



Comisiynydd Plant Cymru Children's Commissioner for Wales

Ymateb i Ymgynghoriad / Consultation Response

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Subject / Pwnc: Equality, Local Government and Communities Committee :
Inquiry into Human Rights in Wales

Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim, under the Care Standards Act 2000, is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC), as stipulated in regulation 22 of the Children's Commissioner for Wales Regulations 2001. The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure (the Measure), which places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential.

The impact of the UK's withdrawal from European Union on human rights protection in Wales;
The impact of the UK Government's proposal to repeal the Human Rights Act 1998 and replace it
with a UK Bill of Rights

1.1 Human rights guarantee basic freedoms and meet the basic needs of all humanity, underpinned by respect for human dignity. Human rights are binding on government and on public authorities at all levels in the UK, and provide a strong ethical framework for planning, decision-making and action. The role and remit of the Children's Commissioner for Wales is explicitly linked to the human rights of children, specifically the United Nations Convention of the Rights of the Child (UNCRC). Whilst there is some crossover of themes and content, the UNCRC is entirely separate to the European Union (EU), the European Convention on Human Rights (ECHR) and Human Rights Act 1998 (HRA).

1.2 Children are entitled to their human rights, including being able to access and exercise their rights. Children's rights are set out in international treaties, including the European Convention on Human Rights (ECHR). Children's rights are entitlements, they are not optional. Children aged 0-17 years are given special human rights protection by the UNCRC. Wales was the first country in the UK to establish a Children's Commissioner to uphold the rights of children in Wales, and has a proud tradition of incorporating children's rights into domestic legislation and policy through the Rights of Children and Young Persons (Wales) Measure 2011 (the Measure), the Children's Rights Scheme 2014 and direct application such as Section 7(2) Social Services and Well-being (Wales) Act 2014.

1.3 The proposals of the UK Conservative Party in its manifesto to introduce a new British Bill of Rights are based on a paper entitled "Protecting Human Rights in the UK"¹. Whilst there have been many reassurances that the rights contained in the ECHR will simply be reintroduced through the Bill of Rights, it is concerning to note that the Bill would aim to "*clarify limitations on individual rights*" for example the Article 8 rights of foreign nationals. The policy also proposes to "*limit the use of human rights laws to the most serious cases*" and apply a "*threshold below which the rights will not be engaged*". Given the worrying recent developments in the United States of America in relation to visas and free movement and here in the UK in relation to support for refugees, it is more important than ever that fundamental rights and freedoms are actively protected and defended.

¹ https://www.conservatives.com/~media/Files/Downloadable%20Files/HUMAN_RIGHTS.pdf

1.4 The ECHR is not a product of the EU, it is an entirely separate and earlier undertaking, which the UK was influential in setting up. The ECHR sets out fundamental rights and freedoms that should apply to all. This universality of rights means that it is not appropriate to 'pick and choose' which rights should apply and to whom. Any international agreements in relation to rights are clear that fundamental rights apply to all; that is the only safe way to ensure that such rights are properly protected and upheld.

1.5 The HRA protects some fundamental rights including the rights to family life and to privacy. The UNCRC protects the rights that are unique to children. The Measure incorporates the UNCRC into domestic law in Wales and places duties on Ministers and those exercising functions to have due regard to the Convention rights. This includes decision making and budget setting. It is essential to protect all of the fundamental freedoms that apply to all citizens in a civilised society and modern democracy, but particularly children whose inherent vulnerability requires additional considerations and protection. Any new Bill of Rights must build upon the existing rights of children rather than diminishing them. Effective judicial remedies are needed to ensure that Rights can be properly and fully upheld and any new Bill should also include provisions to ensure that this will be the case.

1.6 One key difference between the UNCRC and the HRA is that the HRA give rise to enforcement actions if a breach can be established. Whilst the duty of due regard is incorporated into Welsh law, there is limited legal enforceability or redress should the rights be found to have been breached, in comparison to the HRA where damages and injunctive relief can be awarded by the courts. The HRA is therefore important in securing meaningful changes to policy and guidance in light of cases where breaches have been established.

1.7 When presenting evidence with my counterparts to the United Nations Committee on the Rights of the Child during 2015, we expressed our shared concern at the future of the human rights settlement in the United Kingdom due to the UK Government's intention to repeal the HRA, replace it with a British Bill of Rights (the contents of which are yet to be announced), and 'break the formal link between British courts and the European Court of Human Rights'. The HRA has been vital in promoting and protecting the rights of children in the United Kingdom and the European Court of Human Rights has had an important role in developing the protection offered to children by the ECHR. I am still concerned that any amendment or replacement of the HRA is likely to be regressive. I am concerned that the potential removal of the HRA and subsequent 'selection' of rights to apply

sends a worrying message that rights are either optional or disposable should they become too onerous on those who bear the duty to uphold them.

1.8 The Wales Observatory on Human Rights of Children and Young People hosted an event on 19th January 2017 entitled “Brexit: Implications for Children in Wales”. The follow up report notes the recommendations of the event, as influenced by young people from EYST and Youth Cymru. One of their recommendations to the Welsh Government is to *“Provide a ‘social guarantee’ to all people in Wales, including migrants, asylum seekers and refugees; this should guarantee that all people in Wales will be entitled to rights regardless of their country of citizenship”*.² I support this and other recommendations in the report and draw the Committee’s attention to them as part of this Inquiry. I have recently received correspondence from the First Minister highlighting Government’s intentions to develop a specific advisory group of children and young people working in conjunction with the EU advisory group. The aim of the group will be to directly engage with children and young people, seek their views and provide input on the impacts of the UK’s withdrawal from the EU on them, in line with Welsh Government’s legislation. I truly welcome these initiatives as it is fundamental for the children and young people of Wales to have a central part in shaping society in response to the referendum result.

Public perceptions about human rights in Wales, in particular how understandable and relevant they are to Welsh people.

2.1 Too often children do not know that they have rights which means they cannot take advantage of them. Despite being experts on their own lives, children are often excluded from decisions that affect them. Children can at times be powerless to hold to account decision-makers, or those responsible for the provision of services, so the need for a legal framework that embeds and protects their best interests is vital. It is therefore crucial that the Welsh Government and UK Government act as guardians to protect and promote the fundamental rights of children.

2.2 Plans to establish a Youth Parliament in Wales are also very important to ensure the direct involvement of young people from a range of backgrounds and their influence over legal and policy developments that affect them here in Wales. In recent years that national layer of youth

² [http://www.swansea.ac.uk/media/Brexit-Implications%20for%20Children%20in%20Wales%20-%20Report%20on%20Proceedings%20\(2\).pdf](http://www.swansea.ac.uk/media/Brexit-Implications%20for%20Children%20in%20Wales%20-%20Report%20on%20Proceedings%20(2).pdf)

democracy has been missing in Wales. The Youth Parliament will send out a clear message to children and young people that they are important citizens with a part to play in the governance of our nation. It is also a logical additional layer to the local youth councils and forums that are active throughout Wales but which are unable at the moment to take forward national issues such as the importance of their rights being upheld and protected in their everyday lives.

2.3 Children's human rights give rise to obligations which demand accountability and the development of the youth parliament will assist in empowering children and young people with the level of accountability that they demand and deserve. Accountability means holding decision-makers to account, which requires information and data on performance against children's rights standards. Public authorities must understand that children have human rights and that they have an obligation to respect, protect and fulfil children's rights. All those involved should understand that they are accountable to children for meeting this obligation. Children should be made aware of their human rights, and should be given information to understand the responsibilities and obligations of public authorities and other organisations. To obtain any human right a child must know they are entitled to it and be able to actively claim their human rights, including when making a complaint or challenging decisions and actions.

2.4 We should be proud of our history on children's rights in Wales but we cannot be complacent. Firstly, the gaps in opportunities and outcomes between the poorest quarter of the child population and richest quarter are still far too wide. Secondly, there are vulnerable groups such as looked after children, disabled children and those experiencing mental illness that require more effective support and protection. Thirdly, there are changes that could enhance the rights of all children and young people. This includes opportunities for children and young people to act as active citizens, equal protection from physical assault and a strengthening of underpinning rights legislation.

2.5 I firmly believe that children should be prioritised in our laws and public policies, in order to secure positive outcomes and fulfilled lives. To realise children's rights there must be:

- a) strong underpinning legislation and policies;
- b) effective processes and sufficient funds and commitment to implement the policy agenda, and
- c) improved outcomes and experiences for children and young people.

2.6 For example, Children's Rights Impact Assessments (CRIA) should be used by the Welsh Government as a part of its decision making processes. The Children's Rights Scheme which

underpins the Measure states that the intent of CRIA process is “for providing the evidence that children’s rights are being analysed and considered with appropriate rigour in our work”. The Scheme notes that the publication of CRIAs “affords further transparency and opportunity for others to engage and offer feedback”. However the current regulations do not require the CRIA to be published at the outset; this is something that unfortunately results in CRIA not appearing to be undertaken at the early stage. It is therefore not always clear or automatically transparent how children’s rights have been part of the decision making process despite this being a binding requirement on Ministers under the Measure. It is important that practices are updated in order for CRIA to be fully utilised as an instrumental tool to make better policy which give access to children’s rights to secure positive outcomes.

2.7 On a broader level, implementation of the rights set out in the UNCRC is monitored by the Committee on the Rights of the Child. As part of this monitoring process, the UK and devolved governments submits a ‘periodic state report’ every 5 years or so. The Committee published its latest findings in June 2016, officially known as concluding observations, making a series of recommendations on the steps the UK and devolved governments should take to advance children’s rights. Whilst the Committee cannot force the UK and Welsh Government to change its laws, policies and practice, for ratification of the UNCRC to be meaningful there is an expectation on Welsh Government to take seriously the Committee findings and respond to them quickly and transparently, especially in light of the invaluable contribution made by children and young people to the reporting process. The Committee and I are both expecting Welsh Government Ministers to show leadership and commitment to take forward the Committee’s recommendations via a dedicated Programme of Government for Children and Young People, with a clearly defined action plan for full implementation of the UNCRC, so that a child’s rights reality can match the strong rhetoric apparent in Wales relating to children’s human rights.

2.8 My office has been working with the Wales Observatory to define and detail what a child’s rights approach truly constitutes, and we will be publishing a guide in April of this year. As we must endeavour in Wales to match the principles of our laws and policy with meaningful actions which improve outcomes of children and young people. A Children’s Rights Approach is a principled and practical framework for working with children, grounded in the UNCRC. It is about placing the UNCRC at the core of planning and service delivery and integrating children’s rights into every aspect of decision-making, policy and practice.

The principles of a Children's Rights Approach are:

- Embedding children's rights
- Equality and Non-discrimination
- Empowering children
- Participation
- Accountability

Embedding children's rights

Children's rights should be at the core of planning and service delivery. The UNCRC needs to be integrated into every aspect of decision-making through procedures and actions.

Equality and Non-discrimination

Equality is about ensuring that every child has an equal opportunity to make the most of their lives and talents, and that no child has to endure poor life chances because of discrimination. Equality involves treating all children fairly, and providing them with opportunities and resources according to their needs, equal with others, ensuring that they are able to develop to their fullest potential.

Empowering children

Empowerment means enhancing children's capabilities as individuals so they are better able to take advantage of rights, and to engage with, influence and hold accountable those individuals and institutions that affect their lives. Children should be given information to increase their understanding about human rights, and access to resources to enable them to make use of rights in their everyday lives.

Participation

Participation means listening to children and taking their views meaningfully into account. All children should be supported to freely express their opinion; they should be both heard and listened to. Their views should be taken seriously when decisions or actions are taken that affect their lives directly or indirectly (as guaranteed by Article 12 of the UNCRC).

Accountability

Children should be provided with information and given access to procedures which enable them to question and challenge decision-makers. Accountability requires effective monitoring of children's rights standards as well as effective remedies where there is a failure to meet these standards.

2.9 Due regard to the UNCRC should not start and end with Ministerial functions and I continue to call for the extension of the duty of due regard to the UNCRC to all persons exercising functions under legislation relating to children and young people, in order for a child's rights approach to become systematically embedded within and delivered by public and private authorities across Wales. I also call for children's rights to form the framework for the new school curriculum, so that all activities within education settings are clearly linked to children's rights, including their rights to fulfil their potential, to be protected from harm and to participate in the development and delivery of their education. An understanding of human rights, including children's rights, should also be a core and compulsory element of citizenship education so that, going forward, all Welsh citizens will share a clear understanding of the principles and practice of human rights.

With the looming possibility of Human Rights Law being reformed by the UK Government it is imperative that we build upon the foundations we have laid down in Welsh civic society to empower our young citizens with their rights and entitlements. I believe that this will help heighten public awareness of the UNCRC and help us to further foster a culture which promotes thinking about the impact of what goes on in society on children, which challenges bad practice and promotes positive outcomes. Practical improvements leading to beneficial outcomes are essential for the duty of due regard to have real meaning.

Submitted by:



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