

CYPE(6)-13-22 - Paper to note 4

Jane Hutt AS/MS
Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JH-/1628/22

Jayne Bryant MS
Chair,
Children, Young People and Education Committee

26 May 2022

Dear Jayne,

Thank you for your letter of 22 April regarding the paper on the legal powers and remit of the Children's Commissioner for Wales' (CCfW) Office, shared with you by the former Children's Commissioner, Professor Sally Holland.

The paper raises three areas which would require further legislation to address:

- Revised legal powers, scope and remit of the CCfW;
- Full incorporation of the United Nations Convention on the Rights of the Child (UNCRC); and
- Transferring the appointment process of the CCfW from the Welsh Government to the Senedd.

On 17 March 2022, I replied to the former CCfW's paper and I attach a copy of my response. My response addressed each of these issues and I am pleased to have this opportunity to update the Committee on the Welsh Government's position on each of the issues raised.

Revised legal powers, scope, and remit of the CCfW

As you will be aware, in 2021 the former CCfW exercised the power in section 72B of the Care Standards Act 2000 to review the exercise of Welsh Ministers' functions in relation to elective home education, and the regulation of independent schools. In her paper, the former CCfW outlined difficulties she felt she encountered when carrying out her review, some of which the Commissioner attributed to anomalies or gaps in the existing legislation.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Finding time in the current Senedd term to conduct a full-scale review into the powers and legal remit will be difficult, particularly given such a review is not a commitment within the Programme for Government. In the interim however, my officials will discuss with the CCfW's office possible next steps in respect of:

- the remit of the CCfW to include certain groups of young people up to 25 years old; and
- the range of organisations the Commissioner has the right to enquire or investigate, particularly children's homes.

Full incorporation of the United Nations Convention on the Rights of the Child (UNCRC)

The Welsh Government is supportive of the principle of full incorporation of the UNCRC, however there is much work to be done before this ambition can be made a reality in Wales. I am clear a long-term approach is required to progress the human rights agenda in Wales, and our approach to full incorporation will be considered as we take forward the Strengthening and Advancing Equality and Human Rights (SAEHR) in Wales [research report](#).

A draft response to this report was discussed at a meeting of the SAEHR Steering Group on 25 April which I chaired and which the Counsel General attended. At this meeting we confirmed our intention to explore options for incorporation of a range of UN rights conventions, including a holistic approach such as a Welsh Human Rights Bill. This work will continue to be overseen by the Steering Group, which will henceforth be known as the Human Rights Advisory Group, supported by working groups to enable it to undertake detailed work rapidly and bring in additional expertise where appropriate. Our response to the research report will be finalised and published shortly. I will ensure the Committee is notified when our final response to the Strengthening and Advancing Equality and Human Rights in Wales research report is published.

Another factor that will need to be considered is the implications of the Supreme Court judgement on the legislative competence of the Scottish Government, and the impact this may have on Wales. While our work to explore options for incorporation is underway, we will also continue to progress the children's rights agenda through the Children and Young People's plan, the Raising Awareness Plan, and the revised Children's Rights Scheme.

Transferring the appointment process of the CCfW from the Welsh Government to the Senedd

I am aware of the views of the CCfW on this topic and I completely understand and value her views on improving the process. However, I remain of the view the current arrangements for appointing a CCfW are working well. The Welsh Government fully respects the independence of the CCfW, and I do not believe this independence has been undermined by the Welsh Government being part of the recruitment process.

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I hope this response reassures the Committee on these issues.

Yours sincerely,

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal stroke above the first letter of "Jane".

Jane Hutt AS/MS

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Ein cyf/Our ref:

Professor Sally Holland
Children's Commissioner for Wales

Ceirios.Williams@childcomwales.org.uk

17 March 2022

Dear Sally,

Thank you for your letter of 11 November and your accompanying paper on the Children's Commissioner for Wales (CCfW)'s legal powers and remit. The paper is extremely helpful and is timely as we reflect on the role of the Children's Commissioner more than 20 years since the office was established.

Your letter raises three areas which would require further legislation:

- Revised legal powers, scope and remit of the CCfW;
- Full incorporation of the United Nations Convention on the Rights of the Child (UNCRC); and
- Transferring the appointment process of the CCfW from the Welsh Government to the Senedd.

I will respond to each issue in turn.

CCfW legal powers, scope and remit

Your paper raised three main areas relating to your legal powers, scope and remit:

- Review the CCfW Regulations aligned to the exercise of the S.72B power to create a process for sharing documentation in a transparent and legal way;
- Widening the categories of services and organisations in Wales over which the Commissioner has remit under Schedules 2A and 2B (under the Care Standards Act 2000); and
- Extending the remit of the CCfW

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I believe it is important to review the scope and purpose of the legislation and there are one or two points of detail around children's homes and care leavers which our officials would like to explore with you. However, a full scale review is not in the Programme for Government, and finding legislative time will be very difficult during this Senedd term.

As you are aware, we are considering our approach to *Strengthening and advancing equality and human rights in Wales*. Within the next 18 months, I will ensure that these findings are considered as we develop our approach. This timescale will also provide an opportunity for the new Commissioner to share her thoughts.

Full incorporation on the UNCRC

As you are aware, we are supportive of the principle of full incorporation of the UNCRC. However, I recognise, following the recent Supreme Court judgement on the legislative competence of the Scottish Government, we will need to carefully consider the implications for Wales and what the impact of incorporation would be.

I am clear that a holistic approach is required to support the human rights agenda. This issue, together with the Programme for Government commitments to incorporate the UNCRPD and the CEDAW, will be considered as we take forward *the Strengthening and advancing equality and human rights in Wales* research report and I am also working with the Counsel General, Mick Antoniw, on this.

Appointment of the CCfW by the Senedd

I understand your concern on this issue. However, I remain of the view that the independence of the CCfW is not undermined by the Welsh Government being involved in the recruitment of the CCfW. I believe the current arrangements for all Commissioners are working well including the pre-appointment hearings by Senedd Committees which are an important part of this process.

May I thank you once again for setting out your thoughts. This government is committed to children's rights and will continue to progress this agenda through the 2021 Children's Rights Scheme, the Raising Awareness Plan and the new Children and Young Person's Plan.

Yours sincerely



Jane Hutt AS/MS

Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice

cc. The Deputy Minister for Social Services