

CYPE(5)-28-19 - Paper 1

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac
Addysg
Ymchwiliad i Hawliau plant yng Nghymru
CRW 14
Ymateb gan: Grŵp Monitro CCUHP
Cymru

National Assembly for Wales
Children, Young People and Education
Committee
Inquiry into Children's rights in Wales
CRW 14
Response from: Wales UNCRC Monitoring
Group

Consultation response - National Assembly for Wales Children, Young People and Education Committee: Short inquiry on children's rights in Wales to review the impact of the Rights of Children and Young Persons (Wales) Measure 2011

About

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 (UNCRC) in Wales. The Wales UNCRC Monitoring Group was established in 2002 and since May 2016 has been facilitated by Children in Wales. 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 in 2002, 2008 and 2016, and is engaged in other opportunities to forward children's rights, through other UN treaty mechanisms, Welsh Government and National Assembly policy and legislative processes.

Members of the Wales UNCRC 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), Equality and Human Rights Commission Wales (observers), NSPCC Wales/Cymru, Play Wales, Save the Children Wales, The Children's Society, The Observatory on Human Rights of Children, UNICEF and the Welsh Local Government Association (observers)

Further information on the work of the Wales UNCRC Monitoring Group can be found here <http://www.childreninwales.org.uk/our-work/rights/wales-uncrc-monitoring-group/>

1. Introduction

The Rights of Children and Young Persons (Wales) Measure 2011 came into full effect in May 2014 and requires Welsh Ministers through primary legislation to have due regard to the UNCRC when carrying out all of their functions (Part 1). Wales was the first, and presently the only part of the UK to implement such a duty, following repeated calls from the UN Committee on the Rights of the Child (UN Committee) and the Wales UNCRC Monitoring Group through successive civil society reports, to bring domestic legislation both in Wales and in the UK in line with the Convention's General Measures of Implementation.

The primary objective of the Measure is to ensure that the UNCRC is taken fully into account and given sufficient attention in policy development undertaken by Welsh Government officials on behalf of the Welsh Ministers. It is not intended to prescribe policy outcomes but provides a framework for Ministers, through the introduction of the Children's Rights Impact Assessment (CRIA) process, to embed the UNCRC into Welsh law. This process in turn should provide for enhanced policy output and improved outcomes for children and young people.

In 2018, Hoffman & O'Neill¹ - thereafter "the Study" (2018) - undertook a short examination into the impact of the legal integration of the UNCRC in Wales on behalf of the Equality and Human Rights Commission (EHRC). They concluded that

'the Measure has resulted in greater visibility for children's rights in policy processes undertaken by Ministers...(and) although there remain challenges of implementation of the Convention in Wales through government policy and action, overall the Measure has had a positive impact on the way policy is undertaken' (pp. 9)

This Study (2018) considered the impact of the Measure in achieving its intended objectives, focusing on policy development, advocacy and accountability. Professionals engaged through the fieldwork reported that in general, the Measure had had a positive influence on how policy was developed, believing that greater attention and thinking was being given to progressing children's rights in Wales. This in turn had raised expectations around compliance in that policy would take account of the Convention in its development or revision, and through increased visibility, enabling stakeholders to make greater reference to children's rights and the articles of the Convention in their engagement with the policy process. Nevertheless, the quality of consideration and analysis was also described as 'patchy and inconsistent' with the impact of the application of the legislation described as 'uneven'.

¹ <http://www.childreninwales.org.uk/resource/impact-legal-integration-un-convention-rights-child-wales/>

2. Securing compliance with the due regard duty

Part 2 of the Measure requires Welsh Ministers to make a 'Scheme' which sets out the arrangements they have made to secure compliance with Part 1 of the Measure. The present Scheme² (2014) set out a number of actions Welsh Ministers are taking to ensure compliance is achieved. We are aware that a refreshed Scheme is in progress and have made reference to this later in this submission.

2.1 Coordination & awareness raising within Welsh Government

The UN Committee requires government to establish a structure with a clear mandate and sufficient authority to coordinate all activities related to the implementation of the Convention. Such a structure should have '*sufficient human, technical and financial resources*' to be sufficiently effective. In relation to coordination, the current Children's Scheme (2014) makes reference to the Measure Implementation Team within Welsh Government, and describes its role, and many of its key functions and responsibilities (the more recent Compliance report notes that these responsibilities are now within the Children's Branch). We very much see this Team needing to be the internal source of expertise within Welsh Government to support the implementation of the due regard duty through a number of key internal functions.

It is essential that officials across all departments are fully aware and familiar with this resource, and are able to access appropriate and timely advice, support, knowledge and guidance. It is equally important that all departments are made aware of relevant initiatives commissioned by this Team to assist in the realisation of Convention articles e.g. Young Wales, and that such initiative have sufficient resources to meet potential demand.

As well as having the necessary expertise, this Team will require sufficient capacity and resources, and have an embedded strategic relationships with senior personnel and structures across Government (such as the Internal Children's Network referenced in the Compliance Report 2018) if they are to be truly effective in implementing Ministerial duties and the key components of the Measure. We anticipate that the forthcoming refreshed Children's Scheme will provide sufficient detail in relation to current internal arrangements and structures; the roles and responsibilities of the key groups who support the Welsh Ministers to comply with their duty under the Measure and the interface between different layers of governance.

² <http://www.assembly.wales/Laid%20Documents/GEN-LD9732%20-%20Children's%20Rights%20Scheme%202014-22042014-255569/gen-ld9732-e-English.pdf>

The Children's Branch have established a Children's Rights Advisory Group (CRAG), which consists of four members of the Wales UNCRC Monitoring Group³, whose role it is to provide advice through quarterly meetings to members of this Team in relation to pre-identified policy priorities and other related activities⁴. This is a positive development and provides a vehicle by which timely advice can be given to officials in support of their implementation functions (which should be seen as an on-going process) on behalf of Ministers

2.2 Increasing knowledge through internal training

The present Scheme notes the commitment to raise awareness and train staff using resources which have been developed, and that a Raising Awareness and Training Strategy is in place which includes the training tools and methods aligned with staff responsibilities. We would wholly agree that training is crucial in enabling officials, particularly those leading on the development of the CRIA process, to have sufficient knowledge and understanding of the Convention and the due regard requirements prescribed by the Measure in order to carry out their functions to the best of their ability.

Part 4 of the Measure requires Welsh Ministers to produce a Report (known as the Compliance Report) reporting on the activities undertaken to comply with Part 1 of the Measure. The Compliance report (2018) identified '*commissioning, coordinating and supporting training*' as one function, reporting that 648 staff across 4 departments have completed the online training during the period covered by the report, a number which is significantly lower than in the previous period. We understand that the training is currently being refreshed and updated to improve its accessibility and alignment with more recent policy changes, but we have yet not had sight of those changes or the recording and reporting mechanisms to ensure that the training is being delivered and accessed as intended, and that it meets its primary objective of increasing knowledge and understanding amongst staff.

It is essential that there is an element of face-to-face and specialised/targeted training to staff, including lawyers, as part of this new package being developed to complement the online element for staff, and that this support through training be continuous, and be compulsory for all new starters as part of their induction programme. It should also be ensured that officials thereafter receive training where there is a change in their role or function.

³ External members of the CRAG are Children's Commissioner for Wales, Children in Wales, Observatory on Human Rights of Children and UNICEF

⁴ This has included giving advice on draft CRIA and more recently, we have had an opportunity to pass comment on the forthcoming refreshed Children's Rights Scheme.

We anticipate that the forthcoming refreshed Children’s Scheme will provide sufficient detail in relation to the new arrangements and package for training, taking account of all the points made above. We would see the role of the Team of officials referenced above being instrumental in coordinating and driving forward these arrangements.

It should be emphasised that as due regard duty is non-delegable, that Welsh Ministers should also routinely undertake training as well.

2.3 Child Rights Impact Assessment (CRIA) process

To ensure that due regard is applied, the Welsh Government has adopted the CRIA process, consistent with the Convention’s General Measures of Implementation. CRIA remains an important mechanism by which to ensure that ‘due regard’ is applied in practice, and through CRIs being made public, as a basis for scrutiny and accountability. Whilst it’s been reported that the introduction of the CRIA process has resulted in a greater focus and attention given to children’s rights in the policy process, their quality is often regarded as variable.

In a briefing report⁵ (2017) UNICEF found that *‘practice had varied quite extensively to date’*, and whilst there were good examples of CRIA, many were *‘drafted too late’*, *‘become one-off products drafted to record and communicate decisions rather than to inform them’*.

The Study (2018) reported that 260 CRIA have been completed across a range of Government departments since May 2012, and examined a number of policies as case examples where a CRIA was undertaken, or where there were significant omissions e.g. 2017-18 budget (This despite child rights budgeting being a fundamental component of the General Measure of Implementation, supported by published UN Guidance on public budgeting for the realisation of children’s rights⁶). The Study (2018) concluded that the CRIA process can be effective to inform and improve policy development where the ‘due regard’ duty is consistently applied.

We have previously made the following recommendation that quality CRIs should be consistently undertaken on all proposed policies, budgetary decisions and legislation likely to impact on children and young people, and that these are routinely made available in a timely manner to external stakeholders, and for

⁵ <https://www.unicef.org.uk/publications/unicef-uk-cria-2017/>

⁶ UNCRC General Comment No. 19 (2016) <https://www.eurochild.org/policy/library-details/article/un-general-comment-no-19-on-public-budgeting-for-the-realisation-of-childrens-rights-article-4/>

scrutiny by children and young people who should also be engaged in their preparation. This should equally apply as the Strategic Integrated Impact Assessment model which is being implemented.

This would not only enhance accountability, by enabling external players, including children and young people to be better able to hold Ministers to account but also enable them to gain an enhanced understanding of why and how certain decisions had been made and how due regard had been fully taken into account.

2.4 Accountability, compliance and enforceability

As stated, Part 4 requires Welsh Government to produce a periodic report to demonstrate how they have complied with the duty. The latest report was published in 2018⁷, although was not subject to any scrutiny procedures by the National Assembly for Wales at the time.

The Measure does not provide direct legal accountability for children and young people who consider their rights to have been breached. We note that leading child rights advocates in Scotland have called⁸ for a ‘compliance duty’ to form a key component of their forthcoming legislation as the Scottish Government prepares to incorporate the Convention into Scots law. The Study (2018) makes reference to the limitations of the Measure in respect of enforceability by children, young people or persons making representation on their behalf. Wales UNCRC Monitoring Group member The Observatory on Human Rights of Children provides a persuasive case for Welsh Ministers introducing amendments to the Measure to allow for a compliance duty aligned to current competencies, and we would wish to draw the Committee’s attention to their written response.

The Children’s Scheme does provide for a child to make a complaint or challenge a decision, and sets out ways in which support to do so is available. However, the Compliance report makes no reference to any complaints being received and the Study (2018) makes reference to no complaints having been made during the period. The forthcoming refreshed Children’s Scheme now provides an opportunity to set out ways in which children could be better made aware of the complaints mechanism, supported by child-friendly and web-based materials.

3. Due regard duties placed on Public Bodies

We welcome the inclusion of the ‘due regard’ duties to the Convention through the Social Services and Wellbeing (Wales) Act 2014 and the Additional Learning

⁷ <https://gov.wales/rights-children-and-young-people-compliance-report>

⁸ <https://www.togetherscotland.org.uk/media/1200/childrens-rights-scotland-bill-2019.pdf>

Needs and Education Tribunal (Wales) Act 2018 in recent years. Welsh Ministers should follow the logic of the 'due regard' provisions further and extend a general public sector duty of due regard to the Convention in Wales which applies to all public bodies and all bodies delivering public functions. The role of public bodies is pivotal in delivering services which can enhance the promotion of children's rights and help children achieve better outcomes.

We believe that existing legislation could be strengthened to bring it in line with the requirements set out for Welsh Ministers in the Measure. Welsh Ministers are required by law to publish a Children's Scheme which sets out arrangements for complying with the due regard duty as well as a report which outlines how they have complied with that duty. There are no equivalent requirements on public bodies. Consideration should therefore be given to producing guidance to help public bodies comply with legislation and to strengthen scrutiny and accountability arrangements.

4. Strategic response to the Concluding Observations of the UN Committee on the Rights of the Child.

On the 3 June 2016, the UN Committee issued its Concluding Observations⁹ to the UK and devolved governments which set out ways in which governments can better meet their obligations in respect of implementing the UNCRC. These Concluding Observations, the first issued since the implementation of the Measure, were informed by the UN Committee's consideration of the report of the UK State Party, which the devolved governments contribute to¹⁰; reports from civil society organisations, including that of the Wales UNCRC Monitoring Group and from young people¹¹, including those in Wales¹². The Committee welcomed the positive steps being taken by the Welsh Government towards fully incorporating the UNCRC into domestic law, recognising that good progress had been made to secure and protect the rights of many children and young people,

We have previously called for there to be a national action plan for Convention implementation, which identifies key priorities and actions to address the recommendations made in the Concluding Observations. The then Cabinet Secretary for Children issued an initial response through a Written Statement¹³ welcoming the Concluding Observations upon their release in June 2016 and the

⁹ <http://gov.wales/docs/dsjlg/publications/cyp/160727-final-concluding-observations-2016-en.pdf>

¹⁰ The Welsh Governments contribution to the State Party Report - <http://gov.wales/docs/dsjlg/publications/cyp/131120-cyp-periodic-report-en.pdf>

¹¹ The report from Young Wales and the response from Welsh Government to that report - <http://www.youngwales.wales/index.php/priority-areas/uncrc>

¹² All documents submitted can be accessed via the website of the UN Human Rights Office of the High Commissioner - http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=987&Lang=en

¹³ <http://gov.wales/newsroom/people-and-communities/2016/un-committee-highlights-welsh-progress-childrens-rights/?lang=en>

relevant minister has issued similar statements since. However, whilst reference is made to certain recommendations from the UN Committee, a report setting out progress made to date in taking forward the actions and planned future activity until 2021 to implement the Concluding Observations as they relate to our devolved competencies has not been published.

To note that in November 2009, the previous Welsh Government published a National Action Plan “Getting it Right 2009: United Nations Convention on the Rights of the Child¹⁴” in response to the 2008 Concluding Observations. Described as a 5-year rolling action plan, it set out Welsh Government’s priorities in responding to the UN Committee’s previous recommendations.

Whilst the Measure stipulates that Welsh Ministers must have regard when preparing a Children’s Scheme to ‘any other reports, suggestions, general recommendations or other documents issued by the UN Committee relating to the implementation of the Convention’ this is not akin to having a duty to publish a comprehensive National Action Plan on activities to implement the Concluding Observations. We note that there is a legal obligation placed on the Scottish Government to report on steps taken to give further effect to the UNCRC, with their latest report also setting out progress made in taking forward the Concluding Observations and planned activity until 2021¹⁵.

We suggest that the Welsh Government consider introducing a duty on Welsh Ministers to publish, and monitor a National Plan which sets out progress made in implementing the Concluding Observations. Part 6 of the Measure provides for power to amend legislation to give further or better effect to the Convention.

In addition, we support calls from the Equality and Human Rights Commission Wales (EHRC) for the Welsh Government to adopt a formal mechanism to coordinate and monitor the implementation of all UN recommendations, including those from the UN CRC Committee, which would provide Welsh Ministers with a means by which to track progress more holistically. Many of the Concluding Observations issued by UN Committees of other UN treaties¹⁶ make recommendations in support of progressing children’s rights, and a coherent mechanism across Government would aid implementation and monitoring (we would wish to draw the Committee’s attention to the written response of EHRC Wales for more details)

¹⁴ <https://dera.ioe.ac.uk/10867/1/091117gettingitrighten.pdf>

¹⁵ <https://www.gov.scot/publications/progressing-human-rights-children-scotland-report-2015-2018/pages/13/>

¹⁶ For example, there are recent recommendation in relation to children in the Concluding Observations issued by the following UN committees - UN Convention on Torture (UNCAT); UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) & the UN Convention on the Rights of Persons with Disabilities (UNCRPD)

5. Implementing the duty to promote knowledge and understanding of the UNCRC amongst the public, including children and young people

Section 5 of the Measure places a duty upon Welsh Ministers to promote knowledge and understanding of the Convention amongst the public, including children and young people. The latest Compliance Report makes reference to a contract awarded to University Wales Trinity St David for sector specific training, and grant funding to Children in Wales for participation training to the workforce. It should be noted that a broad range of Third Sector and Wales UNCRC Monitoring Group organisations, the Children's Commissioner for Wales, Young Wales and the new Youth Parliament, also deliver activities which contribute to this aim as part of their broader work. We are not aware of any specific programmes of training activity aimed at raising awareness amongst the general population, although the Welsh Government have produced (and currently refreshing) hard copy materials and e-resources to promote knowledge of children's rights and the Convention, supported by social media and web base activities.

This year marks the 30th anniversary of the Convention with the Welsh Government have commissioned multi-media activity and engagement opportunities with children and young people in the lead up to a national event on 20th November¹⁷. This will provide a further opportunity to promote the Convention and activities in Wales which work to promote children's rights including the implementation of the National Participation Standards for Children and Young People in Wales.

The extent to which activities to date have directly achieved their intended aim of increasing knowledge and understanding of the Convention is difficult to gauge, given that no comprehensive survey of the whole population has been carried out. In respect of children, messages from the Study (2018) indicate that accessing knowledge about the Convention is largely dependent on which school a pupil attends and/or whether or not they are involved in any formal engagement structures and mechanisms, such as youth forums, Children's Commissioner's Ambassadors or Young Wales. The young people's workshops conducted to inform the Study found that 92% of young people had heard of the UNCRC with a clear majority having some knowledge about the Convention. However, this cannot be said to be representative of the population as a whole, with other reports put this figure significantly lower (Young Wales report to inform the UN scrutiny session in 2016 – 55% had heard of the Convention)

¹⁷ <http://www.childreninwales.org.uk/item/event-celebrate-30-years-uncrc-wales/>

There is a clear need for an approach which achieves consistency and provides an opportunity for all children and young people to be able to access information and knowledge about the Convention. This should be achieved in collaboration with existing structures which support awareness raising and opportunities for participation. In addition, we support a growing number of calls for human rights education to be fully incorporate into both the content of the whole new curriculum and across the whole school environment.

Welsh Ministers may wish to consider producing a national strategy for promoting knowledge and understanding of the Convention. This would support Ministers when monitoring and evaluating progress in achieving the duties set out in Part 5 of the Measure and inform their reporting requirements under Part 4. It would also contribute to broader priorities, including the programme of work around enhancing workforce development.

6. Making use of due regard to influence policy & legislation, and enhance scrutiny

The Measure also provides an opportunity to use the due regard duty as the basis for policy advocacy in Wales, and the study draws attention to ways in which Assembly members and stakeholders external of Government have made use of this opportunity. In the absence of a more detailed examination, the Study (2018) drew attention to the effective use of the due regard duty to influence policy and scrutinise Ministers, citing the CYPE Committee scrutiny of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 as one case example where the Measure was used to support policy positions and amendments. However, the opportunity to make reference to and use of the due regard duty during debates, plenary sessions and scrutiny undertaken by National Assembly committees was not always embraced when it might have been.

The use of the due regard duty by professionals is also mixed, with many Wales UNCRC Monitoring Group members more accustomed to utilising the Measure and rights-based language than many others. The recent evidence provided to inform the CYPEC scrutiny sessions in respect of the Children (Abolition of Defence of Reasonable Punishment)(Wales) Bill powerfully illustrates how the Convention can be utilised to good effect when putting forward and influencing policy positions. Assembly members and the National Assembly Committee Clerks and research teams may wish to consider exploring opportunities to access training to help support with scrutiny arrangements and making better use of the Measure when holding Ministers to account on their due regards duty

7. Independent monitoring

The UN committee welcomed the increased independence of the Children's Commissioner, but were concerned that powers were still limited. It recommended that independence should be strengthened. We commend the Welsh Ministers' position that the remit of the Children's Commissioner for Wales extend to any matter, devolved or non-devolved, affecting a child or children in Wales. This will significantly enhance enjoyment of their rights by children in Wales and is supported by the legacy report of the National Assembly for Wales' Children, Young People and Education Committee. In 2014, Welsh Government commissioned an independent review into the legislative framework¹⁸, role and accountability of the Children's Commissioner for Wales. Amongst the recommendations was that accountability and funding should be transferred to the National Assembly for Wales, consistent with the Paris Principles. However, we regret the Welsh Ministers' opposition at that time to make the office accountable to the National Assembly for Wales (the parliament) rather than the Welsh Ministers (the government). The Welsh Ministers should promote legislation to reform the Commissioner's statutory role and remit, including by making the Commissioner accountable to the National Assembly for Wales.

8. Closing Remarks

The Measure is a Wales-only significant piece of legislation which seeks to integrate the UNCRC into Welsh Law, with the Study (2018) showing that it is an effective mechanism by which to raise the profile of rights in law and policy. Wales was, and still is, the only part of the UK with such a law, which builds on the legacy of Wales being a country which prides itself on promoting children's rights and embedding them in policy and practice. It is timely for the Committee to reflect on the good progress which has been made but also look at ways in which children's human rights could be further realised. We hope that this response, along with those submitted by organisations as members of the Monitoring Group, assists assembly members in their deliberations and when forming recommendations.

Developed and submitted by Children in Wales, in consultation with and on behalf of member organisations of the Wales UNCRC Monitoring Group.

September 2019

¹⁸ <https://gov.wales/written-statement-review-role-and-functions-childrens-commissioner-wales-announcement-reviewer>