



Children in Wales  
Plant yng Nghymru

## The Welsh Government's response to the Committee's report on children's rights in Wales

Dear CYPE Committee Chair,

We welcome your letter of 14<sup>th</sup> October and request for our views on

- The Welsh Government's response to your recommendations from your inquiry into children's rights in Wales
- Any significant updates relevant to the report since you took evidence

We were delighted to provide both written and oral evidence to the Committee in late 2019 as part of the Wales UNCRC Monitoring Group. We very much welcome the 16 Recommendation in your report and pleased to see that our contribution has helped inform your conclusions.

The impact and response to COVID-19 has demonstrated that now more than ever that the rights of children, as enshrined through the CRC, must be prioritised and realised in all decision making. The duties prescribed through the Rights of Children and Young Persons (Wales) Measure 2011, including the production and publication of timely CRIAs, must continue to be observed within the context of the challenging environment in which policy decisions are currently being made.

### Our Response to the Welsh Government response

#### **Recommendation 1: The Committee recommends**

**That the Welsh Government restate a demonstrable commitment to give due regard to children's rights in all decisions it makes, informed by a robust Child Rights Impact Assessment unless there is a clear reason for not undertaking one.**

WG Response: Accept

We welcome the recommendation and response, believing that the forthcoming revised Children's Rights Scheme, alongside other related activities referenced by Welsh Government in their response, provides a renewed opportunity to restate a full and unequivocal commitment to children's rights as the foundation of good government.

We believe this could be complimented by an effective and on-going communications campaign, as was highly successful in the lead up to the 30<sup>th</sup> anniversary celebrations of the CRC in 2019.

**Recommendation 2: the Committee recommends**

**That at the next opportunity a Ministerial role is created with clear and defined responsibilities for children and young people and which has a stated role of holding the Cabinet to account to deliver the provisions of the Rights of Children and Young Persons (Wales) Measure 2011.**

WG Response: Reject

We remain of the view that the Welsh Government should appoint a Minister for Children with oversight of, and accountability for all policy areas which have an impact on children. A Cabinet sub-committee on children should also be established to ensure better coordination and scrutiny of children's issues across the whole of Government. We have re-stated this view in our recently published Manifesto for the forthcoming Senedd elections next May <https://www.childreninwales.org.uk/news/news-archive/putting-children-first-manifesto-senedd-elections-2021/>

**Recommendation 3: The Committee recommends**

**That the Welsh Government insert provision in its revised Children's Rights Scheme for all Welsh Ministers to undertake initial and follow up training on the Rights of Children and Young Persons (Wales) Measure 2011's "due regard" duty.**

Response: Accept in Principle

As the due regard duty prescribed in legislation is non-delegable, all Welsh Ministers should therefore receive training on the CRC and the Measure. Training is also crucial in enabling officials, particularly those leading on the development of CRIAs, to further their knowledge and understanding of the CRC and the due regard requirements. The pending revised Children's Rights Scheme is an opportunity to reinforce this commitment. Children in Wales is pleased to have been approached by the Welsh Government to support the development of their training approach.

**Recommendation 4: The Committee recommends**

**That the Welsh Government include within the complaints mechanism in its revised Children's Rights Scheme the right to challenge a decision not to undertake a Child Rights Impact Assessment on any area of policy development.**

Response: Accept

The pending revised Children's Rights Scheme provides a renewed opportunity to promote the mechanisms by which to challenge any decision not to undertake a CRIA, and these mechanisms should be made widely known. We do hope however that CRIAs are consistently undertaken on all proposed policies, budgetary decisions and legislation likely to impact on children, and this is particularly important in the current context in with decisions being taken at pace.

**Recommendation 5: The Committee recommends**

**That the Welsh Government publish all completed Child Rights Impact Assessments, including on non-legislative policy decisions, as a matter of course.**

Response: Accept

We agree that all completed CRIAs should be routinely published to aid learning, knowledge transfer and transparency, as well as to enable scrutiny by children and young people. The location where published CRIAs can be access should be widely promoted.

**Recommendation 6: The Committee recommends**

**That the Welsh Government restate its commitment to ensuring that the legislative requirements in relation to children's rights are fully and effectively reflected in its financial decisions across all portfolios by swiftly amending its Budget Improvement Plan to make clear the specific steps the Welsh Government is taking to ensure it is complying with the "due regard" duty in the Rights of Children and Young Persons (Wales) Measure 2011.**

Response: Accept

We welcome this recommendation and response committing to amend the Budget Improvement Plan to ensure full compliance with the duty prescribed through the Measure.

**Recommendation 7: The Committee recommends**

**That the Welsh Government return to publishing an individual Child Rights Impact Assessment on its Draft Budget to evidence compliance with the Rights of Children and Young Persons (Wales) Measure 2011, until this Committee can be reassured that the Strategic Integrated Impact Assessment accompanying a Draft Budget demonstrates the duty of "due regard" to the United Nations Convention on the Rights of the Child has been exercised.**

Response: Reject

Notwithstanding the commitment to improve the present budgetary assessment process, the Welsh Government's budgetary considerations should be subject to a CRIA. Presently, the Government's preference for publishing a more holistic Strategic Integrated Impact Assessment (SIIA) to accompany their draft budget, means that it is not possible to fully assess whether the maximum level of available resources to fulfil CRC obligations are being used.

**Recommendation 8: The Committee recommends That the Welsh Government develop and publish a national awareness-raising strategy with measurable outcomes to promote knowledge and understanding amongst the public, including children and young people, of the United Nations Convention on the Rights of the Child and its Optional Protocols.**

**Response: Accept**

We welcome this announcement and look forward to engaging with Welsh Government to help ensure that Section 5 of the Measure is fully realised and is subject to reporting arrangements under Section 4.

**Recommendation 9: The Committee recommends**

**That the Welsh Government ensure human rights education, including children's rights with reference to the United Nations Convention on the Rights of the Child, is taught under the new Curriculum for Wales.**

**Response: Accept**

Whilst we welcome the intent to make human rights education mandatory in all schools in the new curriculum, our appeal that a 'due regard' duty to the CRC be placed on the face of draft legislation has yet to be accepted. Whilst we welcome publication of a Child Rights Impact Assessment alongside guidance issued in January 2020 committing to embedding human rights education across each of the AoLEs and making it a mandatory element within the new curriculum, we do not believe this is sufficient in itself. Guidance can be subject to change, and indeed, the Bill provides Welsh Ministers with significant powers to make future amendments. Guidance does also not have the same recognised status as primary legislation, and will not provide sufficient clarity for frontline professionals.

The Bill must include a duty of due regard to the UNCRC on its face, which would ensure parity with existing duties placed on public bodies and individuals already secured through the Additional Learning Needs and Education Tribunal (Wales) Act 2018, and the Social Services and Well-Being (Wales) Act 2014. A mandatory duty on the Bill would ensure that the inconsistencies currently witnessed between schools around human rights education are addressed, by embedding the CRC within a coherent legislative national framework which applies to every learner in every school in Wales.

**Recommendation 10: The Committee recommends**

**That the Welsh Government include a strengthened and child friendly complaints mechanism in its revised Children's Rights Scheme to empower children and young people to seek redress when necessary and to uphold their rights.**

Response: Accept

We welcome the intention to strengthen the complaints process and ensure that it is more child friendly and accessible, and would be happy to support Welsh Government in their endeavours, including through the need to engage young people as part of this process. Whilst the revised Children's Rights Scheme can set out the enhanced arrangements, there will be a need to ensure that this is complemented by further communication to promote awareness amongst children of the process to make a complaint where they feel that compliance has not been met.

However, current legislation does not provide direct legal accountability for children who consider their rights to have been breached. Section 6 of the Measure gives Ministers power to amend legislation if it is considered desirable for the purpose of giving further or better effect to the CRC. The example of Scotland, which has introduced a Bill to fully and directly incorporate the UNCRC into Scots law, demonstrates the potential of a reserved model of devolution to enable incorporation of the CRC in a manner which provides for directly enforceable rights at devolved level. We believe that Wales should urgently bring forward legislation to fully and directly incorporate the CRC into Welsh law

**Recommendation 11: The Committee recommends**

**That the Welsh Government call on the UK Government to ratify the 2014 United Nations Convention on the Rights of the Child Optional Protocol to give individual children the right to make representations directly to the United Nations.**

Response: Accept

The UK Government has not ratified OP3 despite requests from civil society organisation and the United Nations to do so. Ratification would provide individual

children an opportunity to make direct representation to the UN and seek redress where they consider their rights to have been breached.

**Recommendation 12: The Committee recommends**

**That the Welsh Government set out in its revised Children's Rights Scheme a clear strategy to ensure the participation of children and young people in discussions on Welsh Government decisions which affect them.**

Response: Accept

The revised Children's Scheme provides an opportunity to outline the strategy by which children and young people can participate effectively on Welsh Government matters which affect them. The Children and Young People's National Standards for Participation, aligned with Article 12 of the CRC, provides the agreed framework through which engagement should take place - <https://www.childreninwales.org.uk/our-work/participation/participation-standards/> Children in Wales, through our Young Wales programme, are working with Welsh Government to help ensure that sustainable models of representation are in place.

**Recommendation 13: The Committee recommends**

**That the Welsh Government publish a detailed strategic response to the United Nation's Committee on the Rights of the Child 2016 Concluding Observations within the next six months. This should include details of progress made against all the recommendations and what actions are being taken to address areas of concern.**

Response: Accept

We welcome this announcement, as a positive step towards Welsh Government outlining the actions taken and forthcoming to address the areas of concern raised by the UN Committee through their Concluding Observations. We would further suggest this tracking process is formalised and is subject to regular monitoring and reporting arrangements.

We believe that this process could be strengthened by there being a National Strategy/Action Plan for children in place. The monitoring arrangements for this Plan

could take account of the UN Committee's recommendations as well as be provide more scope for review and changes between lengthy UN reporting rounds.

**Recommendation 14: The Committee recommends**

**That the Welsh Government publish an annual update of progress made against the United Nation's Committee on the Rights of the Child Concluding Observations, to be laid before the Senedd and scrutinised annually by the relevant committee.**

Response: Accept

We support this recommendation. We however believe that annual reporting against actions set out within a National Strategy/Action Plan for children, which encompass the Concluding Observations, would provide a more robust and sustainable monitoring and compliance model.

**Recommendation 15: The Committee recommends**

**That all devolved public bodies (such as local authorities and local health boards) should be placed under a specific duty to have due regard to the United Nations Convention on the Rights of the Child. The Welsh Government must provide guidance to all devolved public bodies as to what this means in terms of their day to day functions and how compliance will be monitored.**

Response: Reject

We are disappointed that this recommendation has not been accepted, and believe that a public sector duty to the CRC, with robust guidance to help aid compliance, and accountability arrangements should be put in place. Public bodies have significant powers in respect of implementing the CRC through commissioning arrangements and delivering frontline services, yet existing legislation, whilst welcome, has been ad hoc with limited monitoring arrangements.

Children in Wales welcomes the commissioning of research to strengthen human rights in Wales, and have been delighted to contribute in several ways, including through engagement with young people as part of our Young Wales project. We look

forward to the findings being enacted prior to the dissolution of the Senedd in the Spring.

**Recommendation 16: The Committee recommends**

**That the Welsh Government, at the earliest legislative opportunity, transfer responsibility for the appointment, accountability, and funding of the Children's Commissioner for Wales to the Senedd.**

**Response: Reject**

We support the Committee's recommendation which is in line with the UN position that independence be strengthened. Our recent manifesto for the Senedd Elections once again repeats our previous calls for legislation to be introduced which transfers responsibility to the Senedd.

Significant Updates

This year marks the start of the journey towards the next examination of Government's progress in implementing the CRC. Children in Wales, with our partners in the Wales UNCRC Monitoring Group, are now embarking on a new project funded by the Equality and Human Rights Commission (EHRC), which is delivering a series of activities for organisations in Wales throughout this year. The events hosted and Call for Evidence is helping to identify the key priorities in Wales and help to build the capacity of civil society organisations to engage with the UNCRC and the review process.

The Civils Society report to inform the UN List of Issues report will be published in December. The UN will consider this, as well as reports submitted by NHRIs and other child rights alliances across the UK, with a view to publishing a List of priority Issues for response from the State Party (UK Government with input from the developed nations). This is expected in February 2020, and the state party will be required to submit their response within one year.

<https://www.childreninwales.org.uk/our-work/rights/state-childrens-rights-wales/>

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