

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and Education Committee

Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)| Additional Learning Needs and Education Tribunal (Wales) Bill

ALN 60

Ymateb gan: Grŵp Monitro Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn (CCUHP) Cymru:

Response from: Wales UNCRC Monitoring Group

The UNCRC Monitoring Group offers the following headline comments to assist the Committee with its inquiry into the Additional Learning Needs and Education Tribunal (Wales) Bill.

We would wish to draw the Committee's attention to complimentary and more detailed responses from individual organisations who are also members of the Groupⁱ and the response from the Third Sector Additional Needs Alliance (TSANA)

In March 2011 the Rights of Children and Young Persons (Wales) Measure received Royal Approval. The Measure places a clear duty on all Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC. Similar duties on persons exercising functions in relation to children under the Social Services and Well-being (Wales) Act 2014 have also been put in place. A similar reference to the United Nations Convention on the Rights of Disabled People (UNCRDP), ratified by the UK in 2008, was not included, however, in order to address this anomaly, the associated subordinate legislation creates some similar duties in relation to the UNCRDP. While these legislative measures do not create legal remedies for individual rights violations, they are significant advances towards incorporation of the Convention in Wales and the promotion and protection of children's human rights in legislation, policy development, practice and culture.

Children's human rights should be the driving principle which underpins and informs all Welsh Government policy and legislation. It is with this in mind that we express disappointment that the Bill, whilst making a significant attempt at adopting children's human rights discourse within many of the sections, including the Code of Practice, has neglected to explicitly include a

duty of 'due regard' to the UNCRC and the UNCRDP for persons exercising functions under the Bill. This is at best a missed opportunity to help ensure that the conventions are fully embedded in the legislation which would go some way to securing compliance at an operational level by those bodies exercising functions under the Bill in the decision making process as it relates to children.

Not only can we see no reason why a duty of due regard to the UNCRC and the UNCRDP is not explicit on the face of the Bill, but we believe the Bill would be better and more likely to deliver its principles and aims for its inclusion.

We support the Welsh Government's intention to introduce an inclusive and equitable system to meet the needs of children and young people with additional learning needs, from the ages of 0 to 25, to access and fully benefit from the educational opportunities that are available to them which mirror that accessed by their peers. Article 24 of the UNCRDP calls on State Parties to ensure this equality of opportunity. While recognising that the Bill may achieve this, consideration must be given to acknowledging that education is an individual experience that can at times be negatively affected by adverse childhood experiences that are unrelated to an additional learning need as defined under the Bill. This can have a significant negative impact on the individual's right to education (UNCRC Article 28, UNCRDP Article 24) and their right to achieve their full potential through education (UNCRC, Article 29 and inter alia UNCRDP 24.1 (b))

Children and Young People's Voice

Every child and young person with an Additional Learning Need will be entitled to a statutory Individual Development Plan (IDP) to support their learning, regardless of the severity or complexity of their needs. If implemented as intended, this will help achieve greater consistency and continuity, and ensure that children's human rights are fully protected particularly when there is a severity or complexity of individual need. The Bill requires that the child and young person's voice should be at the heart of the decision making process, and to support this, a person centred planning system is being introduced to ensure that their views, wishes and feelings are fully taken into account. This will include the process for preparing and reviewing an IDP.

Whilst welcoming the commitment to ensure that children have a voice when adults are making decisions that affect them (UNCRC Article 12, UNCRDP Article 7.3), it will be essential that children are fully involved, engaged and heard at the onset and throughout every stage of the process, and that robust monitoring arrangements are in place to ensure this routinely happens and that improved child rights based outcomes are being achieved. Reasonable adjustments, including recognition of an appropriate allocation of time, support and encouragement should be in place to help make sure that all children are able to express their views and actively participate. There must be compliance with the recently refreshed National Participation Standards for Children and Young People.

Accurate information, advice and support to enable all children, young people and their parents to fully participate and engage in the new arrangements will also be crucial, and should be in line with Article 13 of the UNCRC and Article 21 of the UNCRDP. Children and their parents should be able to explore their rights, choices and options, including in relation to the IDP and the consequences of having one. The UNCRDP makes numerous references to the accessibility of information; consequently the Bill and Code should recognise that accessibility is not only in format but in ensuring the proper and timely support to enable understanding is in place. This applies equally to children, young people, parents and carers.

Information, advice and support must also be made available in the language of choice for children, young people and parents in line with UNCRC Article 30, and in addition to that of English and Welsh where this is required to enable full engagement.

Multi-agency working

The Bill aims to support early identification and timely intervention to ensure that every child and young person with an Additional Learning Need can achieve their full educational potential. To encourage collaboration and ensure that organisations work towards what is in the best interest of every child (UNCRC Article 3, UNCRDP Article 7.2), in instances where a local authority requests help or information from another specified body in the exercise of their ALN functions, that body must comply with the request (unless specified circumstances apply). The Welsh Government considers that this is essential

in terms of early identification of needs and that the right support is put in place to enable children and young people to achieve their best possible outcomes. While welcoming this, the requirement for organisations to share information could be made stronger. We note the recommendation from the TSANA group that there should be a duty to work in a multi-agency way which is underpinned by local protocols between health, social services and education to assess and deliver provision.

We welcome the significant attempt to strengthen the duty on health bodies to make provision to meet children and young people's additional learning need. NHS bodies in Wales will be under a new duty to consider, when asked, whether there is any relevant treatment or service that is likely to be of benefit in addressing a child's additional learning need and that any treatment or service so identified must be included in the learner's IDP, and that the health body must secure the provision of the treatment or service. It has been noted however, that this reference to treatment could imply a clinical need where what is required is a more holistic focus on supporting social and developmental requirements, and ensuring compliance with both the UNCRC and UNCRDP.

Education in Mainstream Maintained Schools

Whilst the Bill largely replicates the existing inclusive legislative duty to favour those with an additional learning need being educated in mainstream maintained schools (subject to limited exceptions), it also promotes a person-centred approach. The Bill acknowledges that in some instances, attending a mainstream maintained school may not be appropriate or in each and every child's best interest. It consequently enables a local authority to place a child outside of the mainstream maintained education sector in some such circumstances and this right to access educational provision which is in the best interest of the child is very much welcomed. Article 3 of the UNCRC states that *'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'*; Article 7.2 of the UNCRDP states *'In all actions concerning children with disabilities the best interest of the child shall be a primary consideration.'*

In recognition of the potential value of special educational provision when ratifying the UNCRDP the UK placed reservations on Article 24.2 (a) and (b); *'The United Kingdom reserves the right for disabled children to be educated outside their local community where more appropriate education provision is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated.'*

Advocacy

The Bill places a duty on local authorities to refer children and young people to an independent advocacy service on request. The ALN Code sets out clearly the local authority's duty to both promote independent advocacy and make it available; the role and expectations placed on independent advocacy services in regard to representing the wishes and feelings of the child and young person, and the requirement of relevant bodies to take into account the representations made by an advocate. Local authorities must ensure that all children and young people are aware of their entitlement to independent advocacy and must ensure that they receive it when they need it. Section 18.43, bullet point 2 should therefore be strengthened to avoid the onus falling on the young person to have to 'request' an independent advocacy service to be able to access one. The developing work in respect of an 'active offer' to support the entitlement for independent advocacy provision amongst 'eligible' children under Part 10 of the Social Services and Well-Being (Wales) Act may help in this regard.

The Bill does not explicitly provide for the provision of advocacy for parents, this in spite of the Code informing that *'The child, child's parent or young person should be enabled to participate as fully as possible in the decision making processes'*. As the duty is extended to a 'case friend' it would seem incongruous not to apply the duty in relation to parents. As such we have concerns both that those most vulnerable will not be heard and that very young children, or children who lack sufficient capacity to understand (as set out in Section 75 of the Act) may not have appropriate parental representation. We are reminded of the responsibility placed on Government to provide services to support parents under Article 18 of the UNCRC and Article 23 of the UNCRDP.

Right to Appeal

The Bill continues to provide rights for children and their parents to appeal to the Education Tribunal against a range of decisions made by a local authority, FEI or school, but concerningly not health, in relation to ALN matters and IDPs. The provisions of the Bill will further support and promote children and young people's rights by extending appeal rights to all individuals up to the age of 25 who are in school or pursuing further education. In addition, the Bill provides for a 'case friend' to be appointed by order of the Tribunal where the child lacks capacity which will allow the child to exercise appeal rights and other rights under the Bill. While we support these proposals it is critical that both practically and pragmatically the distinction between case friend and advocate is maintained.

Young people over compulsory school age with ALN are given the right to make their own decisions in relation to their ALN, including the right to withhold their consent to a decision about their ALN being taken by an educational institution or local authority. This reflects the fact that these young people are no longer required to be in education and could reasonably expect to determine their own educational future. The Bill provides for regulations to be made in relation to young people who lack capacity to take decisions for themselves

ⁱ [About the Wales UNCRC Monitoring Group](#)

The Wales UNCRC Monitoring Group is a national alliance of non-governmental and academic agencies, tasked with monitoring and promoting the United Nations Convention on the Rights of the Child in Wales. The UNCRC Monitoring Group was established in 2002 and is presently facilitated by Children in Wales, the national umbrella organisation. Since 2002, the Group has worked with the UN Committee on the Rights of the Child and submitted civil society reports to inform successive UK State Party Examinations.

Members of the Monitoring Group are representatives of, and nominated by, non-governmental organisations and academics which are as follows - Barnardo's Cymru, Centre for Welsh legal Affairs, Aberystwyth University, Children in Wales, Children's Commissioner for Wales (observers), NSPCC Wales/Cymru, Play Wales, Save the Children Wales, UNICEF (observers), Wales Observatory on Human Rights of Children and Young People and the Welsh Local Government Association (observers)

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