Cyflwynwyd yr ymateb i ymgynghoriad y Pwyllgor Cyllid ar Cyllideb Ddrafft Llywodraeth Cymru 2025-26.

This response was submitted to the Finance Committee consultation on the Welsh Government Draft Budget 2025-26.

WGDB25-26(6)47: Ymateb gan: Dr Rhian Croke, Arweinydd Ymgyfreitha Strategol ac Eirioli Polisi, Canolfan Gyfreithiol Plant Cymru a Matthew Court, Cyfreithiwr Cymru, Prosiect Cyfraith Gyhoeddus
| Response from: Dr Rhian Croke, Strategic Litigation and Policy Advocacy Lead, Children's Legal Centre Wales and Matthew Court, Wales Lawyer, Public Law Project.

Welsh Ministers must give due regard to the requirements of Part 1 of the United Nations Convention on the Rights of the Child, as per Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011, in the exercise of any of their functions, this includes the development of the Welsh Government Draft Budget

Dr Rhian Croke, Strategic Litigation and Policy Advocacy Lead, Children's Legal Centre Wales and Matthew Court, Wales Lawyer, Public Law Project, Evidence for Senedd Finance in Scrutiny of the Draft Welsh Government Budget 2025-26

November 29th 2024

1. Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011

The Welsh Ministers must give due regard to the requirements of Part 1 of the United Nations Convention on the Rights of the Child (UNCRC)[1], under Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 ('the 2011 Measure') in the exercise of "any of their functions".[2] This means that the Welsh Government Ministers must give consideration to Part 1 of the UNCRC in their drafting of the Welsh Government Budget.

We consider summary implications of this, with reference to the general principles of the UNCRC (article 2, 3, 6, 12) and general measures of implementation (article 4) and with reference to the expectations of the UN Committee ('UN Committee) on the Rights of the Child's General Comments[3] [4] 5[5], 14[6], 19.[7]

---

[1] References in the 2011 Measure to the 'UNCRC" are references to the United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (see s.8(1)(a) of the 2011 Measure)

[2] Rights of Children and Young Persons (Wales) Measure 2011 https://www.legislation.gov.uk/mwa/2011/2/contents

[3] The UN Committee and the Rights of Child periodically publishes comments which seek to ensure the application of and respect for rights of the child by the States parties to the Convention.

[4] Under the Rights Measure 2011 Section 3 (1) (b) in the preparing, remaking or revising of the Children's Scheme the Welsh Government Ministers must have regard to the reports, suggestions, general recommendations or other documents issued by the Committee relating to the implementation of the Convention or the Protocols by the United Kingdom.

[5] UN Committee on the Rights of the Child (2003) General Comment No.5 on General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), paras.45-47. CRIA is listed as one of the 'administrative and other' measures of implementation under Article 4. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en

[6] UN Committee on the Rights of the Child (2014) General Comment No.14 on Best Interests of the Child (article 3). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en

[7] UN Committee on the Rights of the Child (2016) General Comment No.19 on Public Budgeting (article 4) https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-19-2016-public-budgeting

Article 2 of the UNCRC
1. *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Thus Article 2 provides the obligation of States to respect and ensure the rights set forth in the UNCRC to each child within their jurisdiction without discrimination of any kind. According to the UN Committee in General Comment No.5, the non-discrimination obligation requires States actively to identify individual children and groups of children, the recognition and realisation of whose rights may demand special measures. For example, the UN Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. This evidence should result in addressing discrimination to children as a group and inequalities among children that may require changes in resource allocation or special measures to be undertaken in order to diminish or eliminate conditions that cause discrimination.

Therefore, in giving due regard to Article 2 of the UNCRC in the development of the draft Welsh Government Budget, Welsh Ministers must ensure consideration has been given to not discriminating against children as a group as well as specific groups of children, such as those with protected characteristics.

Article 3 of the UNCRC provides:

(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.[8]

[8] Guidance on the best interests principles, per art.3 of the Convention, was given by Baroness Hale in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 at paragraphs 21-33,15 in particular:
[26]… *the best interests of the child must be a primary consideration… This did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them. The important thing, therefore, is to consider those best interests first.*
[33]… *the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations.*

In line with article 3(1) of the Convention and §6 of General Comment No 14, adopted by the UN Committee on the Rights of the Child in 2013, best interests is a three-fold concept, incorporating[9][10]:

1. a) A substantive right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered ahead of making a decision;
2. b) A fundamental, interpretative legal principle, which means that where a provision is open to more than one interpretation, the meaning which most effectively serves the child's best interests should be chosen; and
3. c) A rule of procedure, which requires that decision-making affecting a child or children must include an evaluation of the possible impact of the decision on the child or children concerned. States must show how the substantive best interests right has been respected in the decision and how best interests have been weighed against other interests, both in broad issues of policy and in individual cases.

General comment No. 14 (2013) on the right of the child, also recommends best interests of the child is taken as a primary consideration (art. 3, para. 1):

> *35. With regard to implementation measures, ensuring that the best interests of the child are a primary consideration in legislation and policy development and delivery at all levels of Government demands a continuous process of child rights impact assessment (CRIA) to predict the impact of any proposed law, policy or budgetary allocation on children and the enjoyment of their rights, and child rights impact evaluation to evaluate the actual impact of implementation.*

Therefore, in giving due regard to the Article 3 of the UNCRC in the development of the Welsh Government draft budget, Welsh Government must be able to demonstrate how best interests have been assessed, as a primary consideration, including how they have been weighed against other considerations.

Welsh Ministers as recommended by the UN Committee, should use a CRIA, to assess any impact on children, including those directly and indirectly affected, then consider whether any negative impacts on children may be avoided or mitigated, and after that to consider what other considerations, if any, might outweigh the best interests of children.

Article 4 of the UNCRC provides that *'States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised*

---

[9] In *R (SG) v Secretary of State for Work and Pensions* [2015] UKSC 16 at §105-107, Lord Carnwath considered the best interests obligation and observed the three fold concept as outlined by the UN Committee of the Rights of the Child.

[10] Sani J referred to and relied upon this analysis in *R (MK) v Secretary of State for the Home Department* [2019] EWHC 3573 (Admin) at §32.

in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation'.

As outlined in General Comment No. 5, States need to be able to demonstrate that they have implemented "to the maximum extent of their available resources" to fulfil the economic, social, cultural rights of children, whatever their economic circumstances. States are required to undertake all possible measures towards the realisation of these rights, paying special attention to the most disadvantaged groups.

In General comment No. 19 (2016) on public budgeting for the realisation of children's rights (art. 4), it recommends:

> *47. States parties should conduct child rights impact assessments in order to ascertain the effect of legislation, policies and programmes on all children at the national and subnational levels, especially children in vulnerable situations who may have special needs and therefore require a disproportionate share of spending in order to have their rights realized. Child rights impact assessments should be part of each stage of the budget process and should complement other monitoring and evaluation efforts.*
>
> *71. States parties should conduct child rights impact assessments of all legislation, policies and programmes, including those of a macroeconomic and fiscal nature, in order to ensure that they do not undermine the realisation of children's rights.*

Therefore, in giving due regard to Article 4 of the UNCRC in the development of the draft Welsh Government budget, Welsh Ministers must make it clear and transparent the proportion of expenditure on children, demonstrating transparently that the "maximum extent of available resources" has been allocated to fulfil rights in the UNCRC.

This can be demonstrated as recommended by the UN Committee, by CRIA's being conducted at every stage of the budget process, including a CRIA of the overarching Draft Welsh Government Budget.

Article 6 of the UNCRC
1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 6 concerns the child's inherent right to life and States parties' obligation to ensure to the maximum extent possible the survival and development of the child. The UN Committee, as outlined in their General Comment No.5 expects States to interpret "development" in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development of all children.

Therefore, in giving due regard to Article 6, in the drafting of the Welsh Government budget Welsh Ministers must demonstrate how they will spend to the 'maximum extent of available resources' to ensure the optimal development of children and across the different developmental stages of childhood in Wales.

Article 12 of the UNCRC

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 12 (1) concerns the child's right to express his or her views freely in "all matters affecting the child" with "those views being given due weight in accordance with the child's age and maturity". This principle highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, and applies equally to all measures adopted by States to implement the UNCRC.

It is made clear in General Comment no.19 the importance of meaningful participation of children through mechanisms that support them, including consulting with children who face difficulties in making themselves heard, including children in vulnerable situations.

Therefore, in giving due regard to Article 12, Welsh Ministers must demonstrate how children's views (including vulnerable children directly affected by the budget) in the development of the draft budget have been taken into consideration and given due weight.

2. *The Children's Scheme*

The Welsh Ministers must make a scheme ("the children's scheme") setting out the arrangements they have made, or propose to make, for the purpose of securing compliance with the duty under section 1. [11]

This broad approach to the s.1 duty is consistent with the stated intention of the 2011 Measure, which is to ensure that the rights of children under the UNCRC are given effect in Wales (see the preamble to the 2011 Measure).

A broad approach is also in line with the guidance given in the Children's Scheme 2021 made by the Welsh Ministers pursuant to Section.2:

> *The functions of Welsh Ministers include everything that the Welsh Ministers may do under the power invested in them under legislation and everything the Welsh Minsters must do because legislation has placed a duty on the Welsh Ministers to do it.*

[11] Welsh Government's Children's Scheme 2021 https://www.gov.wales/sites/default/files/publications/2021-12/children%27s-rights-scheme-2021.pdf

This means the duty on Welsh Ministers applies whenever they use any of their powers to make a decision, or where there is a duty placed upon them to make a decision. All actions of the Welsh Government are taken using powers or duties of the Welsh Ministers.

3. ***The "due regard" duty***

The duty to have "due regard" is made reference to in the Welsh Government's Children's Scheme 2021, which states on p7:

> *The Measure places the due regard duty on Welsh Ministers and they must be fully aware of this duty when they make decisions. The due regard duty applies even where Welsh Government officials are carrying out functions on behalf of the Welsh Ministers. The duty also applies to Deputy Ministers.*
>
> *The term 'due regard' requires a balanced consideration of issues. This means that Welsh Ministers, when exercising their functions, must think about how what they are doing relates to the rights and obligations of the UNCRC. In identifying any negative impact on children and young people Welsh Ministers must consider whether any action can be taken to avoid or minimise this impact. Welsh Ministers must also consider how, by using their functions, they can improve the way children and young people access their rights.*
>
> *Having considered this, the outcome needs to be given balanced consideration (due regard) against the other factors that the Welsh Ministers must take into account in making the decision in question.*

Case law dealing with due regard duties in other statutes provides further guidance on what is required to show "due regard", largely in the context of the public sector equality duty under s.149 of the Equality Act 2010. For example, for the steps that must be taken by a public body to satisfy the due regard duty, see the summary by McCombe LJ at §26 of *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345.

4. ***Impact Assessment of Budgets as laid out in the Children's Scheme***

The current version is the 2021 scheme. As relevant, it provides and it states:

> ***Embedding children's rights within Welsh Government***
> *Compliance with the duty to have due regard to the UNCRC has been firmly embedded in the Integrated Impact Assessment (IIA) alongside other legal duties on Ministers such as the Public Sector Equality Duties under the Equality Act 2010, Socio-economic duty, legislation relating to the Welsh Language and the duty not to act incompatibly with the European Convention on Human Rights.*
>
> ***Children's Rights Impact Assessment (as part of the Integrated Impact Assessment)***

The Integrated Impact Assessment (IIA) allows us to undertake a rounded assessment of the impact of a proposed action, including the social, economic, cultural and environmental effects.

The Children Rights Impact Assessment (CRIA), forms a key part of the IIA, and is the tool officials are expected to use to support Welsh Ministers in ensuring the due regard duty is fulfilled.

The CRIA provides a framework for officials to think about, and record, whether the policy proposals are supporting children and young people's rights. It enables officials to consider what the policy/legislation/advice is trying to achieve and the impacts that might have (positive and negative) on children with different life experiences.

The CRIA template includes prompts to support officials in their analysis, to evidence that children's rights have been considered and that every opportunity has been taken to identify ways of realising the relevant rights to support Ministers as they take decisions.

Equality and non-discrimination
The Welsh Government recognises the importance of evidence as a foundational building block for government decision making and addressing equality and non-discrimination against children and young people.
…
CRIA – role of research and engagement with children and young people
The CRIA template supports Welsh Government officials in considering the effect (or unintended consequence) of the policy/legislation/advice on different groups of children and young people and whether any measures can be taken to reduce, remove or mitigate those impacts if possible.

The CRIA template reaffirms the importance of research and data on children and young people in enabling officials to understand potential discrimination issues.
…
Publishing and completing CRIAs
To promote transparency, CRIAs are published on the Welsh Government website.

The public will be able to challenge the Welsh Government where they believe Welsh Ministers have failed to comply with the due regard duty. This may include where a CRIA has not been undertaken as part of the IIA. If a CRIA is not undertaken officials will need to record, why this is the case.

5. ***Failure to carry out due regard to the UNCRC as part of Integrated Impact Assessments.***

While it is positive that the Children's Scheme, requires CRIAs (or CRIAs to be undertaken as part of IIAs) there has been evidenced failure of Welsh Government to carry out CRIA's on significant budgetary decisions affecting children in Wales, see Annex 3 on the Decision to

end Free School Meals in the Holidays, see also Annex 4 on the Decision to end the funding for the Wales Schools programme.

A failure by the Welsh Government to act in accordance with the Children's Rights Scheme 2021 without good reason is unlawful. That arises out of: s. 2(1) of the 2011 Measure, which makes clear that the purpose of the Scheme is to set out the arrangements that the Welsh Ministers have made, or will make, to comply with the due regard duty.

It is of critical importance that due regard to the UNCRC is given to budgetary decisions affecting children, and CRIAs of these decisions must be evidenced transparently and as part of cumulative decisions relating to the overall Welsh Government budget and Main Expenditure Groups.

6. *Failure to carry out due regard to the UNCRC as part of the Strategic Integrated Impact Assessment*

The Children's Scheme does not make any reference to how it will give due regard to the UNCRC as part of the Strategic Integrated Impact Assessment (SIIA) (introduced in 2015/2016 by Welsh Government) on the whole Welsh Government draft budget. In order to demonstrate compliance with the due regard duty, Welsh Government must be able to demonstrate how they have given due regard to the UNCRC on such a significant budgetary decision as is, the development of the draft Welsh Government budget affecting all children in Wales.

There is currently a lack of transparency on expenditure on children across all Ministerial portfolios making it impossible to assess whether the Welsh Government is complying with their obligation to have due regard to the requirements of the UNCRC. There should be a combined CRIA evidencing due regard to the UNCRC across all Ministerial portfolios.

Like ourselves[12] and the Charity Sector in Wales[13], Senedd Children, Young People and Education Committee ('Senedd Children') have consistently called on the Welsh Government to publish a CRIA of the draft Welsh Government budget, see most recently Senedd Children, 2022-23[14], 2023-2024[15] and 2024-25[16]). Indeed, the recommendation has been made in some form for the past decade.

---

[12] Observatory on Human Rights of Children and Children's Legal Centre Wales, Response to Senedd Finance Committee consultation on Welsh Government Draft Budget https://business.senedd.wales/documents/s131558/WGDB_23-24%2016%20Observatory%20on%20Human%20Rights%20of%20Children%20and%20Childrens%20Legal%20Centre%20Wales.pdf

[13] Children in Wales responds to the Senedd's Finance Committee's call for information for its scrutiny of the WG's draft budget proposals. https://www.childreninwales.org.uk/news/children-wales-responds-senedds-finance-committees-call-information-its-scrutiny-wgs-draft-budget-proposals/

[14] Senedd Children, Young People, and Education Committee, "Scrutiny of the Welsh Government's Draft Budget 2022- 23" https://senedd.wales/media/3gdpsrme/cr-ld14921-e.pdf

[15] Senedd Children, Young People, and Education Committee, "Scrutiny of the Welsh Government's Draft Budget 2023- 24" https://senedd.wales/media/5rppwa3s/cr-ld15644-e.pdf

[16] Senedd Children, Young People, and Education Committee, "Scrutiny of the Welsh Government's Draft Budget 2024-25" https://senedd.wales/media/3x3despy/cr-ld16321-e.pdf

For example, in 2019, Senedd Children communicated its concern about the absence of CRIAs in the budget scrutiny process. It called for a more transparent process where CRIAs are made public, allowing for better assessment of how proposed financial allocations could affect children's rights and well-being. This was seen as essential to ensuring that children's rights are adequately addressed in areas where they face disproportionate disadvantage, such as in education or poverty alleviation initiatives.[17]

In 2020, Senedd Children in their National Inquiry on Children's Rights, expressed its concern that there was still no clear process for integrating CRIAs into the budget formulation process.[18] Alongside formal consultations with children and young people to assess the impact of budgetary decisions on them. Senedd Children further emphasised that while children's rights had been embedded in the overall Welsh Government framework, there was a need for greater accountability to ensure that these rights are being respected in the allocation of public funds. Senedd Children underscored that the lack of CRIAs meant there was little clarity on whether the proposed budgets actually improved the welfare of children or addressed vulnerabilities in key areas such as child poverty, education, and mental health services.

In its 2021 report, Senedd Children drew attention to how austerity measures and budgetary cuts in areas, such as social services, education, and housing, disproportionately affect children from disadvantaged backgrounds. Senedd Children argued that CRIAs should be used to assess the impact of austerity on children.[19]

In response to last year's recommendation the Welsh Government again did not accept the recommendation for a CRIA, giving its view that the SIIA is a more effective way of holistically considering the impact on different groups of people.[20] However, what is again very clear from last year's SIIA, is that it made no reference to the Rights of Children and Young Persons (Wales) Measure 2011 or the articles of the UNCRC.

Fundamentally, the SIIA failed to make clear, as per Article 4, whether the "maximum available resources" to fulfil UNCRC obligations were being met. The lack of transparency across the Ministerial portfolios, made it very difficult to track and assess, changes in funding allocations to specific policy priorities, and policy programmes as well as proportion of spend on children. Senedd Children referenced concerns regarding unhypothecated funding allocated primarily to health boards and via the local government settlement making it extremely difficult to see what is spent and in monitoring outcomes for children, and whether children's health for example gets an unhypothecated and fair share of the core NHS allocation.

---

[17] Senedd Children, Young People, and Education Committee, "Scrutiny of the Welsh Government's Draft Budget 2019-2020"
https://senedd.wales/laid%20documents/cr-ld11905/cr-ld11905-e.pdf
[18] Senedd Children, Young People, and Education Committee, "National Inquiry on Children's Rights"
https://senedd.wales/laid%20documents/cr-ld13405-r/cr-ld13405-r-e.pdf
[19] Senedd Children, Young People, and Education Committee, " Scrutiny of Welsh Government's Draft Budget 2021-2022," https://senedd.wales/media/xtho221a/cr-ld14081-e.pdf
[20] Welsh Government response to recommendations of Senedd Children in relation to the Draft Budget 24-25
https://business.senedd.wales/documents/s145760/Welsh%20Governments%20response%20to%20the%20Children%20Young%20People%20and%20Education%20Committees%20report%20Scrutiny.pdf

The Minister for Health and Social Services at the time, communicated that funding for children's services is not ringfenced, and instead there is an expectation within the NHS planning framework to report on how quality and equity is impacting on children's services as part of the narrative of the 3-year plans (see pages 10 – 12 Senedd Children).[21] This approach however, makes it impossible to assess whether due regard to the UNCRC is being given. Senedd Children highlighted that they were concerned that children's specific health and social care needs were being overlooked and could be overshadowed by the situation in adults' health and social care.

We have made it consistently clear, that children do not have the vote, or a seat at the Cabinet decision-making table, indeed nor does their representative, the Minister for Children and Social Care. However, this is where strategic considerations regarding the SIIA are made. It is of fundamental importance there is clear and transparent evidence that there is not disproportionate spending on adults as compared to children, at the expense of the fulfilment of their rights.

Due to significant lack of detail within the SIIA, it also became apparent that reductions to budgets were being made without consideration of due regard to the UNCRC (parag. 20 Senedd Children 2024).[22] While reductions to funding in relation to children's budgets were made visible by Senedd Children, (page 13 Senedd Children 2024-25),[23] during scrutiny sessions of the draft 24/25 budget by Senedd Children, conversely the Minister for Health and Social Services said that there had not been reductions in funding to children's budgets (see page 12 parag 42). [24] Demonstrating considerable concerns in relation to robust accountability to children.

Additionally, the SIIA did not demonstrate how best interests of children had been considered, including how they had been weighed against other considerations. Furthermore, if any negative impacts on children had been identified, how they would be avoided or mitigated. It was not made clear what the full extent of the impacts were on children as a group, and which groups of children they would impact most adversely. It failed to demonstrate whether there had been any discriminatory impact on children and specific groups of children as per Article 2 of the UNCRC, or whether the draft budget supported the optimum survival and development of all children as per Article 6 of the UNCRC.

It is even more difficult, as Senedd Children also pointed out, to see where budget reductions have been made more widely e.g. through the education and health system, and also equality impacts of these reductions. More information should be required from an SIIA regarding what the specific and cumulative impacts of any reductions will be in order to demonstrate due regard to the UNCRC.

---

[21] Senedd Children, Young People, and Education Committee, "Scrutiny of the Welsh Government's Draft Budget 2024-25" https://senedd.wales/media/3x3despy/cr-ld16321-e.pdf
[22] Ibid, page 20.
[23] Ibid, page 13
[24] Ibid. page 12

Furthermore, in taking account of the Committee on the Rights of the Child's Concluding Observations 2023, and General Comment 19 on Public Budgeting parag 31, regressive measures must not be taken without first assessing all other options and ensuring that children are the last to be affected, especially children in vulnerable situations. The Welsh Government must be able to demonstrate that if such measures are necessary, they are reasonable, proportionate, non-discriminatory and temporary and that any rights thus affected will be restored as soon as possible. This was not made evident.

Government should also take appropriate measures, so that the groups of children who are affected, or those with knowledge of the children's situation can participate in the decision-making process. It is commendable that Welsh Government co-produced and launched a Young Person's Version of the Budget Improvement Plan (see Annex 2) but there was no evidence of children's views being given due weight as part of the development of the draft budget and/or evidence of their impact on the draft budget.

The Welsh Government need to do all of the above, to transparently demonstrate that they are acting lawfully with the requirements of due regard to the UNCRC (as per section 1, 2, 3 above).

The above also presents evidence of a failure of the Children's Scheme, to ensure that it is meeting the requirements to set out appropriate arrangements to give due regard to the UNCRC, and, it evidences a failure of Welsh Government Ministers to adhere to the duties in the Rights Measure 2011, to take fully into consideration reports of the UN Committee on the Rights of the Child:

> *Section 3 (1) (a) any report of the Committee under article 44(5) or study undertaken under article 45(c);*
>
> *(b) in the preparing, remaking or revising of the Children's Scheme the Welsh Government Ministers must have regard to the reports, suggestions, general recommendations or other documents issued by the Committee relating to the implementation of the Convention or the Protocols by the United Kingdom.*

Furthermore:

> *Section 2 (4) The Welsh Ministers must, within six months of the Committee making any suggestion or general recommendation under article 45(d) based on a UK report, consider whether to revise or remake the scheme in the light of that suggestion or recommendation.*

The Concluding Observations of the UN Committee on the Rights of the Child were issued in June 2023, 1 year and 4 months ago, exceeding the 6-month limit (see Annex 1 which makes clear the recommendations of the UN Committee). While the Welsh Government has communicated that they are reviewing the SIIA in 2024 in response to the Concluding Observations 2023 (see Annex 2) we have not seen the outcome as yet of this process. This is a failure of the obligation to meet the duty in Section 2 (4).

7. Recommendations

In line with assessing whether the Welsh Government Ministers have complied with the requirement to have due regard to Part 1 of the UNCRC as per section 1 of the Rights of Children and Young Persons (Wales) Measure 2011, we respectfully request that the Welsh Government:

In relation to the Welsh Government Draft Budget 2025/2026

Publish and share a combined Children's Rights Impact Assessment (CRIA) that informed allocations in the Draft Budget 2025/2026 setting out how the UNCRC has been given due regard with reference to specific articles of the UNCRC where relevant.

This should also include a clear and transparent explanation of changes to the overall Budget in 2025-26 from 2024-25[25] and whether due regard to the UNCRC has been given.

If a specific CRIA has not been carried out, set out the reasons for this.

If a specific CRIA has not been carried out publish and share the Strategic Integrated Impact Assessment (SIIA) setting out how the UNCRC has been given due regard with reference to specific articles of the UNCRC where relevant.

Detail any allocations (including budget reductions) (in either the CRIA or SIIA) that will have a positive or negative impact on the rights of the child, including if negative impacts, what mitigations have been put in place to minimise these negative impacts.

Detail how children's views have been taken into consideration and given due weight.

In relation to Main Expenditure Groups in the Welsh Government Draft Budget 2025/2026

Publish and share CRIA for each of the Main Expenditure Groups in the Draft Budget setting out how the UNCRC has been given due regard with reference to specific articles of the UNCRC where relevant.

This should also include a clear and transparent explanation of changes to each of the Main Expenditure Groups in 2025-26 from 2024-25[26] and whether due regard to the UNCRC has been given.

If a specific CRIA has not been carried out, set out the reasons for this.

If a specific CRIA has not been carried out publish and share any IIA setting out how the UNCRC has been given due regard with reference to specific articles of the UNCRC where relevant.

[25] Since the 2024-25 Budget and First Supplementary Budget (October 2024)
[26] Ibid.

Detail any allocations (including budget reductions) (in either the CRIA or IIA) that will have a positive or negative impact on the rights of the child, including if negative impacts, what mitigations have been put in place to minimise these negative impacts.

Detail how children's views have been taken into consideration and given due weight.

Annex 1: **Concluding Observations of the UN Committee on the Rights of the Child**

In addition to the General Comments of the UN Committee on the Rights of the Child, the UN Committee periodically as part of State party reporting, issues recommendations to the State party.

We refer to the Committee's recommendations relevant to development of the draft budget, 2016 and 2023:

2016: The UN Committee recommended in 2016:

> *12. In accordance with article 4 of the Convention and Sustainable Development Goal 10, Targets 10.2 and 10.4, the Committee urges the State party to allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating child poverty and reducing inequalities within and across all jurisdictions. In this endeavour, the Committee recommends that the State party:*
>
> *(a) Utilize a child-rights approach in the elaboration of the State budget, by implementing a tracking system for the allocation and use of resources for children throughout the budget;*
>
> *(b) Ensure transparent and participatory budgeting through public dialogue, including with children;*
>
> *(c) Define budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and make sure that those budgetary lines are protected even in situations of economic recessions;*
>
> (d) Regularly conduct child rights impact assessments of budget and economic decision-making processes and outcomes, including austerity measures, in areas that are directly or indirectly related to children's rights;
>
> (e) Establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention.

2023; The UN Committee on the Rights of the Child's Concluding Observations, yet again in 2023[27], referred to the importance of children's rights in all budgetary decision making.

Legislation

> *8 (e) Develop mandatory child impact assessments procedures for all legislation and policies relevant to children in England, Northern Ireland, Scotland and Wales.*

Allocation of resources

> *11. The Committee recommends that the State party incorporate a child rights-based approach into the State budgeting process in all jurisdictions of the State party, the overseas territories and the Crown dependencies and:*
>
> *(a) Implement a tracking system for the allocation, use and monitoring of resources for children, with a view to eliminating disparities and ensuring equitability, and assess how investments in all sectors serve the best interests of children;*
>
> *(b) Introduce budgetary allocations for children in disadvantaged situations and ensure that children are not affected by austerity measures;*
>
> *(c) Ensure that, in situations of economic crisis, regressive measures are not taken without meeting the requirements set out in paragraph 31 of the Committee's general comment No. 19 (2016) on public budgeting for the realization of children's rights, including that children participate in the decision-making process relating to such measures;*
>
> *(e) Ensure transparent and participatory budgeting in which civil society, the public and children can participate effectively.*

Annex 2: Welsh Government Response to the UN Committee on Rights of Child Concluding Observations 2023[28]

> ***Tracking and monitoring resources***
>
> *The Welsh Government remains committed to children's rights budgeting processes and to exploring ways in which we can improve those processes.*

---

[27] UN Committee on Rights of Child's Concluding Observations 2023 (parag 11) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

[28] Welsh Government (July 2024) Response to the UNCRC Concluding Observations 2023 https://www.gov.wales/sites/default/files/publications/2024-07/response-to-united-nations-committee-rights-child-concluding-observations-report-2024.pdf

We believe that a Strategic Integrated Impact Assessment (SIIA) approach, which we established in 2015-16 and published as part of our Draft Budget process, best meets our legal duty to the UNCRC. We will review the SIIA in 2024, including consideration of our approach to Children's Rights. This integrated approach helps us to understand the intersectional and unintended impacts of spending decisions, and to maximise the impact of available funding, reducing the disproportionate effect on any one specific group or area. We developed this approach based on our prior experiences, of Children's Budgeting to reflect that a quantitative approach, does not always reflect the way funding is spent. Defining the outcomes of spending from a monitoring perspective, is complex, particularly where there are beneficiaries of spending occurring in a single investment. The role of the budget is to outline financial plans, the monitoring and delivery of outcomes falls to the Programme for Government reporting mechanisms.

Allocations and Resources

We continue to act in a way that maximises the impacts of our available funding. In the current fiscal climate, while action has been taken to mitigate impacts as far as possible, the reality is that difficult decision cannot always be avoided.

For example, within out Draft Budget 2024-25:

We have protected the Core local government settlement, which along – with Council Tax funds schools, social service, social care, refuse and recycling collections and local leisure services which have a benefit to children.

Ensured that funding goes directly to schools has been prioritised- including protecting both our Covid Recovery programme, 'Recruit, Recover and Raise Standards', and the Pupil Development Grant that funds schools to support learners from low-income.

Budget Participation

Engagement on the Welsh Government Budget starts early and is maintained throughout the process. This includes sessions with partners representing children and young people These sessions allow us to understand which priorities matter most to children and young people in Wales.

Our Budget improvement Plan, published alongside the 2024-2025 Draft Budget is developed with our Budget Impact and Improvement Advisory Group (BIIAG) to reform budget and tax processes to improve outcomes. This includes consideration of how we engage and collaborate with children and young people raising awareness of public spending and taxation.

With children in Wales, we have co-produced and launched a Young Person's Version of the Budget Improvement Plan. The same group have developed an animated version to help young people understand how the Welsh Government works and what the Welsh Treasury does.

Annex 3: The decision to end Free School Meals in the holidays

The High Court declared that the Welsh Government's last-minute decision to stop free school meals in the school holidays in June 2023, was made unlawfully, following a legal challenge brought by two families represented by Public Law Project. The case concluded without a court hearing, as Welsh Ministers admitted that they had failed to take into account the rights of the children. Welsh Ministers did not undertake a CRIA of this budgetary decision or an IIA. They only conducted an IIA that gave consideration to the rights of the child in relation to a second decision taken in October 2024 not to reinstate the support. What followed was that the Welsh Government's integrated impact assessment[29] concluded there was a negative impact on children and their rights, but Ministers then went on to decide a lack of resources meant that the free school meal provision would not be reinstated. The Welsh Government argued that if free school meals were continued in the holidays this would result in significant cuts in other key education budgets.[30] However, there was no transparency of this consideration as part of the education budget as a whole or with consideration to other budgets, e.g. Health, for example even though via the IIA, the decision was evidenced to negatively impact also on a child's health.

The High Court declared, by consent, that the Welsh Ministers acted in breach of s.1 of the Rights of the Children and Young Persons (Wales) Measure 2011, and s.149(1) of the Equality Act 2010.

Annex 4: The decision to end funding to the Wales Schools Programme

The Wales Police Schools Programme (WPSP) was jointly funded by Welsh Government (WG) and the four Welsh Police forces and celebrated its 20th anniversary in 2024. On 19th December 2023, the Welsh Government Budget 2024-25 announced the withdrawal of the funding arrangement effective from 31st March 2024.[31]

53. In prioritising funding to the NHS, we have reviewed all centrally held budgets in Health and Social Services and have redirected funding from several areas. These include substance misuse budgets. While we are protecting core provision, we have reprioritised funding from the Wales police schools programme, which provides support in all primary and secondary schools in Wales on a range of topics, including substance misuse, online safety and personal wellbeing.

The vision for the WPSP at the time was based on the principles of cooperation, early intervention, and prevention.

---

[29] Welsh Government Integrated Impact Assessment on the decision to end Free School Meals in the holidays https://www.gov.wales/sites/default/files/publications/2023-11/holiday-free-school-meal-impact-assessment.pdf

[30] Welsh Government Written Statement February 29 2024 https://www.gov.wales/written-statement-holiday-free-school-meals-provision

[31] Welsh Government Draft Budget 2024-25 https://www.gov.wales/draft-budget-2024-2025

At the time of the WG announcement, the Programme was implementing the 71 recommendations from the, 'Implementing the Vision of Wales Police Schools Programme' review (2023). This review was commissioned by Welsh Government and Police in Wales, for the purpose of modernising the programme and ensuring that the strategic aims were more aligned to policing and Police and Crime commissioners' priorities. A National Change Manager had been appointed to coordinate the delivery plan across Wales. The total funding grant from Welsh Government stood at £1.98million.

There was no consultation with Policing in Wales prior to this decision nor was there any consideration of the impact this decision may have on Policing or other Strategic Partners, e.g. Education Sector. There was also no consultation with children.

There was also no CRIA or IIA carried out on the decision to cut the funding, evidencing that due regard to the UNCRC on this budgetary decision had not been carried out, suggesting the decision may have been made unlawfully.

Annex 5: Statutory Material

The Rights of Children and Young Persons (Wales) Measure 2011, Section 1, duty to have regard to the UNCRC:

(1) From the beginning of May 2014, the Welsh Ministers must, when exercising any of their functions, have due regard to the requirements of –

(2) [..}

(a) Part 1 of the United Nations Convention on the Rights of the Child (UNCRC)

(b) articles 1-7 of the Optional Protocol to the UNCRC on the involvement of children in armed conflict, except article 6 (2), and

(c) articles 1 to 10 of the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography.

(3) A decision falls within this subsection if it is a decision about any of the following

  (a) provision proposed to be included in an enactment;

  (b) formulation of a new policy;

  (c) a review of or a change to an existing policy.

(4) References in this Measure to the Welsh Minister's duty under this section are-

  (a) From the beginning of May 2012, until the end of April 2014, to the duty in subjection (2); and

  (b) From the beginning of May 2014 to the duty in subsection (1).

(5) This section applies to the First Minister as to the Welsh Ministers (and any reference in this Measure to the duty under this section to be read accordingly).