yn caniatáu i blant neu eu cynrychiolwyr ddwyn cwynion unigol ger bron Pwyllgor y Cenhedloedd Unedig ar Hawliau'r Plentyn, lle gallent honni bod eu hawliau wedi cael eu torri, ar yr amod eu bod yn gallu dangos bod pob dull sydd ar gael iddynt yn eu gwlad eu hunain wedi bod yn aneffeithiol. Pa oblygiadau ymarferol pwysig fyddai hyn yn

Eleanor Burnham: Thank you. You outline ongoing work on a proposed optional protocol to the UN Convention on the Rights of the Child, which would, potentially, allow children or their representatives to bring individual complaints to the UN Committee on the Rights of the Child, where they could claim that their rights have been violated, provided that they could demonstrate that all avenues available to them in their country had proved ineffective. What important practical implications might this have for Wales, as stated in your evidence?

eu cael ar Gymru, fel y nodwyd yn eich tystiolaeth?

[65] **Mr Nastic:** Once there is this third optional protocol, and in all likelihood that will be in the very near future, it will be open for signatures and ratification. The UK Government may indeed ratify it. As with other international treaties, there will be an obligation to implement it and it will be open for use. What it means in practical terms is that Welsh children would be able to submit their complaints to the UN committee in Geneva if all domestic remedies have been exhausted, which means that either they have gone through all the legal avenues here and have been successful, or there has been an unjustified delay and their complaints have not been taken into consideration. In those situations, they could go to the UN committee in Geneva, which would then consider their complaint. It is open to individual children.

9.50 a.m.

[66] The drafting of the optional protocol has only started, but I guess it is reasonable to expect that it would look more or less like other similar mechanisms in UN human rights treaties. Therefore, in future, there may easily be a possibility for Welsh children to go to the UN committee with their individual complaints. I think that would be an important practical development.

[67] **Eleanor Burnham:** Could you please clarify then whether this is an ongoing development of a protocol? Is it not in being at the moment?

[68] **Mr Nastic:** The drafting has only started, yes. You know how it is with international treaties; it takes time to agree the text. It can sometimes take years. Then it will be open to signatures and ratification. So, we are still a way from that, but because the document here mentions the possibility of allowing the Ministers to revisit the scheme and the proposed Measure even if the UK just signs a new treaty, a new protocol, I thought it would be useful to mention that there is something already under way.

[69] **Mark Isherwood:** How satisfied are you that those with a sufficient interest, including children and young people, will be able to challenge Welsh Ministers and hold them to account if those Ministers fail to have due regard to the UNCRC and optional protocols when exercising their functions?

[70] **Mr Nastic:** The proposed Measure will open some new avenues. I think that this is the issue of the overall scrutiny of the implementation of the proposed Measure. Judicial review has been mentioned as one potential avenue. There is going to be parliamentary scrutiny of the implementation of the duty. There is also going to be alignment between the implementation and reporting of this proposed Measure with the reporting to the UN committee, so that will be another avenue open to monitor and scrutinise the implementation of the proposed Measure. So, it is a step forward. It still falls short of the full incorporation of the convention and children having their rights under the convention as legal rights that they could use as stand-alone rights in a court of law, which is what that UN committee would ideally have liked to see.

[71] Another possibility is to reconsider at some point in time, maybe right now or in the near future, the role of the Children's Commissioner for Wales and to strengthen that role, including increasing his powers with regard to dealing with individual complaints. That is, again, something that the UN committee has recommended in its last concluding observations.

[72] So, to summarise, I would say that, yes, there are some channels open with this

proposed Measure for increased transparency, monitoring and scrutiny, but there is still some way to go towards what the UN committee would class as a full incorporation and children having proper legal, enforceable, justiciable rights from the convention.

[73] **Mark Isherwood:** If there is still, as you say, some way to go, would you like to see further changes to this proposed Measure in respect of legal claim or legal redress and, if so, what changes would you like to see?

[74] **Mr Nastic:** We certainly see the proposed Measure as only a stepping stone, the beginning of the law reform that will be an ongoing process and a never-ending story, which will certainly move things towards achieving full legal status for convention rights and will increase the role and powers of the children's commissioner so that they are compliant with the Paris principles.

[75] **Mark Isherwood:** Thank you very much. Alun, do you want to say something?

[76] **Alun Davies:** Could you give us a note on that? I am not familiar with all of those different issues and it would be very useful if you could provide us with another written note, from the point of view of the United Nations, on how you would see that legislation developing. Is that possible?

[77] **Mr Nastic:** Yes, of course.

[78] **Mark Isherwood:** Thank you very much indeed. That brings us to the end of the formal questioning this morning. Are there any closing comments you would like to make or any issues you would like to address that you feel we have not adequately covered in our questioning?

[79] **Mr Nastic:** I would like to thank you for this invitation and for the opportunity to address you and to tell you that we are very excited about these developments. We think that they are very important not only for Wales, but for the UK. Once again, we see you as having a pioneering role here, but it is also wider than that. So, it is no wonder that there has been a direct communication between New York and Cardiff, which I must tell you is unprecedented. Every implementation and incorporation in every country is specific and there are some new elements here and lessons for others.

[80] You, in a way, lead the way on a scale that is even wider than the UK because Wales and the UK are part of the so-called common law countries. When we researched the 60 countries around the world and the way in which they have incorporated the convention, we saw that there is a clear difference between legal systems. As a matter of rule, countries with a common law system do not incorporate and make this convention and other human rights part of their domestic law. The way they implement is to revise their legislation. As far as I know, and I have checked that research again, this is actually the first common law country where once this proposed Measure is passed, the convention will be part of domestic law. So, even beyond the UK borders, you seem to be leading the way. That is one more reason to welcome and support this initiative, and we would like to remain engaged not just during this procedure but later on when it comes to the implementation and also the next CRC reporting round. So, thank you very much for your interest.

[81] **Mark Isherwood:** Thank you. Eleanor has a brief comment.

[82] **Eleanor Burnham:** No, it is a question, really. The UK has never had a written constitution. Do you think that there is ever going to be a need for it or do you think that Wales should just plough its own furrow as we are doing in terms of implementing and incorporating the UN convention into our common law?

[83] **Mark Isherwood:** I do not really expect the UNCRC to have a view on whether the UK should have a written constitution or not.

[84] **Eleanor Burnham:** I thought that he might like to comment. [*Laughter.*]

[85] **Mr Nastic:** There are two things. First, it would be improper of us as a UN agency to say whether or not there should be a constitution and what kind of constitution. Secondly, I can promise you that if there is going to be any constitutional initiative, whether a constitutional bill of rights at a devolved level or UK level, we will engage and we will also use that as an opportunity to promote and advocate for child rights to be explicitly mentioned there and for the convention also to be recognised there. Indeed, there are a number of countries around the world where there has been a constitutional incorporation of the convention.

[86] **Eleanor Burnham:** Thank you for allowing me to ask that prickly question.

[87] **Mark Isherwood:** Thank you very much indeed for that. Thank you for offering to provide two notes to the committee; we would be grateful if we could have those as soon as practicable. A draft of today's proceedings will be sent to you for you to correct if necessary before being finalised. Beyond that, it falls to me to thank you very much on behalf of the committee for attending today and for your useful contribution and evidence. So, thank you and we wish you a safe journey home.

[88] **Mr Nastic:** Thank you.

10.00 a.m.

Dyddiad y Cyfarfod Nesaf: 23 Medi 2010
Date of Next Meeting: 23 September 2010

[89] **Mark Isherwood:** Our next meeting will be after the summer recess on Thursday, 23 September 2010. Members may wish to note that we are moving to the afternoon slot with the meeting commencing at 1 p.m..

[90] I just want to ask a question of the legal adviser. At our last meeting, we asked whether it would be possible to have some clarification on the incorporation of the 18-to-24 age group, given that the duty is to have due regard to the UNCRC, which goes only as far as 18. Have you had an opportunity to look at that yet?

[91] **Ms Roberts:** Yes, I have started to look at it. I am working with the clerking team, which has given me specific deadlines. I am looking at it at the moment, Chair, so I will come back to you shortly with a definitive legal note.

[92] **Jeff Cuthbert:** Will that be sent out during the recess?

[93] **Ms Davies:** Yes, we can send it by e-mail during the recess, but it will also be a paper for the next meeting.

[94] **Jeff Cuthbert:** Okay.

[95] **Eleanor Burnham:** Is there any possibility of our next meeting beginning at 12.45 p.m.? We start several committees at 12.45 p.m.. I have a meeting of another legislation committee in the morning, but other committees do start at 12.45 p.m.. Is that a possibility?

[96] **Mark Isherwood:** I am personally relaxed about that, but do Members have any strong views either way? Do you want to discuss it now or discuss it by e-mail?

[97] **Alun Davies:** We will discuss it again. The start time is 1 p.m.. For those of us who are on committees most of the day—

[98] **Eleanor Burnham:** I have a meeting of Legislation Committee No. 1.

[99] **Alun Davies:** I do not think that we need to discuss this here.

[100] **Leanne Wood:** Before we make a decision on it, can we take a look at what time the other committees meet in the morning and what time they finish? There needs to be enough of a time gap to have lunch.

[101] **Mark Isherwood:** It has been suggested that we formally close the public meeting and go into private session to discuss such matters further.

10.02 a.m.

Cynnig Trefniadol Procedural Motion

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

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

[103] I see that the committee is in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.02 a.m.
The public part of the meeting ended at 10.02 a.m.*