



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

27/2/2017

Agenda'r Cyfarfod
Meeting Agenda

Trawsgrifiadau'r Pwyllgor
Committee Transcripts

Cynnwys Contents

- 4 Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant
Introduction, Apologies, Substitutions and Declarations of Interest
- 4 Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru):
Sesiwn Dystiolaeth gyda Gweinidog y Gymraeg a Dysgu Gydol Oes
Additional Learning Needs and Education Tribunal (Wales) Bill:
Evidence Session with the Minister for Lifelong Learning and the Welsh
Language
- 29 Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad
arnynt o dan Reol Sefydlog 21.2 na 21.3
Instruments that Raise no Reporting Issues under Standing Order 21.2
or 21.3
- 30 Papurau i'w Nodi
Papers to Note
- 31 Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd
o'r Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle mae cyfranwyr wedi darparu cywiriadau i'w dystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Nathan Gill Bywgraffiad Biography	Annibynnol Independent
Huw Irranca-Davies Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Dai Lloyd Bywgraffiad Biography	Plaid Cymru The Party of Wales
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Alun Davies	Aelod Cynulliad, Llafur, (Gweinidog y Gymraeg a Dysgu Gydol Oes) Assembly Labour, Labour, (The Minister for Lifelong Learning and the Welsh Language)
Catherine Lloyd	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Tania Nicholson	Pennaeth Rhaglen Ddeddfwriaethol Anghenion Dysgu Ychwanegol, Llywodraeth Cymru Head of Additional Learning Needs Legislative Programme, Welsh Government
Mair Roberts	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government

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

Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
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Gerallt Roberts	Dirprwy Clerc Deputy Clerk
Lisa Salkeld	Cynghorydd Cyfreithiol Legal Adviser
Tanwen Summers	Clerc Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 14:31.

The meeting began at 14:31.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant Introduction, Apologies, Substitutions and Declarations of Interest

[1] **Huw Irranca-Davies:** Good afternoon, Minister, and good afternoon to your officials as well. Could I simply make a couple of housekeeping announcements first of all? As per normal, we know where the fire escapes are within this room. We're not expecting any fire alarms, so if there is one, follow the normal drill and follow the officials as they signpost you out through the doors. There's full bilingual translation on the headphones in front of you. Of course, afterwards, following this evidence session today, just so that you're all aware, a transcript will be made available so that you can check through it for accuracy and so on.

Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru): Sesiwn Dystiolaeth gyda Gweinidog y Gymraeg a Dysgu Gydol Oes Additional Learning Needs and Education Tribunal (Wales) Bill: Evidence Session with the Minister for Lifelong Learning and the Welsh Language

[2] **Huw Irranca-Davies:** Thank you very much for coming along. This is today's session of the Constitutional and Legislative Affairs Committee, where we are looking at the Additional Learning Needs and Education

Tribunal (Wales) Bill. Minister, it's good to have you here with us, but I wonder whether either you'd like to introduce them or whether your officials would like to introduce themselves.

[3] **The Minister for Lifelong Learning and the Welsh Language (Alun Davies):** I'll ask my officials to introduce themselves.

[4] **Huw Irranca-Davies:** There we are. Shall we start on my right here?

[5] **Ms Nicholson:** I'm Tania Nicholson, head of the ALN legislative reform team.

[6] **Ms Roberts:** Mair Roberts, legal services.

[7] **Ms Lloyd:** Catherine Lloyd, also legal services.

[8] **Huw Irranca-Davies:** Thank you very much. If we go straight into this inquiry session, I'll start with a broad question as to whether you are satisfied, Minister, that the Bill is within the Assembly's competence, and whether you've satisfied yourself to that extent in your discussions with UK Ministers as well.

[9] **Alun Davies:** A broad question, but a very quick answer: yes, I am confident that the Bill is entirely within competence. We've had conversations, clearly, with our counterparts in the United Kingdom Government about cross-border issues. We have absolute confidence that the whole of this Bill is entirely within competence.

[10] **Huw Irranca-Davies:** Could I slightly extend that question, Minister, to ask whether there's anything within what is in front of us now, within this Bill, that may be outside of competence in respect of the Wales Act 2017?

[11] **Alun Davies:** Clearly, the Wales Act has been on the statute book for less than a month, and we're considering the position that that new piece of legislation creates for us. Clearly, as we will all be aware, this Bill is currently proceeding under the Government of Wales Act 2006—the existing Government of Wales Act and not the 2017 legislation. So, we're confident that everything that we have in front of us today is within competence as it was when the Bill was published in December, and as it will be when the Bill completes its Stage 1 scrutiny in this place. So, we are completely confident that we do have all of those issues covered.

[12] However, it is fair to say as well that the 2017 Act will change the competence of the National Assembly, and that could have an impact on any future piece of legislation. We are currently reviewing any implications of the 2017 legislation on this Bill. If there are any issues, I'd be very happy to write to the committee to report those issues to the committee, but, at present, we do not see that the legislation, as enacted by the UK Parliament, does have an impact or effect on us.

[13] **Huw Irranca-Davies:** Thank you, Minister, for the frankness of that. Have you any idea when your scoping of the implications of this in terms of the Wales Act 2017 may be completed—when we might hear whether it's a clean bill of health or not, and whether there are areas of concern?

[14] **Alun Davies:** Before the end of this term, I would expect us to be able to give an indication of whether there are any issues. The area, if you like—. Just to expand the answer somewhat, the area that we've been, probably, most concerned about is that area dealing with the tribunal, where the Wales Act does cover areas around the exercise of Welsh tribunals. We're aware that amendments were made to the legislation quite late in the process, I think, in the House of Lords. So, we haven't had the time in the last four or five weeks to complete an analysis of any potential impact, but we are working on that at the moment and if there are any issues—well, I'll write to the committee at any rate by the conclusion of this term, to inform the committee's review of this legislation.

[15] **Huw Irranca-Davies:** I think we'd be very appreciative of that, and if you do know before then—if you have any clarity before then—if you could write sooner, thank you very much. A couple of other broader questions, but important ones: one is in terms of human rights obligations. Are you confident that this Bill takes account of all our commitments in terms of human rights obligations?

[16] **Alun Davies:** Yes, we are confident that this Bill takes account of all the obligations that we have according to the competence of the National Assembly.

[17] **Huw Irranca-Davies:** If I could bring in Dai at this point. Dai, over to you.

[18] **Dai Lloyd:** Tra ein bod ni yn **Dai Lloyd:** Whilst we are dealing with

ymdrin â materion ehangach, ac rydw i'n deall yn naturiol, wrth gwrs, ein bod ni'n sôn yn fan hyn am anghenion addysg ychwanegol, ond pa feddwl yr ydych chi wedi ei roi—? Oherwydd rydym wedi derbyn nifer o sylwadau—rhai ohonom ni—oddi wrth bobl sy'n gofyn i chi feddwl am anghenion iechyd plant, megis plant sy'n dioddef o bethau fel clefyd siwgr ac ati, sydd efallai efo anghenion addysg ychwanegol, ond sydd efallai heb anghenion fel yna. Beth yw'r trawstoriad, felly, neu'r gorgyffyrddiad rhwng gofyniadau iechyd a gofyniadau addysgiadol? Ynteu a ydych chi wedi pennu'r Bill yma yn benodol, fel taw dim ond anghenion addysgiadol sydd o dan fan hyn, a bod yna ddiystyriaeth hollol o unrhyw anghenion iechyd?

[19] **Alun Davies:** Ni fuaswn i'n dweud ei fod yn diystyried hynny. Mae un o'r prif faterion trafod, wrth gwrs, yn ystod datblygiad y Bil yma wedi bod ar y berthynas rhwng addysg a'r gwasanaeth iechyd a'r holl faes polisi iechyd, felly nid ydym wedi diystyru hynny. Os ydych chi'n edrych ar y Bil presennol sydd gennym ni o'n blaenau ni, mi fyddwch chi'n gweld bod y berthynas rhwng maes polisi addysg a maes polisi iechyd yn un o'r prif faterion lle mae newid wedi bod ers i ni gael y Bil drafft diwethaf, felly mae hynny wedi bod yn destun trafod yn ystod datblygiadau'r Bil. Ond, i ateb eich cwestiwn penodol, rydych chi'n iawn i ddweud taw Bil addysg ydy hwn, ac nid Bil iechyd. Mae yna

these broader issues, I understand, of course, that we are here talking about additional educational needs, but what thought have you given—? Because we have received a number of comments—some of us—from people asking you to take into account the health needs of children, such as children with diabetes and so on, who may have additional educational needs, but who may not have such needs. What is the overlap, therefore, between health requirements and educational requirements? Or have you focused this Bill specifically so that only educational needs are covered, and so that you are discounting any other the health needs that may come into the question?

Alun Davies: I wouldn't say that we are discounting that. One of the main topics of discussion during the development of this Bill has been the relationship between education and the health service and the entire policy area of health, so we haven't discounted that. If you look at the current Bill that we have before us, you would see that the relationship between the policy areas of education and health is one of the major matters where change has been made since we had the previous draft Bill, so that has been a topic of discussion during the development of the Bill. But, to respond to your specific question, you're right to say that this is an education Bill and not

ganllawiau ar gael ac yn mynd i fod ar gael ar anghenion gofal iechyd y plant yn yr ysgol ar hyn o bryd. Nawr, rydym ni'n ystyried i ble maen nhw'n arwain, a ble maen nhw'n ein gadael ni. Os ydym ni yn meddwl bod angen newid pellach yn y ddeddfwriaeth, rydw i'n fodlon iawn i ystyried hynny a gwneud hynny. Ond, beth liciwn i ei wneud yn gyntaf yw cael ystyriaeth lawn i sicrhau bod y canllawiau statudol sydd gennym ni yn barod ar anghenion iechyd yn cael eu cyflwyno, ac, os nad ydynt, os oes angen cryfhau hynny, rydw i'n fodlon iawn gwneud hynny, ond liciwn i weld dadansoddiad o fethiannau'r canllawiau presennol cyn gwneud hynny.

a health related Bill. There are guidelines available and will be available on the healthcare needs of children in school at present. Now, we're considering where they lead to, and where they will leave us. If we do think that there is a need for further change in the legislation, then I'm more than willing to consider that and to do that. But, what I'd like to do first of all is to have a full consideration to ensure that the statutory guidelines that we have already on health needs are introduced, and if they're not, whether they need to be strengthened, then I'm very willing to do that, but I would like to see an analysis of the failings of the current guidelines before we do that.

[20] **Dai Lloyd:** Ocê.

Dai Lloyd: Okay.

[21] **Huw Irranca-Davies:** Thank you, Dai. We'll come to some detail that might follow from this question I'm going to ask you, but in your principle terms, how have you decided what to put on the face of this Bill and what to leave off it?

[22] **Alun Davies:** There will always be tension between what is in active primary legislation and what is achieved through regulation. I've been a Member of this committee for long enough to know that tension is exercised on a regular basis. Now, in terms of looking at what we're seeking to do here, it's quite a complex piece of policy area, and what we're seeking to do is to 'decomplexify', if you like, whilst at the same time enable us to have a clear and logical approach to both the structure of the Bill, the structure to the overall legislation, and then come to a conclusion on where we have the areas that need to be covered in primary legislation on the face of the Bill, and those areas which are best dealt with by secondary legislation. Clearly, there will be areas where the committee will take a particular interest, I understand that, and the children and young people's committee are doing the same. In order to inform the process of scrutiny, I have published a draft

copy of the code, which is the statutory guidance that will deliver and implement the Bill we have in front of us. I did that in order to aid exactly this sort of scrutiny. Are the 200 pages of draft guidance—they're statutory guidance—in the code, is it there to provide the best possible illustration of the sort of regulations we will seek to make under this Bill, and is it right and proper that all of that is kept as secondary legislation, or should some of that be on the face of the Bill?

[23] That is part of the reason why we've sought to inform the process of scrutiny by publication of the code and to test that as a part of the parliamentary processes we're going through at the moment. I hope that we've got the balance right. I'm very aware, as a Minister, that we should put into regulation those matters that should properly be dealt with in regulation, and all other matters should be on the face of the Bill.

[24] **Huw Irranca-Davies:** Thank you, Minister. You've landed yourself in it now by declaring your interest as a former member—quite a long-standing member; two occasions, I think—of this committee. So, you will know where we will be coming at perhaps on this. But putting aside the word 'decomplexify' for a moment—

[25] **Alun Davies:** It's caused me some sleepless nights, Chair. [*Laughter.*]

[26] **Huw Irranca-Davies:** I assume 'decomplexify' is also a kind of an Americanisation of the word 'simplify', but could I simply ask, following that question: is there an overall approach you take, or is it a case-by-case basis, item by item?

[27] **Alun Davies:** I don't think it's an item-by-item approach; although, in some cases, clearly it would be. What we've sought to do is to draw out the vision of where we want to be. This piece of legislation is part of a much wider transformation programme. I think sometimes, when we debate and discuss these matters, we look at the legislation and the Bill in isolation. What I've sought to do in debating and discussing and introducing this Bill has been to try to contextualise that, if you like, in terms of a wider transformation programme. So, you will certainly have a much wider programme upon which the Bill is based. But, within and underneath the Bill, you'll have the regulations that deliver that. So, there is, I hope, a logic, which the committee will see and recognise and understand; but I also recognise that, within that overall framework, that overall architecture, of the legislation, there are areas where we've taken a specific decision on

particular parts of the regulations. Clearly, we're happy to debate and discuss where that balance lies on each one of those different areas.

[28] **Huw Irranca-Davies:** Brilliant. We'll come back to each one of those areas. I only have one other final short question before I ask David to come in, and that's: could I simply ask you to clarify? I think this is straightforward, but can you confirm that all subordinate legislation that amends primary legislation is subject to the affirmative procedure?

[29] **Alun Davies:** No, I can't confirm that. I think there is one—. I'll ask one of the lawyers to correct me if I'm wrong here. I think there is one area that is done through the negative process, and that would be to recognise if a special health authority is created at some point in the future. Am I right?

[30] **Huw Irranca-Davies:** We've got nods going on. Yes. Okay.

[31] **Ms Lloyd:** Section 86.

[32] **Alun Davies:** Section 86.

[33] **Huw Irranca-Davies:** Okay. We will return to that.

[34] **Alun Davies:** So, it's one specific power, which is a very clearly and narrowly-defined power to make an amendment if a special health authority is created.

[35] **Huw Irranca-Davies:** Don't take away our enjoyment; we'll come back to this. David, over to you.

[36] **David Melding:** Minister, you are seeking seven regulation-making powers that you don't intend to use in the near future. So, I assume that means they're not needed for the implementation of the policy of this Act—or when it becomes an Act. So, can you explain why this slightly irregular process is being used?

[37] **Alun Davies:** I would dispute that it's an irregular process. I think it's something that has been done on a number of occasions, although precedent doesn't always answer a specific question; I accept that as well. The regulatory powers that are contained in the Bill are mostly to be used in the implementation of the Bill, as one would expect. They are a small number of powers that we are seeking to put on the statute book at present, which

will enable us to fill in any gaps, or have the powers to do so, should they be needed in the future. Now, I understand that the committee may well argue that that should properly be done via additional primary legislation, and that a further Bill should be brought forward to achieve that objective, but it would be my argument that there isn't going to be a further Bill on this matter, either in this Assembly or in the early years of the next one, in all probability. Therefore, we do need a piece of legislation—that is not only futureproof, but enables us to have the flexibility to deliver on our policy objectives over the coming years.

14:45

[38] **David Melding:** So, that will give you further policy-making flexibilities. Is that the intention of these regulations?

[39] **Alun Davies:** I think it gives us the flexibility to implement policy in changing circumstances. I think that's the way I would prefer to characterise it. But, clearly, these are, again, reasonably narrowly defined areas, not wide and broad-ranging powers to make regulation in a number of ill-defined areas. They are areas—I think access to information is one you might quote—where the actual power to make regulation is reasonably narrow. It isn't a broad power that we're seeking to take.

[40] **David Melding:** So, they couldn't have the effect of altering the general policy structure of the whole Bill?

[41] **Alun Davies:** No. They wouldn't alter either the policy structure or the architecture of the legislation in itself, either in terms of the primary legislation in the Bill, or the code itself. What they would do would be to enable us to deliver the objectives of the legislation in a more coherent way.

[42] **David Melding:** What procedure would be required for these regulations?

[43] **Alun Davies:** I think it is negative. I'm looking at my officials. But, certainly in terms of the approach we're taking, we are looking at the balance of negative and affirmative regulation-making instruments. I hope that we will be able to ensure that we have the richest possible scrutiny available to the National Assembly, where we make these regulations. And if you take, for example, the code, I've given an undertaking to the Assembly committee that I'm very happy for them to examine the code, in addition to the statutory

process of enactment of that piece of secondary legislation, to ensure that we have the fullest possible scrutiny available for Assembly Members.

[44] **David Melding:** I just wonder—. I'm trying to pursue general principles. Normally, regulations obviously implement current policymaking intent. You may have minor adjustments, but to have them there, not to be used in a predictable way or a way you could reasonably timetable, is, I think, unusual. And, therefore, we need to be reassured, at the very least, that it isn't a way of changing policy without the need to use primary legislation. Now, you have said that it wouldn't change policy substantially, so that is reassuring, but wouldn't a further reassurance be that, when such powers are put into a Bill for possible exercise, they should have, at least, the affirmative procedure?

[45] **Alun Davies:** I'm happy to give that due consideration. Can I say this? I would contest the assertion that these are wide or broad powers. If you look at—

[46] **David Melding:** No, I've accepted—you've told us that. I mean, obviously we'll reflect on that. I'm not contesting that point with you, but I do agree that that would be one of the possible bases to justify this approach, as opposed to if it could be used more widely.

[47] **Alun Davies:** If the committee were to report on that, I'd give that due consideration. I'm happy to do that.

[48] **Huw Irranca-Davies:** Okay, thank you for that. I think David is pushing at an interesting facet, here, which, under your previous chairmanship, the committee was very keen on, and under your membership—this trying to avoid the situation where futureproofing becomes a catch-all for widening the scope. You've made it very clear that this isn't widening the scope, but I think we'll need to reflect on this a little bit, but—

[49] **David Melding:** An authoritarian Government could have very vague framework legislation with all sorts of futureproofing that means you never get full scrutiny again, and I chose not to pursue that avenue, because I trust that that was not your intent.

[50] **Alun Davies:** David will also be aware that there is a Record of Proceedings where I follow exactly the same line of argument.

[51] **Huw Irranca-Davies:** Yes, indeed. Yes, indeed.

[52] **Alun Davies:** I agreed with myself then, and I agree with him today.

[53] **Huw Irranca-Davies:** Okay, I'll put that page away, then. Nathan, do you want to take us on to the area of the code, which I think you were going to take us through?

[54] **Nathan Gill:** Yes. Thank you, Chair. Minister, I was just wondering why the draft code has not been published alongside the Bill, and, in your letter dated 14 February, why it is that it states that:

[55] 'This draft of the Code is not in itself subject to scrutiny.'

[56] **Alun Davies:** Yes. Can I say this? We published a code in order to aid the parliamentary scrutiny of the Bill and to enable the National Assembly and others to consider the meaning of the Bill and the way that the Bill would be implemented in real terms. So, clearly, the priority was to publish the Bill and to ensure that the Bill was available to the National Assembly according to the timetable we'd given an undertaking to do so. So, the Bill had to be published first.

[57] The code is a draft code. It's very much a draft code. Clearly, the actual code will be drafted when the legislation is complete and when this Bill reaches the statute book. We'll then be able to publish a new draft based on the final version of this legislation and that code will itself then be subject to scrutiny. What I've said is that the code is not subject to scrutiny today because we're examining the Bill today. We will examine the code when it comes to the point of enacting that piece of secondary legislation. So, I'm not saying it's not subject to scrutiny; what I'm saying is that at the moment it is an aid to scrutiny, and, in due course, at the correct time, it will then be subject to scrutiny. I recognise then that we will need to ensure that it is subject to rigorous scrutiny as well.

[58] **Nathan Gill:** Okay. Thank you. Could you clarify the purpose of the negative draft procedure in section 5 for approving the draft code?

[59] **Alun Davies:** What section 5 seeks to do is to outline a process that tries to strike a balance between two elements: first of all, a consultation with practitioners, with interest groups, with stakeholders, and, secondly, effective parliamentary scrutiny in this place. What we have sought to do in

that section is to outline that the code needs to have, if you like, the fullest possible examination, both by Assembly Members here, but also by those people who will implement it and who will be delivering that code, as well, in practice. So, we're trying to strike a balance between that level of public consultation, if you like, and effective parliamentary scrutiny. Now, I've given additional undertakings to the Children and Young People's Committee that we will ensure that they have an opportunity to scrutinise the Bill as well. I recognise that isn't covered in section 5 at present, but we are open to ensuring that the code does have the widest possible and most vigorous scrutiny available to us, and we're happy to continue to work with the National Assembly to ensure that happens.

[60] **Nathan Gill:** Okay. Why is the additional learning needs code, which has the power to impose requirements, subject to the negative procedure when the document that it's going to replace, which is just guidance, was subject to the affirmative procedure?

[61] **Alun Davies:** As I've said, I'm content for the code to be subject to the most rigorous scrutiny that is required by the National Assembly. The old special educational needs code was delivered using different legislation at a different time, and was done in a different way, but I recognise that that's no argument for doing things differently today. I would be content for the National Assembly, were it to be so minded, to determine a different process of scrutiny if that is what the National Assembly wishes to do. What we're doing in section 5 is outlining what we believe is at the moment the most appropriate means of enacting this secondary legislation. But, clearly, if this committee believes it requires more vigorous scrutiny, then I'm happy to take those considerations on board.

[62] **Nathan Gill:** Okay. I just wondered why requirements in the code could not have been included on the face of the Bill or in the subordinate legislation.

[63] **Alun Davies:** The code, the draft code, is over 200 pages long and it deals with some complex areas of implementation. So, clearly, we wouldn't wish to have all of that on the face of the Bill. But I also recognise that there is an ongoing, and there always should be, tension between what is included in primary legislation and what is secondary legislation. I accept that completely. I hope that the level of detail on the face of the Bill is appropriate. I don't think it would have been appropriate or practical to include much of what is in the code on the face of the Bill, and I hope that

we've created a Bill that has the architecture, the framework, the structure, in place, and a code that then delivers that in practice but delivers it in a way that maintains a level of flexibility and enables us to make adjustments to that code as needed without needing to go back to primary legislation. Now, there will always be tension there, as I've said, and I'm happy to consider elements of that tension. If the Members has particular areas that he's concerned about, I'd be very happy to address those issues.

[64] **Nathan Gill:** Okay, thank you. And finally, I just wondered if you could explain the purpose of section 5(9).

[65] **Alun Davies:** I think that simply enables us to consult on the code before all the relevant provisions of the Bill come into force. It's about ensuring that we're able to move forward with some flexibility and with some speed upon the Bill being accepted by the National Assembly.

[66] **Nathan Gill:** Okay, thank you.

[67] **Huw Irranca-Davies:** Minister, thank you. Before I bring David back in, you were saying there that you really want the code to be subject to the most rigorous scrutiny, which is welcome to be heard. But it seems to me that you're almost inviting us—I don't want to put words in your mouth—to come back and suggest to you, 'Well, yes, we think that we agree with you there, and there's a way to do that', because, as you say, your argument is that the previous SEN code was subject to a different time, a different type of oversight, and that this isn't quite there yet, is it? It isn't quite there. I don't want to put words in your mouth, but you seem to be saying that you want that most rigorous scrutiny, but within the shape that we currently have it, that most rigorous scrutiny isn't there.

[68] **Alun Davies:** The current SEN code was enacted under the provisions of, I think, the Education Act 1996, so it's clearly bound by those regulations. And I stand by the comment I made in terms of rigorous scrutiny, but also rigorous scrutiny balanced with rigorous consultation as well. So, we have the consultation with stakeholders and with those practitioners—people that implement the legislation—and then we take that into the code, and we then enable that code to be scrutinised by the National Assembly. It's clearly a matter for the National Assembly, then, to determine how that scrutiny takes place. And I would always welcome additional rigorous scrutiny from the National Assembly in all the legislation.

[69] **Huw Irranca-Davies:** Again, that's really good to hear, because my understanding would be at the moment that under the negative procedure, there could well be a vote, but it would not be amendable.

[70] **Alun Davies:** That would be the case, I think, for most secondary legislation, but in terms of how we're taking this forward, I recognise that for a piece of secondary legislation of this size and complexity, it would be unfair to simply put that in front of Members and expect a 'yes' or 'no' vote. I accept that completely, which is why I've invited the children and young people committee to examine the code prior to it being laid. And were that to happen, then I would hope that Members and others would have the opportunity to scrutinise the code before we go through a formal process of legislating.

[71] **Huw Irranca-Davies:** Okay, thank you very much. David.

[72] **David Melding:** Before we move on from that point, I'm genuinely puzzled by the attitude, sometimes, of Government. I would have thought that you'd be really proud of that code—it is coherent and it has gone through extensive consultation. Obviously, the subject committee would have had an opportunity to look at it. And then, you leave it to the negative procedure, which means it may not even get debated in Plenary. I would have wanted a debate. I would have wanted to have stood up as Minister and said, 'We've worked very hard on this—it's a major advance, we invite you all to vote for it'. I find it very curious that you want to hide a light under a bushel in that way.

[73] **Alun Davies:** I always take up the invitation to make a speech, as David is aware. Clearly, the Government will take different views on different matters, and I think it is right and proper that Government has the ability to do that in terms of the way in which different elements of secondary legislation are enacted. But I hope that the overall approach of flexibility of conversation with the National Assembly about what is appropriate for a particular piece of legislation is the point of principle, and the important point of principle here. Clearly, if the National Assembly believes that this should go through the positive or the affirmative procedure, then I would not be objecting to that in any way at all. But I would also say in response to David Melding that I actually think we need to go further than that sometimes, and not simply go through the process, but actually enable Members to contribute as we're developing and as we're drafting that piece of secondary legislation.

[74] **David Melding:** But it's not either/or, though, is it?

[75] **Alun Davies:** Pardon?

[76] **David Melding:** It's not either/or. You could certainly do that—

[77] **Alun Davies:** Yes, well, that's what I'm seeking to do. And I'm seeking to ensure that the subject committee has the opportunity then to scrutinise all aspects of the code, has the opportunity to suggest amendments and to discuss amendments, and I will approach that with a very, very open mind in terms of seeking to have an excellent piece of legislation, and not simply a fast Bill, or a fast Act.

15:00

[78] **David Melding:** And I think you're much more likely to get a really excellent outcome if you proceed in that direction. So, I'm certainly pleased to hear that. And, obviously, policy engagement then would take place with the relevant committee, and I'm sure would be fruitful.

[79] Can I move to section 13, paragraph 2? This relates to key terms and basically it would allow certain exemptions from categories to be considered—looked after children—and that this would then disapply the need, in some instances, that you state in regulations, to have an individual development plan. My question is: why is that not on the face of the Bill?

[80] **Alun Davies:** I think most of the areas that deal with the needs of looked-after children are on the face of the Bill. What I would say to the Member—I know he's taken a great interest in this matter over a number of years—is that what we're seeking to do is to integrate the individual development plan into a personal education plan, and to ensure that we integrate this piece of legislation with the existing social services structures. So, I hope that we have achieved that, not just by section 13, but other sections. Now, clearly, what we're seeking to in 13(2) is to enable us to prescribe those categories of looked-after children who will not be treated as looked-after children by local authorities, in order to be able to be more precise in how this legislation is delivered, and how this legislation is implemented, and how it is integrated with the overall social services regimes.

[81] **David Melding:** I suppose, from our point of view, we try to make different Acts fit together, and procedures or whatever, but when you're disapplying a duty, I would have thought it was a fairly specific thing—that you know where there are certain points that don't quite fit and therefore you need to disapply, and you can just put it on the face of the Bill.

[82] **Alun Davies:** Well, we know that not all looked-after children are required to have a personal education plan, and we know that there are already exemptions for those. And I hope, if you look at section 13(2), which the Member is looking at specifically—. But if you look at section 14—

[83] **David Melding:** Yes, I'll come to that. I don't want to—

[84] **Alun Davies:** I hope what we will find is that that integration actually is given more weight, if you like, in section 14.

[85] **David Melding:** Okay. Going on to section 14, then, there, as you said, it's disapplying the need for a pupil education plan. Again, I ask: why is that not on the actual face of the Bill? Because I do think these are fairly technical specific matters and your draughtspeople should be able to spot them.

[86] **Alun Davies:** Yes. And I think the overall approach that we've taken in terms of seeking to produce this legislation is to preserve existing flexibility, to ensure that, although most looked-after children have a personal education plan as part of their statutory care and support plan, and that is already determined by, I think, section 83 of the social services Act, then we will be able to fit this into that existing piece of legislation. So, what parts of section 14 do is to insert requirement for a personal education plan from the secondary legislation that's present into the primary legislation in section 83 of the 2014 Act. That is the purpose of what we're trying to do here. I'll ask my colleagues to come in here to explain that—

[87] **David Melding:** I'm not sure a further explanation would be altogether a mercy, but I suppose we ought to hear it. [*Laughter.*]

[88] **Ms Lloyd:** So, the objective behind the looked-after children provisions is to streamline their general education planning, so that the planning for ALN is integrated within the social services regime for looked-after children. Under that, the requirement to have a personal education plan is currently in secondary legislation under the Social Services and Well-being (Wales) Act 2014. So, what section 14 does is it moves the requirement for looked-after

children to have a personal education plan into the Act itself, so up to primary legislation level, but to preserve that existing flexibility for some children not to have one—it gives the regulation power in section 14 to create exceptions for that. An example of one of the current exceptions to the requirement to have a personal education plan is for children who are on short-term breaks, and that's defined in the regulations. So, section 14 is seeking to preserve that flexibility, in case situations might change. They might want to, for example, change the definition of someone on a short-term break by changing the number of weeks it counts to qualify, or not qualify. So, that's what section 14 seeks to do.

[89] **David Melding:** [*Inaudible.*]*—*short-term break as, more or less, that phrase is on the face of the Bill, and then the definition of how many weeks constitutes short term, or whatever, is then followed up in regulations. I'm not a conspiracy theorist—I'm sure that this is all the mechanics of trying to make the system work more effectively. We're just asking, why can't it be on the face of the Bill? Because, at the moment, the explanatory memorandum doesn't help very much, giving you any answers—we just don't know. And whilst, I'm sure, the Minister has only reasonable intentions in how these powers are going to be used, we have to sort of try to test all this against a fairly rigorous standard for primary legislation.

[90] **Alun Davies:** I accept that; I accept that, clearly. What I think we were seeking to achieve here, in terms of the legislation being written and drafted in the way that it is, is to ensure that this legislation dovetails easily into the existing legislative and statutory framework. Now, it would have been possible—and I think David is absolutely right—to start tinkering with parts of that, and put in various different parts of that instrument onto the face of the Bill. It certainly is possible to do that. But, by doing so, we would be starting then to erode some of the flexibility that we have as part of the overall existing statutory framework. And the purpose of this was to add to, to dovetail into, that statutory framework, rather than to change it. Now, I accept that there can be more than one view on that.

[91] **David Melding:** It sounds quite plausible to me. I can't say I have the skills of a parliamentary draughtsperson, but I think what you've just said there is—you know, it sounds reasonable, initially. Can I make a suggestion, then, that both these regulations have negative procedures, and, given that you've chosen not to put what could be significant detail on the face of the Bill, regarding an exemption—you've explained why it ought to be exempt, and it's in their best interest sometimes—then might you not consider

making those two regulations in the first instance affirmative, and then perhaps following up later with negative, if it's just dealing with minor details thereafter?

[92] **Alun Davies:** I'm content to consider that.

[93] **David Melding:** Okay. Can I move to section 30(1)(b)? This basically relates to the decision of a school not to maintain an individual development plan, and then the rights of a child or a parent to ask for a reconsideration of that. And there is, at the moment, no timescale in which such a request has to be considered placed on the face of the Bill. So, why is that the case?

[94] **Alun Davies:** We felt it was more appropriate that the timescale should be included as part of a wider and more general timescale to be included in the code relating to the development and review of IDPs in their totality.

[95] **David Melding:** Because, again, you could have just put a timescale. I think lots of legislation does—there's probably case law as well, as to what is a reasonable time. And then, in regulation-making powers, vary it if you need to. But at least then you have a baseline on the face of the Bill.

[96] **Alun Davies:** I'm not sure that would achieve very much, quite honestly. But, you know, what we were seeking to do was to ensure that a timescale for reconsideration requests should be a part of the overall determination and description and structure of the IDP, rather than to treat this individual issue in isolation. That was our intention, so that all of this would be covered within the code.

[97] **David Melding:** And finally then, section 36(2), on the definition of 'home authority' in relation to looked-after children and related powers, here you're using the negative procedure, and I would just like to ask why you decided not to use the affirmative procedure in this instance.

[98] **Alun Davies:** In section 36(2)—. This is a power that is linked to the Education Act 1996 and there are existing powers within that, which are subject to the negative procedure. We feel that it's appropriate to be consistent in terms of the procedure that we use for the execution of these powers.

[99] **David Melding:** Okay, but you did consider whether it was more appropriate?

[100] **Alun Davies:** We've considered it. We've considered that on every occasion as we go through this. I was well schooled on this committee, as the Chair will be aware. So, we have given consideration to these matters on all of these different powers and regulations. Clearly, on some occasions, we might have come to different conclusions—I accept that, but what we believe is that consistency is also important in terms of understanding and implementing law as well.

[101] **David Melding:** We very rarely hear a Minister in front of us saying, 'We've considered all the precedents and we're going to overturn one of them.' I don't think you are able to say that in this case, but it does seem to be a constant case of following the existing arrangements and not as we would see it, sometimes, testing those and seeing if the affirmative is actually more appropriate.

[102] **Alun Davies:** Not to be following existing arrangements, but ensuring consistency with other arrangements that are determined by that legislation, which is slightly, technically different.

[103] **Huw Irranca-Davies:** Thank you, David. Dai, over to you, please.

<p>[104] Dai Lloyd: I symud ymlaen at adran 37 ac yn fwy penodol at adran 45(2)(d)—nawr, o gofio bod yr adran yma eisoes wedi'i hailddrafftio yn sgil yr ymgynghoriad ar y Bil drafft, pam ydych chi'n teimlo bod y pŵer i ddarparu ar gyfer achosion eraill lle y gellir eithrio plant o addysg brif ffrwd yn briodol?</p>	<p>Dai Lloyd: Moving on to section 37 and more specifically to section 45(2)(d)—now, given that this section has already been redrafted in light of the consultation on the draft Bill, why do you feel that the power to provide for other instances where children could be excluded from mainstream education is appropriate?</p>
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<p>[105] Alun Davies: Pwynt (d) rŷch chi'n sôn amdano fe—mae hynny i sicrhau, petai categori ysgol newydd yn cael ei greu yng Nghymru, y gallem newid y ddeddfwriaeth i sicrhau ein bod yn cyfro hynny. Petai ysgolion rhydd, er enghraifft, yn cael eu cyflwyno yng Nghymru, fe allem ni wedyn newid y ddeddfwriaeth i</p>	<p>Alun Davies: You're referring here to point (d)—well, that is to ensure that, if a new category of school were to be created in Wales, we could change the legislation to ensure that that could be covered. If free schools, for example, were introduced in Wales, we could amend the legislation to ensure that such schools would be</p>
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sicrhau bod ysgolion o'r fath yn rhan o'r ddeddfwriaeth yma.

captured under this legislation.

[106] **Dai Lloyd:** Yn dilyn hynny, a fydddech chi'n cytuno y byddai hynny—ychwanegu achos arall—hefyd yn gyfystyr â newid sylweddol mewn polisi? O dan y fath amgylchiadau, pam ydych chi'n ystyried bod y weithred negyddol, felly, yn briodol?

Dai Lloyd: Following on from that, would you agree that adding a further instance would also represent a significant policy change? Under such circumstances, why do you believe that the negative procedure is therefore appropriate?

[107] **Alun Davies:** Na, nid wyf i'n credu ei fod yn newid sylfaenol mewn polisi—mae e er mwyn sicrhau parhad o bolisi. Felly, nid wyf yn credu taw'r broses *affirmative* sydd ei hangen arnom ni. Nid ydym ni'n gweld bod hynny'n newid polisi; mae'n meddwl ein bod ni'n dal i weithredu polisi o dan amodau newydd a gwahanol.

Alun Davies: No, I don't think it's a fundamental policy shift—it does ensure a continuation of policy. Therefore, I don't think that the affirmative procedure is necessary in this case. We don't see that this is a change of policy; it means that we continue to implement policy under new and different conditions.

[108] **Dai Lloyd:** Reit, symudwn ymlaen, ac yn ôl i'r tensiynau rydych chi wedi eu crybwyll eisoes, ac rydym ni wedi cael nifer o gwestiynau ynglŷn â'r tensiynau yma o ran beth sy'n ymddangos ar wyneb y Bil a beth sy'n ymddangos mewn llefydd eraill. Yn nhermau adrannau—fe wna i jest eu rhifo nhw—50, 54(4), 58(5), er enghraifft, mae'n ymddangos gyda'r *additional learning needs co-ordinator*, er enghraifft, o dan adran 54(4), fod bwriad y polisi yn glir, ac o hynny, pam na allwch chi ei roi e ar wyneb y Bil, er enghraifft?

Dai Lloyd: Right, we'll move on to those tensions that you've already mentioned, and we've had a number of questions with regard to these tensions in terms of what appears on the face of the Bill and what appears in other places. In terms of sections—I'll just list them—50, 54(4), 58(5), for example, it appears that with the 'additional learning needs co-ordinator', for example, under section 54 (4), the intent of the policy is clear, so why couldn't you put that on the face of the Bill, for example?

[109] **Alun Davies:** O ran adran 50(3), nid wyf i'n credu ei fod yn beth

Alun Davies: When it comes to section 50(3), I don't think it would

doeth i restru sefydliadau na gwneud rhestrau ar wyneb y Ddeddf. Felly, rydym ni'n meddwl ei bod yn well gwneud hynny fel rhan o god, fel rhan o is-ddeddfwriaeth.

be wise to list institutions or to put any lists of that sort on the face of the Bill. We think that that is better done as part of a code, as part of subordinate legislation.

[110] O ran adran 50(5), mae'r rheoliadau yn sicrhau bod y math o restrau rydym yn eu creu yn gallu newid a'n bod ni'n gallu newid pethau heb roi, 'Rhaid dychwelyd i fan hyn ar gyfer deddfwriaeth newydd', ac rwy'n credu bod hynny'n ffordd resymol a hyblyg i ddefnyddio rheoliadau. Dyna'n union y fath o gydbwysedd, rwy'n meddwl, sydd yn deg, oherwydd mae'n golygu bod gyda ni'r hyblygrwydd priodol i sicrhau ein bod ni'n gallu newid pethau yn ôl yr angen, ond bod y strwythur wedi cael ei greu trwy'r ddeddfwriaeth yma.

In relation to section 50(5), the regulations ensure that the kind of lists that we draw up can be amended and that we can change those without stating, 'Come to this place for new legislation', and I think that that is a reasonable way to use regulations. That's exactly the kind of balance that, I think, is fair, because it means that we have the appropriate flexibility to ensure that we can make changes as necessary, but that this structure is put in place through this legislation.

15:15

[111] **Dai Lloyd:** Rydym ni'n dilyn ac yn deall egwyddorion, wrth gwrs, ond yn nhermau craffu, mae yna adrannau eraill, ar yr wyneb eto, sydd yn nodi bod yna fwriad polisi sydd yn glir. Eto, oni fyddai'n well ichi roi hynny'n glir ar y dechrau, ac wedyn cael y pŵer i ddiwygio unrhyw amserlenni os byddai angen wedyn?

Dai Lloyd: We follow and understand the principles, of course, but in terms of scrutiny, it appears that there are other sections on the face of the Bill that note that there's a clear policy intention. Again, would it not be better to state that clearly at the very beginning, and then have the power to amend any timetables if needed?

[112] Rwy'n benodol rŵan yn mynd ymlaen i adran 60(1), adran 67(1), adran 68(1), 68(3) a 68(4) a hefyd 69. Yn y bôn, mae'r rheini i'w gweld â'u hamcanion yn berffaith glir. Felly, i fynd yn ôl, ac nid wyf i eisiau

I specifically move on now to section 60(1), section 67(1), section 68(1), 68(3) and 68(4) and also 69. At heart, they appear to have perfectly clear policy intentions. So, to go back, I don't want to rehearse the tensions

ailadrodd y tensiynau sydd eisoes wedi cael eu hadrodd yma dros rannau arweiniol y cyfarfod yma, ond, yn y bôn, mae'r adrannau yna'n edrych yn glir. Pam felly peidio â'u rhoi ar wyneb y Bil?

that have already been discussed here with regard to the introductory part of this meeting, but those sections do appear to be clear. So, why not place those on the face of the Bill?

[113] **Alun Davies:** Rwy'n trio eich dilyn chi, Dai, ond rydych chi'n siarad yn rhy glou i fi ambell waith. Pan rydych yn edrych ar y rheoliadau yn adran 68, er enghraifft, rydych yn sôn yn fanna amboutu sut mae'r tribiwnlys yn mynd i redeg, ac rwy'n credu bod hynny'n briodol i ddod o dan reoliadau. Mae'n ein galluogi ni i newid pethau os oes rhaid ac mae'n delio gyda materion gweinyddol ac *operational* yn fwy na materion sy'n fwy o ran strwythur gwaith y tribiwnlys. Felly, rwy'n meddwl ei fod yn ddigon teg bod rhai o'r adrannau yma yn cael eu gweithredu trwy'r rheoliadau.

Alun Davies: I'm trying to follow you, Dai, but you're speaking a little too quickly for me at times. If you look at the regulations in section 68, for example, you talk there about how the tribunal is going to run, and I think that that is appropriately done under regulations. It enables us to make changes if necessary and it deals with administrative and operational issues more than with issues that are more related to the structure of the work of the tribunal. So, I do think it's appropriate that some of these sections are made through regulation.

[114] **Dai Lloyd:** I symud ymlaen, ac yn fwy penodol, felly, ynglŷn â'r tribiwnlysoedd, pam mae angen cytundeb yr Ysgrifennydd Gwladol i wneud rheoliadau o dan adrannau 79 ac 80?

Dai Lloyd: Moving on, and more specifically with regard to the tribunals, why is the agreement of the Secretary of State needed to make regulations under sections 79 and 80?

[115] **Alun Davies:** Wel, mae hyn yn mynd â ni nôl, i ryw raddau, at y cwestiwn cyntaf gan y Cadeirydd amboutu ble mae Deddf Cymru yn ein gadael ni. Roeddwn i wedi awgrymu, wrth ateb y Cadeirydd, ein bod ni'n ystyried goblygiadau hynny. Ar hyn o bryd, mae angen cytundeb yr Ysgrifennydd Gwladol i wneud y

Alun Davies: Well, this takes us back, to a certain extent, to the Chair's first question on where the Wales Act leaves us. I suggested, in responding to the Chair, that we should consider the implications of that. At the moment, we need the agreement of the Secretary of State to make these appointments and, I believe, under

penodiadau yma ac, rwy'n credu, o dan y ddeddfwriaeth newydd, fe fyddai angen caniatâd Gweinidog y Goron.

the new legislation, we would need the consent of a Minister of the Crown.

[116] Rydym ni'n dal yn ystyried hyn ar hyn o bryd, so mae yna rywfaint o *health warning* fanna ein bod ni'n dal i ystyried y materion yma. Ond, ar hyn o bryd, mi fuasai angen cael caniatâd yr Ysgrifennydd Gwladol, a chan nad oes polisi gyda ni i newid hynny, rydym yn gweithredu'r un polisi yn y ddeddfwriaeth yma.

We are still considering this issue at the moment, so there is a slight health warning there that this issue is still being considered. But, at the moment, we would need the agreement of the Secretary of State, and as we have no policy to change that, we are working to the same policy in this legislation.

[117] **Dai Lloyd:** Jest i'ch gwthio chi ychydig bach yn rhagor ar hynny, ac rwyf hefyd yn nodi eich ateb blaenorol ynglŷn â gweithgareddau'r tribiwnlys a beth fyddai'n digwydd yn y dyfodol o dan Ddeddf Cymru 2017, ond yn benodol, os ydy'r Cynulliad yn dymuno addasu unrhyw beth sy'n ymwneud â thribiwnlys yn y dyfodol, ac wrth gwrs bod y Ddeddf newydd mewn bodolaeth, sut fyddai hynny'n creu anawsterau, neu sut fydddech chi'n gallu ymdopi efo'r angen i newid, o dan Ddeddf Cymru 2017, y Ddeddf newydd, felly? A allwch chi jest amlhau ar beth rydych chi, rwy'n credu, eisoes wedi ateb yn flaenorol?

Dai Lloyd: Just to probe a little further with regard to that, and I also note your previous response with regard to the activities of the tribunal and what would happen in the future under the Wales Act 2017, but specifically, if the Assembly wishes to modify anything with regard to the tribunal in the future, and that the new Wales Act is in existence, how would that create difficulties, or how would you be able to cope with the requirement to modify, under the Wales Act 2017, the new Act? Could you just elaborate on what, I think, you've already said?

[118] **Alun Davies:** Rwy'n credu y byddai'n saffach i fi ysgrifennu atoch chi yn ateb hyn. Ond a gaf i ddweud hyn? Roeddwn i'n aelod o'r pwyllgor pan wnaethom ni ystyried a sgrwtineiddio'r Ddeddf yma, ac mi oedd rhyw anghytundeb rhwng y pwyllgor yma, y Cynulliad yma, y

Alun Davies: I think it's safer for me to write to you in response to that question. But may I say this? I was a member of the committee when we considered and scrutinised this legislation, and there was some disagreement between this committee, this Assembly, the Welsh

Llywodraeth yma a Llywodraeth y Government and the UK Government.
 Deyrnas Unedig. Ac un o'r meysydd And one of the areas of disagreement
 anghytundeb oedd pwerau was the powers of Ministers of the
 Gweinidog y Goron. Crown.

[119] Fy marn i yw y dylem ni allu My view is that we should be able to
 gweithredu heb hynny, oni bai ei fod act without those consents, unless
 yn angenrheidiol. Dyna'r farn a oedd it's entirely necessary. That's the
 gen i fel aelod o'r pwyllgor yma a view I held as a member of this
 dyna farn y Llywodraeth hefyd. Ond committee and that is the view of the
 mae gyda ni'r ddeddfwriaeth fel y Government, too. But we do have
 mae hi. Nid wy'n credu bod Aelod fan legislation as it is in place. I don't
 hyn a fuasai'n meddwl bod y think there's a Member here who
 ddeddfwriaeth yma yn fath o would think that this legislation is the
 ddeddfwriaeth y liciwn ni ei gweld. kind of legislation that we would
 Ond dyma le'r ydym ni. Dyma beth have wanted to see. But this is where
 sydd gyda ni. we are. This is what we have.

[120] Felly, rŷm ni'n gweithredu y tu So, we are working within the
 mewn a chyda'r ddeddfwriaeth yma. boundaries of this legislation. At the
 Ar hyn o bryd—dyna'r sefyllfa fel yr moment—that's the situation as it
 oedd hi a dyna'r sefyllfa fel y mae hi was and the situation as it currently
 hefyd. I newid hynny, fe fuasai'n is. To change that, you would have to
 rhaid cael caniatâd i newid hynny, have consent to do that, because we
 achos byddem ni'n newid pwerau'r would be changing the powers of the
 Ysgrifennydd Gwladol. Secretary of State.

[121] **Dai Lloyd:** Océ.

Dai Lloyd: Okay.

[122] **Huw Irranca-Davies:** Right, thank you very much. Can I turn to another
 area now, which is that part of the Bill that refers to the meaning of 'in the
 area of a local authority'? What's taken our attention here is that section 82
 of the Bill inserts a regulation-making power into section 579 of the
 Education Act 1996, which will allow Welsh Ministers to make further
 provision about the meaning of the 'in the area of a local authority in Wales'.
 We understand that and we seem to understand what you're doing there, but
 could I ask why do you think it's appropriate for a Bill that is concerned with
 additional learning needs to reserve such a power that will apply to education
 law in general?

[123] **Alun Davies:** Because in terms of ensuring a child's education, what we

want to ensure is coherence and consistency and that the young person or the child's home local authority is responsible for both the ANL matters and any other relevant educational needs or functions. So, what we want to do is to ensure that we have consistency and coherence. We want to ensure that we have a holistic approach to the delivery of the individual's additional learning needs, but that those additional learning needs are delivered within the context of their wider educational needs, so the power is taken to ensure that you do have that holistic approach to the child or the young person's education.

[124] **Huw Irranca-Davies:** That's a very rational explanation of why you are extending something that is an additional learning needs Bill beyond into the wider education sphere. But on that basis, and the fact that that could have some significant implications that go beyond ALN—although the look of your face is suggesting not—. Well, let me put it to you: because you're extending it into that wider sphere of educational law, it seems slightly curious that we're on the negative procedure here rather than the affirmative.

[125] **Alun Davies:** Okay, let's differentiate those two issues. I don't think anybody would wish to argue that additional learning needs shouldn't be part of a holistic education experience for an individual learner, whoever they may be or at whatever part or stage of their education. So, we would always want the additional learning needs to be a part of a rich educational experience. What we're doing here is extending the responsibility for the delivery of that education experience to the home local authority. We're not extending these powers any further than that. We're simply saying that the home education authority should have responsibility for the delivery of that holistic, rich education experience for those people with additional learning needs. So, that's what we're doing. I think that's a fair and reasonable use of this power. The exercise of that power through the negative or affirmative procedure is, I think, a fair point of debate and a fair point of consideration. If the committee feels strongly on that—that that is, again, an area we would be happy to give further consideration to. But, I'll say to you—

[126] **Huw Irranca-Davies:** That's good to hear, and you've been frank and open with us on some of these interesting areas of tension, because it seems that, for example, if we have an NHS body, which could be an LHB or an NHS trust, this gives the opportunity to amend that definition at subsequent stages of the Bill. However, if we go a year down the line from now, you're going to use subordinate legislation. On that basis, it would seem reasonable to put forward the argument that there should at least be a stronger

mechanism for scrutiny and a vote on that.

[127] **Alun Davies:** This is an area that deals specifically with where responsibility lies.

[128] **Huw Irranca-Davies:** Yes.

[129] **Alun Davies:** I'm not convinced it's a major area of policy in terms of the exercise of it, but I recognise that if we are to extend it in this way, then Members may have different views. I think the objective of policy is absolutely right and proper. I think the objective of policy is correct. How that is implemented I am content to consider further.

[130] **Huw Irranca-Davies:** Okay, thank you for that. I have one final question to ask and it's in relation to Schedule 1. We're just curious as a committee why the explanatory notes are lacking any information in respect of Schedule 1. What happened there?

[131] **Alun Davies:** Schedule 1 deals with minor consequential amendments and repeals. I hope that the explanatory notes provide sufficient detail, but I recognise that these are, by their nature, minor and consequential amendments and my consideration is that we've dealt with this in an appropriate way.

[132] **Huw Irranca-Davies:** Well, by word of explanation, there is some—it does touch on it a little bit, but the explanatory notes to the Bill have no information about the provisions within Schedule 1. There is some information in it about two regulation-making powers, in chapter 5 of the explanatory memorandum, about subordinate legislation. However, there's no explanation for the inclusion, for example, of section 441A in the Education Act 1996—paragraph 3(17). It just struck us as unusual that there wasn't an explanation of that. Is it simply that it was omitted by error or ran out of time or—?

[133] **Alun Davies:** No, it wasn't omitted by error or as matter of time. I think it was a decision that I took in terms of the level of detail needed in order to appreciate and to understand what these amendments were seeking to deliver. What we're seeking to do is to ensure consistency in what has been quite a complex body of legislation. It comes back to our initial conversation on this matter. We are seeking to replace two systems, if you like—pre-16 and post-16—with a single holistic system of additional learning needs. What

that means is that we do need to make a number of minor consequential amendments to a number of Acts of Parliament, which currently populate this policy area. So, in order to simplify the regime, we have to ensure the legal integrity of it, which means making a number of these minor consequential amendments. It was my view, and it remains my view, that the policy intent of legislation is sufficiently clear as to enable an understanding of Schedule 1.

[134] **Huw Irranca-Davies:** Thank you very much. I'm just looking to my colleagues in case there are any further questions, but I think we've covered all the ground we need to. Minister, can I thank you very much, and your officials as well? And as I say, the transcript will be sent to you just for you to check for accuracy. Thank you very much indeed.

[135] **Alun Davies:** Thank you.

15:28

**Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad
arnynt o dan Reol Sefydlog 21.2 na 21.3
Instruments that Raise no Reporting Issues under Standing Order 21.2
or 21.3**

[136] **Huw Irranca-Davies:** Well, thank you, all. We're going to continue now, if the committee is content, on to the next item on the agenda: item No. 3— instruments that raise no reporting issues under Standing Order 21.2 or 21.3. And we have one statutory instrument with a clear report—it's an affirmative resolution instrument—the Partnership Arrangements (Wales) (Amendment) Regulations 2017. And we have three negative resolution instruments: the Non-Domestic Rating (Demand Notices) (Wales) Regulations 2017, the Social Care Wales (Proceedings before Panels) (Amendment) Regulations 2017, and the Fire and Rescue Services (Emergencies) (Wales) (Amendment) Order 2017. As I say, they raise no reporting issues, so do we have any comments or are we content to note those? Diolch yn fawr.

15:29

Papurau i'w Nodi
Papers to Note

[137] **Huw Irranca-Davies:** And if we move then on to item No. 4: papers to note. First of all, we have there to note correspondence from the Secretary of State for Wales relating to section 69, consequential provision, of 12 February 2017. We also have the correspondence from the committee to the Secretary of State for Wales on section 69, consequential provision. Are we happy to note both of those? [*Interruption.*]

[138] **David Melding:** I was going to say something—

[139] **Huw Irranca-Davies:** By all means.

[140] **David Melding:** I remembered we're in public session just in time.

[141] **Huw Irranca-Davies:** Yes, indeed. We'll come back. And then if we can turn to the stronger voice for Wales inquiry that we're currently engaged on—the response from committees. In your papers you have two responses there: the response from the Chair of the Health, Social Care and Sport Committee on 30 January, and the response from the Chair of the Children, Young People and Education Committee on 16 February. Are we happy to note those and we can return to them in discussion?

15:30

[142] **David Melding:** They clearly demonstrate the relevance of the inquiry, because they're picking out really quite significant issues that are going to be affected and require this sort of framework we're looking at.

[143] **Huw Irranca-Davies:** Indeed. And they'll certainly be played back as part of the evidence that we've received as well. But they do indeed seem to chime very well with the themes that we're going on, and are very helpful, including in terms of picking up on some of the preceding work that some of the committees have done on this area. So, we'll note those two responses.

15:31

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd
o'r Cyfarfod**
**Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting**

Cynnig:

Cynnig:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o'r cyfarfod yn unol â Rheol Sefydlog 17.42(vi).

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o'r cyfarfod yn unol â Rheol Sefydlog 17.42(vi).

Cynigiwyd y cynnig.
Motion moved.

[144] **Huw Irranca-Davies:** Then, if the committee is content, under Standing Order 17.42, we can resolve to meet in private to continue our business. Are we content? Thank you very much.

Derbyniwyd y cynnig.
Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 15:31.
The public part of the meeting ended at 15:31