

# Children and Young People Committee

## CYP(3)-06-10 - Paper 2

The Wales UNCRC Monitoring Group welcomes the commitment of the former First Minister and his colleagues to introduce legislation to embed the UNCRC in law for children and young people in Wales. This will build on the Assembly's 2004 resolution and the several Welsh Assembly Government strategies that have drawn on the Convention.

Within the confines of devolved competence, it is appropriate to construct an Assembly Measure around a general duty on Welsh Ministers to have due regard to the CRC, coupled with a strong scrutiny role for the Assembly and provision ensuring the involvement of external agencies and children and young people.

Unfortunately the proposal in the consultation to restrict the scope of the duty to 'relevant functions' will significantly undermine the positive impact of the duty and could undermine progress already made by the Welsh Assembly Government in building respect and protection for children's rights. Examples of this effect can be seen in the areas of child poverty, participation, play and protection for vulnerable groups (traveller children).

The 'relevant functions' approach is minimalist and sectoral, in opposition to the holistic approach the CRC demands. It fails to recognize the indivisibility and interdependence of rights, a fundamental feature of the CRC and its implementation.

These adverse effects can easily be rectified by removing the reference to 'relevant functions' and making the duty apply across the exercise by Welsh Ministers of all their functions. This is the single most important change that needs to be made.

There are other important points. The scrutiny role of the Assembly and the involvement of relevant external agencies and children and young people in implementation are both vital. Provisions about these things in the draft Measure need to be strengthened.

Lastly, the consultation document betrays misunderstanding or misrepresentation of the nature and requirements of the UNCRC. Obviously, this needs to be addressed, including by constructive engagement with available external expertise by both the Welsh Assembly Government and the National Assembly.

### Introduction

The Wales UNCRC Monitoring Group is pleased to be invited to give evidence to the Children and Young People Committee of the National Assembly for Wales on the proposed Rights of Children and Young People (Wales) Measure and would like to thank the Committee members for this opportunity.

We are a national alliance of non-governmental and academic agencies convened and chaired by Save the Children's Wales programme. The group is tasked with monitoring and promoting the United Nations Convention on the Rights of the Child in Wales.

The Wales UNCRC Monitoring Group membership includes: Action for Children, Aberystwyth University Centre of Welsh Legal Affairs, Barnardos Cymru, Cardiff University Department of Child Health, Children in Wales, Funky Dragon, Nacro Cymru, NSPCC Cymru, Save the Children Wales (Chair), Swansea University, School of Law. Observers: Children's Commissioner Office for Wales, Equality and Human Rights Commission, Welsh Assembly Government, Welsh Local Government Association, Children and Young People's Partnership Support Unit.

The UNCRC Monitoring Group was established in July 2002 just prior to the hearing of the UK Government's 2nd periodic report to the UN Committee on the Rights of the Child in Geneva. The Wales UNCRC Monitoring Group has increased in size and strength since this time, resulting in an increasing engagement of NGOs and academic institutions in developing their understanding and other partners' understanding of the importance of the UNCRC. It has also developed an important constructive yet critical collective voice that monitors the Welsh Assembly Government and UK Government's obligation to realise the rights of children.

As part of the monitoring process to the UN Committee on the Rights of the Child the UNCRC Group produced an interim report in 2006 called *Righting the wrongs: the reality of children's rights in Wales*. In 2007, the Group wrote *Stop, look, listen: the road to realising children's rights* which is the Wales NGO Alternative report that was submitted to the UN Committee on the Rights of the Child as part of the UK State party reporting process.

### The duty to have due regard

We support the idea of a general 'duty to have due regard' to the CRC rather than stronger formulations such as giving the CRC precedence over other matters to which Ministers must have regard or making CRC compliance a criterion for the legality of Ministerial action (c.f. section 6 of the Human Rights Act 1998).

The reasons for this are contained in 2.2 and 2.3 below:

Welsh Ministers are under a duty when exercising their functions also to promote other general objectives - for example equality of opportunity, sustainable development and the use of the Welsh language. While there should be no conflict in practice between these objectives and the requirements of the CRC, it is not clear that the CRC should in principle take precedence over them. Instead, the CRC should become another legally-prescribed point of reference along with these other general objectives. This will mean that the

obligations of the CRC are explicitly recognised as part of the legal framework within which policy is developed and government decisions are taken at devolved level in Wales;

The Measure will be the first general legislative measure of implementation in the UK, and it is being done at devolved level and not on a UK-wide basis. Welsh devolution so far has been progressed mainly through political, legislative and administrative mechanisms. So far as judicial aspects are concerned, England and Wales still share a legal system. 'England and Wales' is still regarded by most people as a single jurisdiction. While a 'duty to have due regard' will produce effects in administrative law, it is not likely to produce radically different approaches to judicial remedies in the courts in Wales compared to the courts in England. A stronger formulation, especially if making compliance with the CRC a question of legality, would be much more likely to produce such effects. While we fully support judicial implementation along those lines, we recognise that it is, on balance, not appropriate to try to legislate for it within Wales alone at this particular stage of Welsh devolution.

### **'Relevant functions'**

However, the proposed duty to have due regard to the CRC would only be effective if pervasive. The 'relevant functions' approach renders it ineffective and possibly counter-productive of the goal of progressive realisation of the CRC. This is because it is a sectoral approach, because it is self-referential rather than UNCRC-referential and because it will undermine effective accountability.

### **A sectoral approach**

The disadvantages of a sectoral approach are detailed in 2.5 and 2.6 below

It focuses only on specific areas, leading to neglect of children's rights in other areas. The model put forward in the consultation document may in fact be worse than doing nothing, because limitation to specific policy areas of the scope of a duty to have due regard to the CRC may well encourage disregard of the CRC in other areas.

It makes it difficult if not impossible to ensure adequate accountability. In the model proposed in this consultation, Assembly scrutiny committees would see bits of a picture, never the whole picture. Co-ordination of scrutiny would be difficult. This would hamper effective engagement of external stakeholders, children and young people and the public at large.

Research for UNICEF published in its 2007 Report, "Law Reform and Implementation of the Convention on the Rights of the Child", reveals a variety of different approaches that have been taken to improving protection of children's rights in countries around the world. The study makes it clear that no one approach is sufficient in itself and that even a systematic approach to sectoral law reform (and the proposal in the consultation document could not be described as systematic) tends to neglect some CRC rights, for example privacy and freedom of movement and association. It also tends to lead to recognition of the obligation to respect children's views only in specific circumstances or contexts, with inadequate mechanisms for accountability.

Further guidance on this point can be seen in the extracts from General Comment 5 (2003) of the UN Committee on the Rights of the Child and in the extracts from its 2002 and 2008 Concluding Observations on the UK State Party reports. These are at **Annex 1**.

Progressive policies require 'joined-up' government based on common principles. Where the CRC is perceived as relevant only to specific policy areas, not only is it likely to be ignored in other areas, but progress within those areas to which it is said to be relevant is undermined. Some examples are given in **Annex 2**. It is especially depressing to note that the sectoral approach proposed in the consultation document actually runs counter to Welsh Ministers' carefully constructed position on child poverty. Such internal inconsistency represents a woeful failure of joined-up government.

Within the confines of devolved powers, an element of sectoralism is inevitable. A general duty to have due regard could not, for example, impact on most governmental decision-making on asylum or criminal justice. However, to further reduce the scope of application of the duty in the way proposed would discredit attempts to present the Measure as a general measure of implementation.

### **Self-referential not UNCRC-referential, undermining accountability**

The 'relevant functions' approach is an inversion of what is required. The starting point in any attempt to 'embed the UNCRC' should be the CRC, not the Welsh Assembly Government's existing policies. As already stated, the CRC should become a ubiquitous point of reference in the exercise of Welsh Ministers' functions, similar to equality of opportunity, sustainable development, etc. under the GOWA 2006. The statutory scheme should support this, as in those cases.

It is revealing to examine the suggested method of identifying 'relevant functions'. It appears that officials and Ministers have started with the question of 'what we do' rather than 'what the CRC requires'. They have identified some of their existing strategies, policies, programmes and funding streams into which it seems relatively easy to fit aspects of the CRC. Some are already ostensibly informed by the CRC, for example Rights to Action and the Child Poverty Implementation Plan. In relation to others there is perhaps a view that it would be fairly easy to 'pull in' the CRC in similar fashion. In many cases the 'functions' listed are policy documents or general objectives for the exercise of statutory powers and duties rather than the powers and duties themselves. Accordingly it is not clear that the duty to have due regard would in practice bite on future exercises by Welsh Ministers of specific statutory powers and duties. At the very least, it would be difficult to identify the exercise of a specific statutory power or duty as being clearly covered by the new duty.

The overall effect is to neutralise the impact of the new duty on the WAG and to undermine accountability. Obviously, it is not worth expending legislative effort to do that.

## **The Assembly scrutiny role**

The role of the National Assembly is crucial. It should encompass scrutiny of the draft 'children's scheme' and scrutiny of the government's performance in carrying out the scheme. This should be the principal mechanism for accountability. External stakeholders, including those who are statutory consultees under section 3(4), should all be able to engage with this democratic process as well as to engage directly with the Welsh Assembly Government.

In this respect the draft Measure follows the 'parliamentary scrutiny' model for human rights implementation which some experts argue is equally if not more important than judicial enforcement - especially in relation to positive rights. The reason for that view is that parliamentary bodies are democratically accountable and can generate complementary processes in which civic society can engage. Judicial authorities cannot (and arguably should not) generate such processes. We believe that both parliamentary and judicial mechanisms should be developed for CRC implementation within the UK. However, for the reasons explained above, we think that it is right in the context of the current stage of Welsh devolution to pursue the parliamentary scrutiny model rather than the judicial, in this Wales-only Measure.

Assembly scrutiny needs to be robust, well-informed and co-ordinated. There are two main aspects to this, both of which are included in the draft Measure but both of which require some attention. The first is the legislative scrutiny role and the second is the role of scrutiny of executive action.

As to the first, the draft Measure would require a scheme to be laid before the Assembly and periodically revised. This process should be informed by, and in turn it should inform, the implementation processes of the CRC itself. But the Assembly's role would be enhanced, and the accountability mechanism strengthened, if the Assembly were empowered to require Ministers to consider revision at any time, for purposes specified by the Assembly when making the request. This is not provided for at present in the draft Measure.

Another aspect of legislative scrutiny concerns the use by Welsh Ministers of the proposed power to amend existing legislation by means of statutory instrument. This is a substantial power to confer on the executive and the minimum requirement should be affirmative resolution procedure, as proposed in the draft Measure. However it is worth noting that Schedule 2 to the Human Rights Act, which makes provision for remedial orders under section 10 of that Act, includes a number of additional safeguards to ensure adequate democratic scrutiny of draft subordinate legislation intended to address incompatibility of UK law with the Convention rights under the European Convention on Human Rights. Consideration should be given to following this precedent. It would enhance the Assembly's role and strengthen the accountability mechanism.

The second aspect of Assembly scrutiny is that of calling Ministers to account for their performance in carrying out the statutory scheme. The draft Measure requires Ministers periodically to lay a report before the Assembly. Again, consideration should be given to strengthening the Assembly's position. For example, the Assembly itself could be empowered to call for such a report or for a report on any particular aspect of Ministers' performance under the scheme.

## **Involvement of external agencies and of children and young people**

On the Welsh Ministers' side of the process, there should be a more extensive provision about consultation than that which is offered in the current draft Measure. Children and young people, the Children's Commissioner and other external agencies are not merely an integral part of machinery for effective accountability. They also constitute a resource to which Ministers can turn when seeking to identify priorities and ways of achieving goals set within those priority areas. In this regard the CRC's own understanding of 'resource' is instructive:

'Resource must be understood as encompassing not only financial resources, but also other types of resources relevant for the realization of economic, social and cultural rights, such as human, technological, organizational, natural and information resources. Resources are also to be understood in qualitative terms and not solely quantitative.'

Report of the day of general discussion on "Resources for the Rights of the Child - Responsibility of States", UN Committee on the Rights of the Child, 21 September 2007

As presently drafted the Measure will impose an obligation on Ministers to consult once a draft scheme has been settled. This is too late. The external stakeholders should be brought in to the iterative process of developing the draft scheme. This would be consistent with the principle of inclusive exercise of governmental functions which is already reflected in the Government of Wales Act 2006. It would also be likely to produce a better draft scheme. It would help to harness external resources towards implementation and to stimulate wider engagement in the Welsh Assembly Government's efforts to fulfil its obligations under the CRC.

## **Knowledge and understanding of the UNCRC**

Throughout the consultation document an attempt seems to have been made to use simple language. Perhaps accuracy has been a casualty of this. A more worrying interpretation is that the inaccuracies betray officials' and/or Ministers' lack of understanding of the nature of the obligations of the CRC and of what is required in order to give effect to them in practice.

A specific example of inaccuracy is the reference to the 'right to clean drinking water' in paragraph 1.6 of the consultation document, as explained in 5.3 to 5.7 below.

According to paragraph 1.6 of the consultation document, we all take for granted in Wales the 'right to clean drinking water'. This is misleading because there is not a 'right to clean drinking water' as such. The relevant right is set out in Article 24.1 of the CRC. It is the

right of the child to enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health.

The provision of clean drinking water is something that governments are obliged to take measures to secure, as a particular aspect of their pursuit of 'full implementation' of this right (see Article 24.2 (c)). Many of us may well take it for granted that we have clean drinking water in Wales, and it may be that no further measures are necessary to deliver this particular aspect of implementation of the Article 24.1 right.

However, complacency about 'full implementation' of the Article 24 right in Wales would be misplaced. Article 24.1 requires governments to 'strive to ensure that no child is deprived of his or her right of access to such health care services'. Rights of access to services can be undermined in a variety of ways and often because of several different factors which may range from marginalised status (e.g. refugee/disability/low income family/traveller family) to the way in which services are configured and resourced. We know there are problems in Wales as indeed elsewhere in the UK in this regard. We know the problems require a joined-up response underpinned by common principles.

Accordingly the 'right' to which the duty to secure provision of clean drinking water attaches is not one which we can take for granted in Wales. It is not equally accessible to all children. It is appropriate to impose a legal requirement on the Welsh Ministers to pay due regard to the need to fully implement this right.

Unfortunately such a requirement will have little or no impact if confined to specific policies and programmes as proposed in this consultation. The real issues that need to be addressed in Wales in order to achieve 'full implementation' of the Article 24 right are not capable of being addressed by means of a sectoral approach.

In the consultation document in general, there is a failure properly to convey what the CRC is about. Children do have the same human rights as everyone else, as stated at paragraph 1.7 of the consultation document, but the CRC was not produced simply because children 'may need extra help'. It is about creating mechanisms for delivering optimal conditions for the nurture of children in families and communities. It has its origins in recognition of the need to address inequalities in provision for and protection of children and its pre-history goes back beyond modern international human rights law. The objectives of the CRC are wholly consistent with and supportive of the broad social justice agenda of past and present administrations in Wales as well as of the ideals underpinning the post-2<sup>nd</sup> World War foundational international human rights instruments. It is therefore surprising that the consultation document makes neither acknowledgement of this nor any attempt to show how a holistic, pervasive approach to CRC implementation sits squarely within established Welsh public policy.

The above point is further illustrated by the way in which the proposed Measure intends to include young people aged 18 to 24 years. This displays a lack of understanding about the legal position of persons under 18 years of age who are not fully fledged legal persons in their own right and are therefore often unable to access their rights on their own behalf. We appreciate the spirit behind the intention to adopt the principles of the UNCRC for over 18 years and we fully acknowledge the need to pay special attention to access to rights for this age group. Further, the inclusion of over-18s in aspects of the implementation, such as consultation, seems wholly appropriate. However, we would see it as simply not possible to apply the UNCRC as such to over-18s.

Much of the narrative about the general purpose of the proposed Measure misses the central point that at the moment the CRC is a treaty which is binding in international law on the UK, but that within the UK it has very limited legal effect. There is no effective way in which children and their families within Wales can hold the government to account for the promises set out in the CRC. This is, presumably, the gap that Welsh Ministers had in mind when committing 'to embed the UNCRC' in law in Wales.

## **Conclusion**

We have made clear in this submission that the 'relevant functions' notion constitutes a major flaw in this legislative design. In order for the Measure to produce any benefit, the duty to have due regard to the CRC must be made pervasive. Other improvements are also indicated and the Group will be submitting a formal response to the consultation in which these points are more fully explained and other points will also be made.

We would also like to re-iterate that we acknowledge the bold step that Ministers attempted to make when the original vision for this Measure was announced. The task of legislating to give further effect to the CRC in Wales requires imagination and innovation. This is especially so because of the demarcation of governmental power between the devolved and UK levels. There are many people and organisations in Wales and beyond, including in the specialist agencies of the UN, who are willing to contribute their expertise and efforts to help Welsh Ministers in this task. The Group is one such organisation and the Welsh Assembly government as well as other statutory bodies have observer status on the Group.

It is therefore a pity that this consultation is the first time external partners have had an opportunity to contribute. A task of this nature cries out for an open, inclusive and transparent approach to identifying the most appropriate legislative model as well as to its implementation in due course. It would have been useful, for example, if Welsh Ministers had been able to benefit from open dialogue with the UN Committee on the Rights of the Child as well as relevant Welsh non-governmental organisations and statutory bodies. The objective, independent and wise counsel of the Welsh judiciary and senior legal practitioners might have been especially helpful as to the implications for the law and legal system of Wales.

It is not apparent from the consultation document that any of this has occurred in the period between the First Minister's announcement in July 2009 and the publication of the consultation in March 2010. The timid, self-referential, complex and sectoral approach that has emerged for consultation suggests that the process of policy development has indeed suffered from a lack of

engagement with external expertise.

We therefore urge that consideration be given to how Welsh Ministers and indeed the Assembly as a parliamentary body can now actively engage with external experts and stakeholders to help take forward the Measure in a way that will result in realisation of the original vision of embedding the CRC in law for children in Wales.

## **Annex 1**

### **Extracts from the UN Committee's General Comment No 5 (2003) on General measures of implementation of the Convention on the Rights of the Child CRC/GC/2003/5**

The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. Its experience in examining not only initial but now second and third periodic reports under the Convention suggests that the review process at the national level has, in most cases, been started, but needs to be more rigorous. The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. (18)

The Committee believes that effective implementation of the Convention requires visible cross-sectoral coordination to recognize and realize children's rights across Government, between different levels of government and between Government and civil society - including in particular children and young people themselves. Invariably, many different government departments and other governmental or quasi-governmental bodies affect children's lives and children's enjoyment of their rights. Few, if any, government departments have no effect on children's lives, direct or indirect. Rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others. (27)

In examining States parties' reports the Committee has almost invariably found it necessary to encourage further coordination of government to ensure effective implementation: coordination among central government departments, among different provinces and regions, between central and other levels of government and between Government and civil society. The purpose of coordination is to ensure respect for all of the Convention's principles and standards for all children within the State jurisdiction; to ensure that the obligations inherent in ratification of or accession to the Convention are not only recognized by those large departments which have a substantial impact on children - education, health or welfare and so on - but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.

Many States parties have with advantage developed a specific department or unit close to the heart of Government, in some cases in the President's or Prime Minister's or Cabinet office, with the objective of coordinating implementation and children's policy. As noted above, the actions of virtually all government departments impact on children's lives. (39)

The Committee emphasizes that States parties to the Convention have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-State service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.' (43)

### **Extracts from the 2002 and 2008 Concluding Observations**

#### **Legislation**

While noting the entry into force of the Human Rights Act 1998, which incorporates the rights enshrined in the European Convention on Human Rights into domestic law, the Committee is concerned that the provisions and principles of the Convention on the Rights of the Child - which are much broader than those contained in the European Convention - have not yet been incorporated into domestic law, nor is there any formal process to ensure that new legislation fully complies with the Convention. The Committee notes that the devolved administrations have introduced some legal reforms to ensure compatibility with the Convention such as ensuring that the education system in Scotland complies with article 12 and that corporal punishment in the day-care system in Wales is prohibited, but remains concerned that the State party does not ensure that its legislation is compatible with the Convention throughout its territory. (8)

The Committee encourages the State party to incorporate into domestic law the rights, principles and provisions of the Convention in order to ensure that all legislation complies with the Convention and that the provisions and principles of the Convention are widely applied in legal and administrative proceedings. The State party is also encouraged to provide training in the provisions of the Convention and to disseminate the Convention more widely. 2008 The Committee, while welcoming the State party's efforts to implement the concluding observations on previous State party's reports, notes with regret that some of the recommendations contained therein have not been fully implemented, in particular:

With respect to the concluding observations on the second periodic report of the United Kingdom (CRC/C/15/Add.188), those recommendations related, inter alia, to incorporation of the

Convention in the State party's law (paras. 8-9); budgetary allocations (paras. 10-11); dissemination and awareness of the Convention (paras. 20-21); non-discrimination (paras. 22-23); corporal punishment (paras. 35-38); education (paras. 47-48); CRC/C/GBR/CO/4 asylum-seekers and refugee children (paras. 49-50); juvenile justice (6)

The Committee urges the State party to take all necessary measures to address those recommendations from the concluding

observations of the previous reports that have not yet - or not sufficiently - been implemented as well as those contained in the present concluding observations. In this context, the

Committee draws the attention of the State party to its general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child. (7)

## **Legislation**

The Committee appreciates the State party's efforts to harmonize its legislation with the Convention, particularly with the adoption of the Children's Act 2004 for England and Wales which, inter alia, created the Children's Commissioner for England, and the Childcare Act 2006. However, the Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it. (10)

The Committee recommends that the State party continue to take measures to bring its legislation into line with the Convention. To this aim, the State party could take the opportunity given in this regard by the development of a Bill of Rights in Northern Ireland and a British Bill of Rights, and incorporate into them the principles and provisions of the Convention, e.g. by having a special section in these bills devoted to child rights.

## **Annex 2 The weakness of the sectoral approach**

The introduction of a child rights Measure provides the Welsh Assembly Government and the Welsh Ministers with an excellent opportunity to further embed their commitment to children's rights through the implementation of the UNCRC. The Assembly's adoption of the UNCRC as a basis for its policy making has led to some good progress and developments in coordination and awareness raising about the nature of children's rights and Wales progressive thinking is seen as leading the way in the UK in this area.

This progress however will be undermined if the proposed Measure in its current sectoral form were to be implemented.

A powerful example of this is the task of ending child poverty.

## **A Child Poverty**

WAG's current approach to child poverty recognises that children's poverty is actually about family poverty; with families' lack of economic resources and the pervasive impact of this on children and families' experiences. It follows then that children will be affected by:

economic policy

welfare to work policy

transport policy

play and participation

benefit and tax credit take up and administration

community safety

child care

WAG's remit includes or shares responsibility for all of these policy areas that affect the lives of children and those living in poverty and these areas are likely to be reflected in the new Child Poverty Strategy. Limited aspects of some of these policy areas may be covered by the list of proposed 'relevant functions' to be included in the children's scheme but the failure clearly to embrace all of them illustrates just how this Measure will 'miss the boat' in terms of impacting on those areas that hugely affect children's lives.

Uniquely in the UK, WAG have taken a child rights approach to child poverty, recognising that poverty as a rights issue requires a multi dimensional approach that is based not just on 'income' poverty but on improving children's wellbeing and reducing equality of opportunity.

UNICEF's 2007 report, "Child Poverty in Perspective: an overview of child well-being in industrialised societies" stated that:

'Understanding child poverty as a denial of children's fundamental human rights resulting from a lack of resources emphasises the interrelated and interdependent dimensions of deprivation. For example access to decent housing, health care, a balanced and adequate diet will contribute to children's success at school. By contrast, overcrowded accommodation, located in a deprived neighbourhood may contribute to poor health, low educational achievement and disaffection from school'

Assumptions that children from all households and families can claim their rights through family membership are essentially flawed. We know that poor households and adults living in poverty face particular difficulties in accessing services, in participating and in commanding an adequate family income. In this way children who grow up in marginalised families or who are removed or expelled from family units are not able to claim rights through family membership in the same way as other children.

One very clear example of this is the intention to introduce further conditionality into the benefits system. It is not clear how the

incomes of children whose parents fail to fulfil the new conditions will be protected. At the moment the everyday lives of children and young people are still shaped by social inequalities and family background. However, the presentation of children as rights bearers is an essential step in achieving better childhoods and outcomes for children and young people in Wales.

The Child Poverty Measure recognises that action across all areas of state action is necessary in order to tackle child poverty. An approach that chooses the areas which will and will not be responsible for children's rights runs counter to this approach and may in fact act to undermine the desired outcomes of the Child Poverty Measure.

## **Participation**

Article 12 of the UNCRC enshrines the right of all children to be heard and respected and for their views to have an impact on decision-making that affects them. Meaningful participation is essential for children to access the full range of their rights under the CRC: this is one aspect of the indivisibility of rights. The Welsh Assembly Government has played a key role in developing participation of Welsh children including through the establishment of Funky Dragon, the Children's and Young Peoples Assembly for Wales, and of Youth Forums and Schools Councils across Wales. These developments are set within the framework of the Assembly Government's commitment to the United Nations Convention on the Rights of the Child now formally adopted as the basis of all its work for children and young people (Rights to Action, WAG, 2004).

The Welsh Assembly Government initiated The Participation Consortium, a multi-agency strategic body, in 2003, and co-funds the Participation Unit which was established in 2004. Together they work with the Welsh Assembly's Participation Project to coordinate and share good practice and promote and support the development of meaningful participation at all levels including within the Welsh Assembly Government and other large statutory organisations. This includes action to establish children's participation across all functions of government not just youth work and social care. The National Participation Standards were developed as a tool to promote participation across Wales and were endorsed by the Children and Young People Cabinet sub-committee and launched by the Minister in 2007.

In acknowledgement of this progress the Committee on the Rights of the Child has singled Wales out in their Concluding Observations for our good practice. Again Wales is seen as a leader in promoting children's participation at a national and local level and across public bodies and policy areas. It is becoming accepted practice in some areas to consult with children on a range of issues and to promote their active involvement in setting agendas and priorities across all areas of their lives. Recent developments in the Welsh Assembly Government include the setting up of Participation 'link workers' at Divisional Officer level to promote children and young people's involvement across the WAG departments, and training on participation is now mandatory for all new employees.

We are therefore deeply concerned that the Measure in its proposed form will badly undermine, indeed reverse, the progress and increased willingness to respect the views of children in Wales. If the children's rights Measure does not require Ministers to have due regard to, for example Article 12, across all their functions then the implication is that children have a lesser or no entitlement to express views and have them taken into account in areas other than those described in the proposed scheme. This seems to work against the expressed commitments and intentions of the Ministers and the Welsh Assembly Government as embedded in their support of the Participation Standards, local participation strategies, the recent Children and Families (Wales) Measure, the Children and Young People's Planning Partnerships to name but a few. How, for instance, will the child rights Measure sit with the new National Participation Strategy being developed as we write by WAG's own Participation Project?

## **Play**

Article 31 of the UNCRC recognises the rights of children to rest and leisure, to engage in play and recreational activities and to participate freely in cultural life and the arts. The ability to play and learn informally is recognised as significantly contributing to children accessing their human rights of survival, development, protection and participation. The objective of providing safe places to play for children requires thinking about provision in local communities, about access to play facilities and about creating and protecting spaces for play.

Recent evidence submitted by Barnardos to the Children and Young People Committee's enquiry on Safe places to Play and Hang Out highlighted the following issues:

For children in rural areas their right to play is affected by lack of provision, rural poverty, transport and traffic speed.

Children living in low income households and areas of deprivation experience issues with cost, accessing existing provision e.g. after school clubs, environmental poverty, street play, lack of provision for older children and arising community safety and anti-social behaviour issues.

Disabled children find that their right to play is hindered by parental concerns about safety, transport, adequate support for children to access provision, additional cost of targeted child care and clubs and problems with bullying.

Ensuring children's right to play is therefore a responsibility that is shared across the government and therefore requires coordination across the Ministerial portfolios and policy areas. This is further illustrated when we look at protecting play opportunities and physical spaces to play - issues of land designation, commercial development and economic regeneration, highways and planning decisions and applications spring to mind as crucial in impacting on a child's right to play.

## **Gypsy and Traveller children**

The rights of Gypsy Traveller children have been consistently highlighted as a concern by the Committee on the Rights of the Child amongst others. We know that children from these families have some of the worst outcomes in education; have poor physical and mental health and life expectancy; suffer discrimination, racism and bullying; many live in inadequate or insecure accommodation, live in poverty and traditionally do not access mainstream services or participate in decision making.

The Welsh Assembly Government has recognised this in the development of their current draft Strategy 'A Road less Travelled'. The issues they feel need to be addressed to promote the rights of Gypsy Travellers are social exclusion and racism, educational disadvantage, cultural and safety issues and social and economic issues. If the Assembly are committed to seeing the rights of Gypsy Traveller children realised then the proposed child rights Measure should require Ministers to address the multi-dimensional nature of their lives.

Many more examples could be given, the right to the highest attainable standard of psychological health and emotional well being is impacted by housing, transport and access to services; elements of youth justice provision that are devolved include housing, education, employment and training; domestic abuse whilst recognised as a child rights issue by WAG does not appear on the list, neither are the Participation Standards referenced (although referred to and held up throughout Europe as an example of good practice)

Children's rights need to be understood as indivisible and interdependent and need to be reflected as such by being given pervasive effect and not limited to 'relevant functions' as in the proposed Measure.