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25 September 2019  
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Children, Young People and Education Committee

## **WLGA Response to the CYPE Inquiry into Children's Rights in Wales**

The extent to which the Rights of Children and Young Persons (Wales) Measure 2011 has influenced the Welsh Government's decision making, including its financial allocations and whether it has fulfilled the Convention's 'general measures' of implementation Article 4 of the United Nations Convention on the Rights of the Child (UNCRC) requires governments to *"undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention"*.

The introduction of the Rights of the Children and Young Persons (Wales) Measure 2011 was ground-breaking. Wales became an international pioneer for children and was one of the first countries in the world to include children's rights in domestic law. What the Measure has done is:

- Make clear, under Section 1, the duty on Welsh Ministers to pay due regard to the UNCRC when exercising their functions. This means the minimum standards laid down by the Convention should be the central organising principle of policy development affecting children and for the fulfilment of their rights to be a primary consideration of Ministerial decision-making.
- Require Welsh Government to publish a Children's Rights Scheme. This sets out how it will secure compliance with the due regard duty in policy formation and the reporting arrangements through which it can demonstrate progress.
- Supplemented and strengthened the accountability framework available for children and young people in Wales, through its tendency to address a lack of policy focus on children's rights rather than prescribing policy outcomes.

Some recent research indicates that the Measure has met its intended objectives, by improving the visibility of children's rights in Welsh Government's policy formulation and ensuring the Convention acts as the basis through which officials better understand, and therefore, increasingly reference it in engaging with relevant stakeholders<sup>1</sup>.

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<sup>1</sup> Hoffman, S. and O'Neill, S. (2018) *The Legal Integration of the UN Convention on the Rights of the Child in Wales*. [.pdf]  
Available online at:

[https://www.equalityhumanrights.com/sites/default/files/the\\_impact\\_of\\_legal\\_integration\\_of\\_the\\_un\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child\\_in\\_wales\\_eng.pdf](https://www.equalityhumanrights.com/sites/default/files/the_impact_of_legal_integration_of_the_un_convention_on_the_rights_of_the_child_in_wales_eng.pdf)

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Whilst welcome and useful, where the Measure falls short is that it secures a partial incorporation of children's rights and only goes some way to meeting the UN recommendations to fully integrate the Convention into domestic law. Application of the General Measures requires legal incorporation to be supported by:

- appropriate political coordination;
- child-focused strategic planning;
- child-focused budgeting;
- child-focused data collection and disaggregation;
- children's rights impact assessments and evaluation;
- cooperation between and across all layers of government;
- children's rights education, training and capacity building; and,
- an independent institution for children accountable to the legislature.

Children's Rights Impact Assessments (CRIA) offer a robust mechanism which support officials to take account of the Convention and helps them to evidence how the due regard duty has been paid. However, carrying out and publishing a CRIA on new or amended policy decisions is not mandatory. When CRIAs have been published, there is variability in the quality of assessment and how they have been applied. For example, CRIAs are normally carried out and published for new legislation but not for budget-setting processing and some policy consultations. Others have integrated children's rights into a combined impact assessment covering a range of other topics including equality, the environment and the Welsh language.

While there is some evidence the due regard duty has improved the visibility of children and young people and has changed the way officials formulate policy, it is difficult to determine the extent to which the Measure has improved outcomes without the mandated publication of CRIAs.

### **The evidence of whether the Measure has led to improved outcomes for children and young people**

Differences in methodology for CRIA to be carried out *ex ante* (policy formulation) and *ex post* (policy evaluation). Implementation of due regard under the Measure borrows the Brown principles<sup>2</sup> borne out of case law informing the Equality Act 2010. These principles inform decision-making rather than evaluate the impact a particular policy decision has had on children rights.

While there is some evidence the due regard duty has changed the way officials formulate policy and has improved the visibility of children in decision-making, it is difficult to determine that extent to which the due regard duty has improved outcomes for children without the mandated publication of CRIAs.

### **The extent to which the Welsh Government has sought to ensure that its duties within the Measure are translated into the work of the public bodies it provides funding to, including local authorities and NHS bodies;**

Under international law, all layers of government are deemed duty-bearers of children's rights. They all have responsibilities to ensure that the obligations in the Convention are protected, respected and fulfilled. This is in accordance with Articles 4 of the UNCRC and the General Measures of the Implementation set out by the UN Committee on the Rights of the Child. Article 3 of the International Covenant of Economic, Social and Cultural Rights and Article 27 of the Vienna Convention on Law and Treaties also sets out the failure of any public authority, including local authorities, to uphold in human rights is a failure of the State.

Although the Measure applies only to Welsh Ministers, by virtue of international law it is reasonable to expect that the duties they put on themselves should also apply to the public bodies to which they provide funding. Interestingly, updated statutory guidance relating the Well-being of Future Generations Act 2015 (issued under Section 17(3) of the Children and Families (Wales) Measure 2010) refers to the Welsh Ministerial duties under the Rights Measure and states that *"this filters down to the local level through legislation, regulation and statutory guidance"*.

<sup>2</sup> R. (Brown) v Secretary of State for Work and Pensions [2008]. EWHC 3158. Available online at:

<http://www.bailii.org/ew/cases/EWHC/Admin/2008/3158.html>

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It is important to note that local authorities were already committed to the principles of the UNCRC prior to the Measure. Guidance issued under section 125 of the Learning and Skills Act 2000 and the Children and Families (Wales) Measure 2010 sought to ensure that the UNCRC formed the basis of local policy decisions and for local authorities to support children's participation in decision-making. The introduction of the Measure did raise the profile of children's rights across Wales. Some local authorities sought to voluntarily exercise their commitment to children's rights with renewed vigour. For example, some local authorities have integrated consideration of children's rights into their own impact assessment processes. Others, like Cardiff and the City and County of Swansea went further:

- Swansea - emulated voluntarily applied the duties in the Measure to their own policy framework in 2014 and declared its intention to become a 'Human Rights City' in 2018.
- Cardiff Council's Children & Young People Scrutiny Committee carried out an inquiry into the local application of the Measure in 2012<sup>3</sup> and the Council upheld a recommendation to commit to the UNCRC in its corporate plan. Cardiff has since started working with UNICEF to become a 'Child-Friendly City'.

Section 7(2) of the Social Services and Well-being Act 2014 and Section 7 of the Additional Learning Needs and Education Tribunal Act 2018 extends the due regard duty to persons and relevant bodies (including local authorities and NHS bodies) exercising functions under these Acts. Timescales for commencement for these duties vary. The duty under the Social Services and Well-being Act commenced on the day it received Royal Assent whereas implementation of the Additional Learning Needs and Education Tribunal Act 2018 is not due to begin until September 2021.

There has been little post-legislative scrutiny of the Social Services and Wellbeing Act 2014 and ongoing evaluation activity does not specifically cover the status of human rights obligations in decision-making. Therefore, it is unclear to determine the extent of compliance with the duty to pay due regard to the UNCRC.

### **The extent to which the Welsh Government has implemented its duty to promote knowledge and understanding of the UNCRC amongst the public, including children and young people**

#### **a) E-module on Children's Rights**

Swansea borrowed the children's rights e-module from the national arrangements under the Children's Rights Scheme to promote awareness amongst its staff

#### **b) Capacity building for professionals**

Welsh Government commissioned Trinity College to develop and deliver sector-specific training on the UNCRC. Modules related to education, social care and local authority corporate management.

#### **c) Making the Convention known to children and young people**

Articles 4, 29 and 42 of the UNCRC places duties on the Welsh Government to ensure that children and young people learnt and understood their outlined in the Convention.

##### **SCHOOLS**

Section 101 of the Education Act 2002 sets out the basic curriculum for all maintained schools in Wales and Convention rights do not form part of the statutory curriculum (although they are referenced in the current PSE Framework (2008)).

Despite this, some local authorities (Swansea and RCTCBC) have committed their strategic, financial and staff resources to ensuring children rights are built into schools' local offer through the

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<sup>3</sup> [https://www.cardiff.gov.uk/ENG/Your-Council/Councillors-and-meetings/Scrutiny/Scrutiny-reports/Documents/YP-%20Rights%20of%20the%20Child%20\(UNCRC\).pdf](https://www.cardiff.gov.uk/ENG/Your-Council/Councillors-and-meetings/Scrutiny/Scrutiny-reports/Documents/YP-%20Rights%20of%20the%20Child%20(UNCRC).pdf)

coordination of UNICEF's Rights Respecting School Award (RRSA) in their areas. A large proportion of schools in Wales are also engaged with the Children's Commissioner for Wales 'Rights Ambassadors' programme.

The curriculum in Wales is undergoing through a period of wholesale transformation and a number of bodies including the UN Committee on the Rights of the Child, the Children's Commissioner for Wales and the Ministerial Expert Panel for Sex and Relationships Education have all called for human rights and children's rights based education to form part of the new statutory curriculum. As of April 2019, draft guidance for the new curriculum suggests that children's rights education will form part of the non-statutory cross-curricular responsibilities.

## **YOUTH SERVICES**

Local authority youth services in Wales have played a vital role in supporting children and young people to learn about, access and claim their rights outlined in the UNCRC. Key policy documents including *Extending Entitlement* and *the Principles and Purposes of the Youth Work in Wales* make a firm commitment to ensuring youth workers embed the UNCRC in their professional practice.

Although arrangements have shifted in recent years, local authority youth services traditionally housed the staff responsible for managing, coordinating and facilitating mechanisms for youth participation in the area. While these arrangements may have been subject to change, guidance issued under section 17(3) of the Children and Families (Wales) Measure 2010 expects local authorities to make sure as many children and young people as possible are aware of their rights as set out in the UNCRC, including their right to participate and for their opinion to be heard, and to be involved in decision-making about policies and services which affect their lives.

### **How the duty to have 'due regard' to the Convention on the Rights of the Child is being implemented in practice and whether Child Rights Impact Assessments are being used as a meaningful tool;**

Children's Rights Impact Assessments (CRIA) offer a robust mechanism which support officials to take account of the Convention and helps them to evidence how the due regard duty has been paid. However, carrying out and publishing a CRIA on new or amended policy decisions is not mandatory. When CRIAs have been published, there is variability in the quality of assessment and how they have been applied.

### **How effectively the Welsh Government responds on a strategic basis to the Concluding Observations of the UN Committee on the Rights of the Child.**

Following the UN Concluding Observations in 2008, the Welsh Government established *Let's Get it Right* in 2009. This was their response to their response to the UN's recommendations and set out a 5-year strategic action plan as to how it intended to meet them.

In 2016, the UN Committee on the Rights of the Child published their latest set of Concluding Observations following another round of periodic scrutiny on the implementation of children's rights. Welsh Government's response to this set differed from their previous approach. Instead, re-establishing a specific programme for children and young people, key actions were listed in *Prosperity for All* and *Taking Wales Forward*. These key policies documents are age-inclusive and do not give a bespoke strategic focus for the UN Concluding Observations.

The WLGA hope that you find these observations useful.


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**Yn gywir / Yours sincerely**



**Pennaeth Addysg dros dro  
Interim Head of Education**

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