

Response from the Wales UNCRC Monitoring Group to the Children's Rights Scheme: report on compliance with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011

1. Introduction

The Wales UNCRC Monitoring Group is a national alliance of non-governmental and academic agencies coordinated 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.

Group membership includes: Aberystwyth University Centre of Welsh Legal Affairs, Barnardo's Cymru, Cardiff University Department of Child Health, Children in Wales, Funky Dragon, Nacro Cymru, NSPCC Cymru, Save the Children Wales (Chair & Coordinator), Swansea University, School of Law.

Observers include: Children's Commissioner Office for Wales, Equality and Human Rights Commission, Welsh Government, Welsh Local Government Association, UNICEF UK.

This report has been produced on behalf of the Monitoring Group by Simon Hoffman, Co-director, Wales Observatory on Human Rights of Children and Young People, both for the Welsh Government and to be used as part of our written evidence to the National Assembly for Wales Children and Young People's Scrutiny committee meeting on 9th May 2013, which is scrutinising both the National Action Plan update report and the Children's Rights Scheme compliance report 2013. Written evidence regarding the national action plan is sent separately.

2. Background

The Explanatory Memorandum accompanying the Rights of Children and Young Persons (Wales) Measure 2011 states:

'The proposed Measure will embed consideration of the requirements of the UNCRC and its Optional Protocols into strategic decision making by the Welsh Ministers and the First Minister across all areas of the Welsh Assembly Government's work. The objective is to ensure that those requirements will have an even greater prominence in respect of devolved matters in Wales than has so far been the case.' (para.3.14)

The Measure seeks to address the 'implementation gap' between policy rhetoric, and the practice of children's rights in Wales by embedding the UNCRC in Welsh Government strategic decision-making. It is intended to promote culture change to ensure children's rights are properly taken into account in the policy-making, law-making and, from May 2014, all other decision-making processes of Welsh Ministers.

3. The Report

Referring to the sections as set out in the report.

Introduction

This section expressly recognises the purpose of the Measure, i.e. to promote culture change (p.3). It implicitly acknowledges the need to assess compliance with the due regard duty Measure by examining:

- The processes and arrangements in place to implement the due regard duty.
- The impact of the Measure. (p.4)

Although impact is not further elucidated or explained in the Introduction, it is apparent from later sections of the report that it is seen primarily in terms of outcomes for children and young people. There is however limited sensitivity to the impact of compliance assessed by evaluation of culture change.

Section I: Putting the arrangements in the Children's Scheme into place

This section deals with institutional arrangements as well as processes. There is welcome recognition of the importance of institutional arrangements to underpin compliance.

There are a number of issues raised by Section I of the report. In summary these are:

- a) There appears to be a drawing back from the notion of 'Champions' under the Children's Scheme (Children's Scheme, p.5), and from the intention that the role of the Implementation Steering Group will be to provide leadership, advice and guidance to promote children's rights across Director General areas (ibid). There is a risk that leadership is being lost as compliance arrangements are reviewed. The Implementation Steering Group has changed to become the Children's Rights Scheme Monitoring Group. Whilst monitoring is an important function it implies a passive, at best reactive role.
- b) The role of the Children's Rights Scheme Monitoring Group includes 'steering', but there is no explanation of how the group will deliver the leadership function identified for its antecedent. It is confirmed that the Children's Scheme Monitoring Group will share best practice, although it is unclear whether the group will take the initiative (for example by confirming and establishing best practice as the norm, nurturing and developing expertise, i.e. Champions, or issuing *de novo* guidance on best practice).

It is desirable that the leadership role of the Children's Rights Scheme Monitoring Group be more clearly articulated. Including the group's role to determine institutional best practice.

- c) The Measure Implementation Team is a positive initiative. The report suggests that the team is proactive in providing a range of options for officials to engage with support in order to raise awareness and knowledge of the UNCRC. This is an essential aspect of securing compliance: the work already undertaken by the team is a progressive innovation.

The success of these initiatives will be measured by reference to, *inter alia*:

- Number of staff participating.
- Seniority of staff participating.
- Coverage or take-up of training across departments.
- Take-up of different training/support options.

This information (or similar) is not available in the report. It is therefore difficult to assess how effective the various initiatives have been to ensure compliance. It would be helpful if future reports could include relevant data.

- d) The report states that sampling of Child Rights Impact Assessments (CRIA) is being carried out. The effectiveness of this evaluation process will only be fully appreciated once it is known:
- How many CRIA which have been sampled.
 - Which departments have had CRIA(s) evaluated.
 - What criteria were used to assess the CRIsAs sampled.
 - The outcome of the evaluation.
 - What steps have been taken to improve CRIA processes as a result.

This information (or similar) is not available in the report. It is therefore difficult to assess how effective the CRIA processes have been. It would be helpful if future reports could include relevant data.

- e) The report refers to resources available to Welsh Government staff. This is a positive initiative, as is the requirement on staff to keep written records of impact assessment. The objectives of training and support are identified as increasing ‘awareness’ and ‘understanding’ of the UNCRC. These objectives are occasionally conflated. The due regard duty requires substantive appreciation of children’s rights which goes beyond awareness that rights exist.

It is stated that there has been evaluation of the support provided. It would be useful if the evaluation of support were further elucidated; in particular to shed light on how (if) this has improved understanding of the UNCRC – and its implications – within the Welsh Government, and how this has influenced practices.

- f) The report refers to working in partnership, including with the NGO community. Willingness to engage with the child rights community is a positive feature of governance in Wales. Anecdotal evidence suggests that there may be impediments to engagement, these include:
- Lack of clarity about the role of the GIR Implementation Support Network, and how this group inputs to decision-making.
 - Lack of clarity about how Welsh Government relates to the Wales Monitoring group for the UNCRC.
- g) The introduction of the Six Steps impact assessment tool is positive and essential innovation. Whilst it is important to recognise the need for ‘convenience’ for officials in day-to-day use, this needs to be balanced alongside the need for a rigorous and effective CRIA process. In order to determine whether the requisite rigour is being applied to consideration of substantive rights, and therefore whether the due regard

duty is being properly applied, the CRIA process needs to be transparent and open to scrutiny. Although officials are told to keep records of CRIA processes, these are not available for consideration by the NGO community. This is an impediment to proper scrutiny and accountability.

It is strongly recommended that where policy or legislation has been subject to a CRIA the record kept by officials, or an adequate summary, is made available for scrutiny.

Section 2- How it is making a difference to children, young people and families

This section is arranged thematically and provides a summary of seeming positive impacts for children and young people following implementation of the due regard duty. Consideration of these assertions is beyond the scope of this response, and in any event would require examination of the evidence from which the conclusions are formed.

Annex – Examples of legislation/policies that have completed the CRIA

This section provides examples of the outcome of CRIA processes. It is appreciated that practical constraints limit the number of examples which may be included for discussion. However, it is questionable whether or not such a selective presentation offers any reliable insights into the influence of CRIA processes generally in the Welsh Government, in particular where there is no indication of the criteria used for sampling.

It would be preferable to have randomised systematic sampling, accompanied by transparency so that relevant CRIA records are available for scrutiny.

Further Comment

Section 6 of the Measure contains a power for Welsh Ministers to amend legislation to give further or better effect to the rights and obligations in the UNCRC, provided this is within the legislative competence of the National Assembly for Wales. Legislation suitable for amendment to this purpose will be identified in a report published under section 4. The due regard duty under section 1 applies where Ministers review or amend existing legislation. In order to ensure that existing legislation is optimal to give further or better effect to the rights and obligations in the UNCRC it may be necessary to carry out a review of legislation (i.e. legislation which is within the competence of the Welsh Government to amend

It would be desirable if any further report(s) under section 4 were to include a section commenting on existing legislation and whether any amendments might be desirable in order to give further or better effect to the rights and obligations in the UNCRC.

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