

Equality and Human Rights Commission

# The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales

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Observatory on Human Rights of  
Children and Young People and Sean  
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Dr Simon Hoffman, Wales Observatory on Human Rights of Children and Young  
People and Sean O'Neill, Children in Wales

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# Acronyms and abbreviations

CCfW	Children's Commissioner for Wales
Convention	United Nations Convention on the Rights of the Child
CPS	Revised Child Poverty Strategy 2015
CRIA	Child Rights Impact Assessment
CYPEC	Children Young People and Education Committee
HRA	Human Rights Act
Measure	The Rights of Children and Young Persons (Wales) Measure 2011
NAW	National Assembly for Wales
SSWBA	Social Services and Well-being (Wales) Act 2014
UN	United Nations
UN Committee	United Nations Committee on the Rights of the Child
UNCRC	United Nations Convention on the Rights of the Child
WBFGA	Well-being of Future Generations (Wales) Act 2015

# About the research

The Equality and Human Rights Commission (EHRC) wishes to examine ways in which it can promote better realisation of human rights in Wales. In December 2017 the Equality and Human Rights Commission commissioned research on the impact of the ***Rights of Children and Young Persons (Wales) Measure 2011*** (the ‘Measure’), which is Wales-only legislation integrating the UN Convention on the Rights of the Child (the ‘Convention’) into Welsh law. The research aims to assess the impact of the Measure and how (if at all) it has made a difference to children’s rights in Wales.



# Executive summary

Since devolution for Wales in 1999 the Welsh Government has been responsible for policy in areas having an impact on children's rights under the Convention (e.g. education, health, housing, the environment, social care). Policy development in areas affecting children in Wales under the control of Welsh Ministers is governed by the Measure. The Measure is a general legislative measure of implementation which integrates children's rights in Welsh law. It is consistent with several recommendations made by the UN Committee on the Rights of the Child (the 'UN Committee') on the domestic application of the Convention. The Measure came into full effect in May 2014.

The Measure's primary objective is to ensure that the Convention is fully taken into account in policy development undertaken by Welsh Ministers. It does so by requiring Welsh Ministers to have 'due regard' to the Convention when carrying out any of their functions. It is not intended to prescribe policy outcomes.

The introduction of the due regard duty led directly to the introduction of a Children's Rights Impact Assessment (CRIA) as part of the policy development process undertaken by Ministers and their officials. CRIA is consistent with recommendations on general administrative measures of implementation of the Convention by the UN Committee. The introduction of CRIA has helped raise the profile of children's rights in policy development in Wales. However, application of CRIA in practice is 'patchy and inconsistent', sometimes undermining the substantive application of the due regard duty.

The Measure has introduced a new opportunity for policy advocacy on behalf of children in Wales, legitimising the language of Convention rights in policy discourse, and providing a foundation for stakeholders to engage with the Welsh Government in dialogue about how to give effect to children's rights through policy. It has also introduced an expectation of compliance with the Convention, which contributes a strong underpinning for advocacy on behalf of children in Wales.

The due regard duty has enhanced legal accountability through the addition of a new basis for action in public law. Despite this, legal redress and judicial review have not emerged as significant accountability mechanisms for children's rights compliance in Wales. However, the Measure has established the Convention as an audit framework for Welsh Government policy. A requirement under the Measure to publish a periodic report on how Ministers have complied with the due regard duty gives opportunity for public debate and scrutiny at parliamentary level (in Wales), although, with some exceptions, this has not been fully exploited by members of the National Assembly for Wales (NAW). Non-governmental organisations and the Children's Commissioner for Wales (CCfW) are more adept at using the Measure as an accountability device.

The primary impact of the Measure has been to embed the Convention as a framework for policy development in Wales, including through the introduction of CRIA. It has provided impetus and confidence to stakeholders to use the Convention in policy advocacy and has strengthened Ministerial accountability for the way in which Convention rights are taken into account in policy decision-making

The Measure has resulted in greater visibility for children's rights in policy processes undertaken by Ministers and their officials. 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 by the Welsh Government.

# Part One

## Context

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The UK is a State party to the UN Convention on the Rights of the Child, and its first and second Optional Protocols.<sup>1</sup> However, the UK's approach to the incorporation of international treaties means the Convention is non-binding in domestic law. There have been numerous calls from several UN treaty bodies, most notably the UN Committee on the Rights of the Child for the UK to incorporate the Convention into domestic law.<sup>2</sup> To date, successive UK Governments have refused to incorporate the Convention.

The primary responsibility for giving effect to the Convention in the UK is with the UK Government. However, the realisation of many Convention rights in Wales is dependent on policy decisions taken by the Welsh Government, in areas which fall under the control of Welsh Ministers,<sup>3</sup> such as: education, health, housing, the environment, community safety, planning, and social care.<sup>4</sup> The NAW has competence to enact legislation in these areas, and others, which are relevant to rights guaranteed by the Convention. In 2011 the NAW enacted Wales-only legislation to give effect to the Convention in policy development in Wales: the ***Rights of Children and Young Persons (Wales) Measure 2011*** (the 'Measure').<sup>5</sup> The Measure came into full effect in May 2014.<sup>6</sup> It is primary legislation that requires the Welsh Ministers to have due regard

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<sup>1</sup> References to the Convention in this report include reference to the two Optional Protocols.

<sup>2</sup> For example, UN Committee, General Comment No.5, *General Measures of Implementation of the Convention on the Rights of the Child*, 2003; and UN Committee, *Concluding Observations on the UK State Party*, 2008.

<sup>3</sup> The Welsh Government includes Cabinet Secretaries and Ministers. For readability the term Ministers will be used in this report to apply to both unless the context suggest otherwise.

<sup>4</sup> For NAW legislative competences: Government of Wales Act 2006, Schedule 7. Welsh Government executive powers largely mirror these competences.

<sup>5</sup> Full text available at <http://www.legislation.gov.uk/mwa/2011/2/contents>

<sup>6</sup> The Measure came partially into effect in May 2012 (applying to new policy and legislation). It was brought into effect in two stages to allow officials time to prepare for its introduction.

to the Convention when carrying out any (i.e. all) of their functions (the ‘due regard duty’).<sup>7</sup>

## About the research

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The Equality and Human Rights Commission wishes to examine ways in which it can promote implementation of human rights in Wales, including through the use of devolved legislation.

The research was carried out by the Wales Observatory on the Human Rights of Children and Young People, and Children in Wales between 1 January and 31 March 2018.

## Methodology

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We adopted a mixed methodology comprising:

- a literature review
- a ‘snapshot’ review of NAW proceedings
- professional stakeholder survey (civil society)
- legal professionals survey
- case studies, and
- consideration of output from workshops with children and young people, undertaken via *Young Wales*, a consultation and participation forum coordinated by Children in Wales.

At the outset it was recognised that time and resource constraints would be practical limitations on the methods and scope of the research. In particular, as participative and qualitative research is highly resource intensive, and require time for preparation and fieldwork, we had to impose limits on this method of data acquisition. We therefore

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<sup>7</sup> Section 1 requires the Welsh Ministers, when exercising any of their functions, to have due regard to: Part 1 of the CRC; articles 1 to 7 of the Optional Protocol to the CRC on the involvement of children in armed conflict, except article 6(2); and, articles 1 to 10 of the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

decided to adopt a mixed-methods approach, using several data sources to acquire relevant information over a relatively short period of time, simultaneously facilitating processes of triangulation to strengthen confidence in our findings.

We established a Project Advisory Group of third sector experts in children's rights in Wales, along with representation from the Equality and Human Rights Commission and the Children's Commissioner for Wales, and an expert on children's rights and research in the field from England. The group was asked to guide the research, to help identify themes for examination, and to comment on initial findings. We invited an expert from outside Wales to join the group in order to counter any potential bias in the research design, implementation or analysis introduced by researcher familiarity with the subject matter of the enquiry.

### **Literature review**

We reviewed primary and secondary materials.<sup>8</sup> This helped to establish the objectives of the Measure, and the mechanisms deployed to achieve these objectives.

The literature review also helped develop an initial picture and understanding of the impact of the Measure on structures and process of policy development, and policy output in Wales. From the literature review we were able to establish key areas for further examination. These are:

- policy development process and outputs
- opportunities for advocacy, and
- enhancing accountability.

**Note:** In this report 'policy' includes: proposals for legislation, legislation, policy documents, action plans, or programme decisions (e.g. budgets), unless the context suggests otherwise.

### **Snapshot review of the National Assembly for Wales' Record**

We decided to review the Record (the official transcript of proceedings in the NAW) as Assembly Members are able to act as advocates for children, and are responsible for holding Welsh Government Ministers to account for compliance with children's rights,

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<sup>8</sup> We included previous studies, see e.g. research on Child Rights Impact Assessment noted at Box 2.

and with their due regard duty under the Measure. We examined how Assembly Members have used the Measure as tool to support policy advocacy and accountability. After discussion with our Advisory Group we decided to focus on plenary sessions of the NAW, and meetings of the NAW Children Young Persons and Education Committee (CYPEC – the NAW committee most likely to draw on the Measure in the context of its work) during the Fifth Assembly in 2016 (11 May 2016 to 14 December 2016), to allow us to complete the research within the project timescale. We have, however, looked beyond these dates (i.e. 2015 and 2017), to inform and confirm our findings, and our case studies include policies introduced in 2015, 2017 and 2018.

The approach taken to analysis of the Record was to search for keywords to signal reference to the Measure or to children's rights in debate.<sup>9</sup> A 'hit' on any of the keywords would lead to further reading of the surrounding narrative, adopting a reflexive approach, to establish the relevance of what was being discussed to the key areas for examination identified by the literature review.

### **Professional stakeholder survey**

We identified Welsh Government Ministers and their officials as possible stakeholder participants in the research. However, after discussion with our Advisory Group it was decided, for practical reasons, that they would not be included in the survey.<sup>10</sup> While this omission does represent a gap in the data (and an opportunity for further examination in the future), our findings based on our other data are supportable and provide clear insights into the impact of the Measure.

Following discussion with our Advisory Group it was decided to survey civil society stakeholders ('stakeholders'), to gather data on the themes identified by the literature review. We took a purposive approach to identify stakeholders as individuals or organisations with current or past experience in the field of children's services or

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<sup>9</sup> Keywords: measure, child, children (inc. children's), Convention, CRC (inc. UNCRC). We also included 'right' and 'rights' but this produced a huge number of hits. We noted that right or rights would likely be used along with child or children when referring to children's rights so we narrowed our selected keywords accordingly.

<sup>10</sup> Based on experience and familiarity with Welsh Government policy-making procedures, it was felt that there was insufficient time to identify and approach officials working on relevant policy, and to obtain Ministerial permission to include them in our research.

children's rights in Wales, and some prior awareness and understanding of the Measure.

Stakeholders were initially approached by email to take part in the research. They were informed of the purpose of the research and that participation would be voluntary and they would remain anonymous, with the option to withdraw at any time.<sup>11</sup>

Stakeholders were asked to contribute through a structured survey sent by email. The surveys were constructed taking account of the key areas identified from the literature review to focus participants on their experience of the impact of the Measure thematically: process and visibility, accountability, output, and engagement. The survey also provided respondents with the opportunity to comment on other aspects of the Measure's impact not covered in the survey.

The survey was designed to enable participants to enter (unlimited) narrative responses with prompts and encouragement to do so. All stakeholders were given the option to opt for a telephone or face-to-face interview, or to provide follow-up to the survey by telephone (none took up these options). We also had the possibility to contact participants by telephone for clarification or further elaboration of any points arising from the questionnaire (not required).

The number of stakeholders who took part in our surveys is small: n=12. However, in the context of Wales this is significant as our initial scoping of organisations identified n=15 individuals and organisations with current or past experience in the field of children's services or children's rights in Wales, and some prior awareness and understanding of the Measure.<sup>12</sup>

Once returned, the survey responses were read and responses collated/aggregated and organised thematically (see above). They were then read again and analysed to identify consistent and inconsistent responses, any common issues raised, and any issues not dealt with in the survey (i.e. new issues raised by respondents).

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<sup>11</sup> Wales is a relatively small country, with a limited number of individuals and organisations working in the field of children's rights. In order to guarantee anonymity, steps have been taken throughout to avoid giving any indication of the employer organisation or field of work of our participants.

<sup>12</sup> Stakeholders were identified with assistance from our Advisory Group.

Participants were given the opportunity to review and comment on the draft report prior to submission, including to raise any issue of inaccurate reporting or breach of confidentiality. No issues were raised.

### **Legal professionals survey**

We surveyed legal advisors or advocates working in the field of children/children's policy, for their views on the Measure as a device to support legal accountability. The number of legal professionals who took part in our survey is once again small: n=5. However, as for civil society stakeholders, in the context of Wales this a significant and representative group with appropriate experience and expertise on the Measure in legal context.<sup>13</sup>

Given the small size of the survey group, we decided to approach each of the respondents for a telephone interview. This was based on an interview schedule prepared in advance. Taking into account the work of legal professionals this schedule focused entirely on the impact of the Measure on legal accountability.

Participants were initially approached by email to take part in the research. They were informed of the purpose of the research and that participation would be voluntary, that interviews would be transcribed in note form, and that they would remain anonymous, with the option to withdraw at any time.<sup>14</sup>

Telephone interviews were transcribed and read to identify consistent or inconsistent responses.

Participants were given the opportunity to review and comment on the draft report prior to submission, including to raise any issue of inaccurate reporting or breach of confidentiality. No issues were raised.

### **Case studies**

We examined selected Welsh Government policy during the Fourth Assembly (2012–16) and current Fifth Assembly (2016–). The policies examined were identified with assistance from our Advisory Group. They are:

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<sup>13</sup> Identified with assistance from our Advisory Group. Number approached 5; number participating 5.

<sup>14</sup> Once again, in order to guarantee anonymity, steps have been taken throughout to avoid giving any indication of the employer or field of work of our participants.



- The Wales Child Poverty Strategy 2015 (CPS)
- The Well-being of Future Generations (Wales) Act 2015 (WBFGA)
- The Active Travel Action Plan for Wales (2017)
- The Additional Learning Needs and Educational Tribunal (Wales) Act 2018, and
- Welsh Government Draft budget allocation 2017–18.

The approach taken to analysis of the case studies was to examine both the final policy (including legislation), and policy documents (including CRIA where available) prepared in the lead-up to introduction and implementation of the policy, as well as any consultation documents or debates on the policy in the NAW. The researchers examined these documents etc to look for references to the Measure, the due regard duty, and children's rights, or for how these have been taken into account in the policy development process or final output.

### **Workshops with young people**

*Young Wales* carried out three workshops with young people focusing on knowledge and understanding of the Convention, and policy development. It was felt worthwhile and properly reflective of the enthusiastic engagement we received from children and young people to produce a separate report on this aspect of the research (this is included in the Appendix).<sup>15</sup> Our research takes account of the relevant findings set out in that report.

**Note:** We use 'children' to refer to those aged 0–17 years in this report as the age range covered by the Convention, unless context demands otherwise, or when reporting the views from workshops with young people, who were aged 13–19 years.

### **Scope of the research and limitations**

The literature review provided insights into the objectives of the Measure. It is clear that the Measure is not intended to prescribe policy outcomes (discussed further below).

The purpose of the Measure is to influence Welsh Government policy while in development, to ensure greater attention to the Convention by Ministers and their

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<sup>15</sup> Three workshops were held in North, South-West and West Wales. A total of 37 young people took part aged between 13 and 19 years.

officials. It also establishes mechanisms to enhance accountability for children's rights in policy development.

The research focuses on the impact of the Measure to achieve its objectives identified from the literature review. As these are aimed at influencing policy in development the research does not attempt a detailed evaluation of policy output, or outcomes for children post-implementation, for compliance with the Convention.

As noted above, the timescale for completion of the project means we have been unable to engage with Welsh Government officials involved in policy process in Wales. We see a clear need for further research in this area to examine how the Measure influences policy decision-making by these key participants.

## The Rights of Children and Young Persons (Wales) Measure 2011

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Following devolution for Wales in 1999 the NAW acquired legislative competence in many areas directly or indirectly relevant to human rights, including children's rights under the Convention, for example: health, housing, social care, education, planning, transport, and environment.<sup>16</sup> The Welsh Ministers have powers to make policy and bring forward proposals for legislation in areas which mirror the competences of the NAW. The implementation of the Wales Act 2017 (1 April 2018) introduces a reserved powers model of devolution for Wales. The Wales Act confirms that the Welsh Government and NAW are competent to observe and give effect to human rights in Wales.<sup>17</sup> The Wales Act amends the existing devolution statute, the Government of Wales Act 2006, to make '*observing and implementing international obligations, [and] obligations under the Human Rights Convention*' matters suitable for Welsh policy and legislation.

Policy in Wales has consistently made reference to the Convention. In 2002 the NAW introduced its 'Seven Core Aims' as the basis of service planning for children and young people, explicitly based on the Convention. This was followed in January 2004 by the

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<sup>16</sup> At the time NAW competences were set out under: GWA 2006, Schedule 5.

<sup>17</sup> Schedule 7 of the Government of Wales Act 2006 is substituted by a revised Schedule 7A which specifies competences reserved to the UK Parliament (Wales Act 2017, Schedule 1): '*Observing and implementing international obligations, [and] obligations under the Human Rights Convention*' are expressly not reserved.

adoption of the Convention as the basis of all Welsh Government policy making in children's services.<sup>18</sup> Despite this, when the UK was examined by the UN Committee in 2008<sup>19</sup> it noted that the Convention was not used consistently as a framework for policy.<sup>20</sup> This 'implementation gap' (between policy rhetoric and reality) had already been identified as a concern by the Wales UNCRC Monitoring Group, a network of civil society stakeholders set up to monitor compliance with the Convention in Wales.<sup>21</sup>

In 2008 the UN Committee recommended that steps be taken in the UK to incorporate the Convention into domestic law.<sup>22</sup> Taking its lead from this recommendation, the Welsh Government was keen to strengthen its commitment to the Convention in policy. The Government of Wales Act 2006 (which had increased the competences of the NAW), gave the NAW the opportunity to embed the Convention in policy decision-making through Wales-only legislation.<sup>23</sup>

The Monitoring Group was closely involved in discussions with the Welsh Government about the form and content of the proposed legislation. Legislation along the lines of the Human Rights Act 1998 (HRA) would have been an option in Wales to integrate the Convention in Welsh law. The HRA gives further effect to the European Convention on Human Rights (ECHR) in UK law, giving a right of action and possible remedy before UK courts where rights are violated.<sup>24</sup> However, the Monitoring Group wanted a legislative solution to the problem of a persistent lack of attention to the Convention in policy-making in Wales. A reactive remedy, to provide remedy after a violation of a right has occurred, similar to that introduced by the HRA, was not thought a complete solution to this problem. Instead the due regard formula emerged as a device to

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<sup>18</sup> For an overview of children's and young people's policy: Ian Butler and Mark Drakeford, *Children's Rights as Policy Framework in Wales*, in Jane Williams (ed.), *The Rights of the Child in Wales*, 2013, 9–20.

<sup>19</sup> Under Part 2 of the Convention the UK is required to report periodically to the UN Committee on progress made on implementing the Convention. The UK last reported in 2016.

<sup>20</sup> UN Committee, *Concluding Observations on the UK State Party*, 2008, Concluding Observation no.14.

<sup>21</sup> The Monitoring Group raised the issue in a report submitted to the UN Committee in the lead up to examination of the UK in 2008. Available from the authors on request.

<sup>22</sup> UN Committee, *Concluding Observations on the UK State party*, 2008, Concluding Observation no 11

<sup>23</sup> On the development of the Measure: Jane Williams, 'The Rights of Children and Young Persons (Wales) Measure 2011 in the context of the international obligations of the UK', in Williams (ed.), *Rights of the Child in Wales*, 2013, 49–64.

<sup>24</sup> The ECHR is not given superior status to UK primary legislation. A UK Higher Court may issue a declaration on incompatibility (S.4 HRA 1998), but this does not affect the validity or continuing effect of incompatibility of primary legislation.

address the implementation gap at an early stage in policy development.<sup>25</sup> This gained the support of both the Welsh Ministers and the Monitoring Group, and is the approach adopted by the Measure, which received Royal Approval on 11 March 2011. It came partially into effect on 1 May 2012, and has been in full effect since 1 May 2014.<sup>26</sup>

## How the measure works

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The Measure embeds the Convention in Welsh Government policy processes. It introduces legal devices to strengthen accountability for the way in which children's rights are dealt with in policy in Wales, and to promote awareness of the Convention.

### The due regard duty

The primary mechanism for embedding the Convention in policy in Wales is set out in Section 1 of the Measure. This places a duty on the Welsh Ministers to have due regard to the Convention when exercising any of their functions.<sup>27</sup> The due regard formula is borrowed from UK equalities enactments.<sup>28</sup> Equalities case law provides some guidance on the meaning of due regard under the Measure. Having due regard means a decision-maker must attend to the substance of a decision properly informed and aware of what must be considered before and at the time of making the decision, paying attention to any relevant objective. The decision-maker must take account of relevant evidence and exercise the due regard duty with rigour, and an open mind. The duty should be integrated into the discharge of the public functions.<sup>29</sup>

The Measure, by introducing the due regard duty embeds the Convention as part of the framework for policy decision-making by Ministers and their officials. It establishes attention to children's rights, as guaranteed by the Convention, as a condition of legitimacy of policy in Wales. As a result of the Measure when Ministers in Wales are

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<sup>25</sup> See: Williams, note 23 above.

<sup>26</sup> See: s.1 of the Measure.

<sup>27</sup> What constitutes the 'functions' of the Welsh Ministers is not defined in the Measure. The powers of the Welsh Ministers are prescribed in the Government of Wales Act 2006.

<sup>28</sup> Currently the Equality Act 2010.

<sup>29</sup> The leading case is: *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158.

considering a proposal for new policy, or amendment to an existing policy, they are required to think about:

how they can use functions which are exercisable by them to give better effect to the rights and duties in the [Convention].<sup>30</sup>

The due regard duty strengthens accountability for children's rights in policy in Wales by adding a new basis for judicial review of Ministerial decision-making. Children, and others with sufficient interest will be able to look to the courts to hold Ministers to account for compliance with the due regard duty, and how they have taken the Convention into account in policy decision-making.

The due regard duty also presents new opportunities for policy advocacy. Assembly Members, as well as stakeholders, are able to rely on the due regard duty as a foundation for argument in favour of preferred policy choices consistent with Convention guarantees.<sup>31</sup>

## The Children's Scheme

Section 2 of the Measure requires Ministers to make and publish a 'Children's Scheme' setting out the arrangements they have made for securing compliance with the due regard duty. The scheme must be approved by the NAW and is subject to public consultation, including with children, and the CCfW.<sup>32</sup>

The requirement for a Children's Scheme is intended to promote a proactive approach to compliance with the due regard duty. The Children's Scheme was published in 2012

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<sup>30</sup> See: Measure, *Explanatory Memorandum*:

[http://www.assembly.wales/Laid%20Documents/MS-LD8085-EM%20-%20Proposed%20Rights%20of%20Children%20and%20Young%20Persons%20\(Wales\)%20Measure%20-%20EXPLANATORY%20MEMORANDUM-14062010-186022/ms-ld8085-em-e-English.pdf](http://www.assembly.wales/Laid%20Documents/MS-LD8085-EM%20-%20Proposed%20Rights%20of%20Children%20and%20Young%20Persons%20(Wales)%20Measure%20-%20EXPLANATORY%20MEMORANDUM-14062010-186022/ms-ld8085-em-e-English.pdf)

<sup>31</sup> For a full discussion of accountability mechanisms under the Measure see: Simon Hoffman and Jane Williams, 'Accountability', in Jane Williams (ed.), *The Rights of the Child in Wales*, 2013, 167–180.

<sup>32</sup> When the scheme is made (or remade) Ministers must have regard to textual output from the UN Committee: any study, reports, recommendations and other documents which emanate from the Committee. Within six months of the UN Committee making any recommendation or suggestion based on one of the UK's periodic reports, the Welsh Ministers must consider whether the scheme should be amended.

and remade in 2014.<sup>33</sup> It sets out several Welsh Government initiatives to support compliance with the due regard duty. These include:

### *Child Rights Impact Assessment*

The Children's Scheme commits the Welsh Government to undertake a CRIA of all policy proposals. An initial assessment is made to determine whether a proposal is likely to have an impact on children, and if so a full CRIA is completed using a template set out in the Children's Scheme. CRIA is a tool to encourage thinking about, and to predict the impact of policy on, children's rights and is amongst the general administrative measures of implementation of the Convention recommended by the UN Committee. Procedural guidance accompanying Welsh Government CRIA encourages consultation with stakeholders, including children as an aspect of CRIA procedure.<sup>34</sup>

### *The Measure Implementation team*

A team of Welsh Government officials, the 'Measure Implementation Team' is established to lead on implementation of the Measure. The team provides information and advice on implementation of the Measure and on the Convention to officials working on CRIA.

### *Training*

The Welsh Government has introduced training on the Convention for all staff. This is: an online training resource; formal presentations about the Measure and its implications across all Welsh Government departments by the Measure Implementation Team; and, expert training for targeted staff involved in the development of policy and legislation.

### *Complaints procedure*

Children will often face obstacles in accessing justice to assert their rights,<sup>35</sup> including bringing a judicial review for breach of the due regard duty. The Children's Scheme introduces a complaints mechanism with the intention of making it easier for children, or

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<sup>33</sup> Available at <http://www.assembly.wales/Laid%20Documents/GEN-LD9732%20-%20Children's%20Rights%20Scheme%202014-22042014-255569/gen-ld9732-e-English.pdf>

<sup>34</sup> See CRIA at Annex 1 and 2 of Children's Scheme 2014.

<sup>35</sup> See generally contributions in: Ton Liefaard and Jaap E. Doek (eds.), *Litigating the Rights of the Child* (London: Springer, 2015), 53–70.

their representatives, to raise concerns about non-compliance with the due regard duty directly with the Welsh Government.

## **Compliance Report**

Section 4 of the Measure places a duty on Ministers to report periodically to the NAW on how they have complied with the due regard duty. The maximum period between reports is 5 years but this may be shortened by the scheme (currently every 2.5 years). Compliance Reports were published in January 2013, July 2015 and March 2018.<sup>36</sup>

## **Duty to promote knowledge and understanding**

Section 5 of the Measure places a duty on Ministers to take appropriate steps to promote knowledge and understanding of the Convention amongst the public in Wales, including children.<sup>37</sup>

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<sup>36</sup> Most recent report available at <http://gov.wales/topics/people-and-communities/people/children-and-young-people/rights/report-childrens-rights-measure/?lang=en>

<sup>37</sup> Reflecting the requirement set out in Article 42 of the Convention and address a concern raised by the UN Committee in its 2008 Concluding Observations.

# Part Two

## Research findings

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The Measure is not intended to prescribe policy outcomes. It is designed to address a particular problem: a lack of attention given to the Convention in Welsh Government policy decision-making. It employs legal devices to promote greater attention to the Convention in policy development, and to enhance accountability for how children's rights are taken into account. The Measure has introduced a new structural framework for the development of policy in Wales. Our research focuses on the Measure's impact to achieve these objectives.

The literature review highlighted policy development, policy advocacy, and strengthening accountability, as opportunities for better realisation of the Convention arising from the Measure. Our methodology took a purposive approach, to consciously examine whether the Measure has had an impact in practice. Our findings are drawn together and presented as a single narrative under the headings: Policy Development and Policy Advocacy, Accountability, and Awareness of the Convention.

## Policy development and policy advocacy

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This due regard duty embeds the Convention as a reference framework for policy decision-making for Ministers and their officials. We have already set out structural and procedural developments internal to the Welsh Government which are attributable to the introduction of the Measure and the due regard duty (see Part One). In its Compliance Reports in 2015 and 2018 the Welsh Government emphasises the significance of the Measure for policy development:



Section 1 of the Measure places a duty on Welsh Ministers to have due regard to the [Convention] and the Optional Protocols when making their decisions. The term ‘due regard’ requires a balanced consideration of issues. This means Ministers must think about how what they are doing relates to the rights and obligations in the [Convention].<sup>38</sup>

The Welsh Government has identified CRIA as a significant innovation to support compliance with the due regard duty, and therefore the Convention in policy development. The 2018 Compliance Report states:

CRIA is part of the Welsh Government’s procedures for ensuring that due regard is given to children’s rights when policies, programmes or legislation are being developed.<sup>39</sup>

Data provided in the 2018 Compliance Report shows the number of CRIA carried out by department between May 2012 and April 2016 (see Figure 1). The Welsh Government has since provided further information that about 260 CRIA have been completed in the period since May 2012.<sup>40</sup> In its 2015 Compliance Report the Welsh Government claimed that there had been a ‘substantial increase’ in the number of CRIAs undertaken in the period after May 2014.<sup>41</sup>

**Figure 1: Number of CRIAs completed by Welsh Government Departments, May 2012 – April 2016<sup>42</sup>**

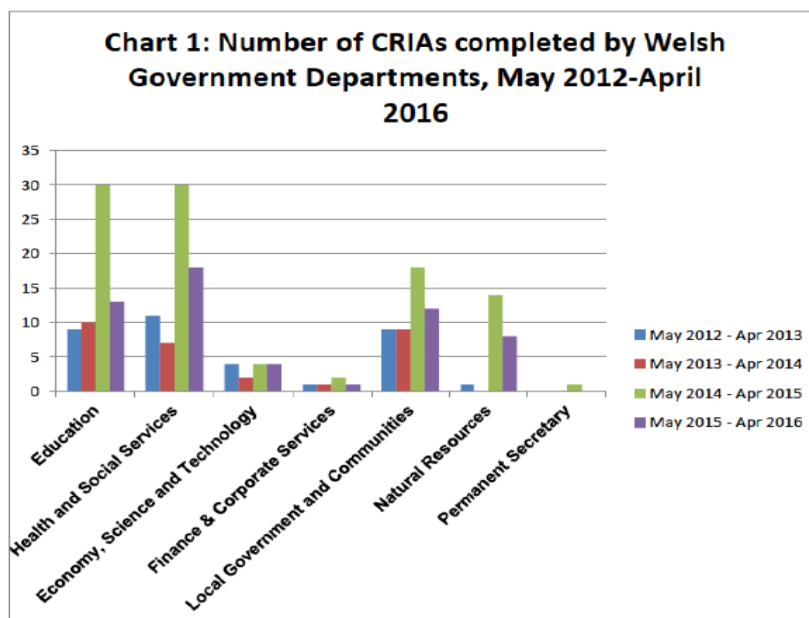
<sup>38</sup> Welsh Government, *Compliance Report 2013–15*, p.3.

<sup>39</sup> Welsh Government, *Compliance Report 2015–18*, p.10.

<sup>40</sup> Compliance Report 2015–18 and information provided by Measure Implementation Team for UNICEF Briefing, Strengthening CRIA in Wales (2017): [https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-Briefing\\_Child-Rights-Impact-Assessment\\_Wales\\_September-2017.pdf](https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-Briefing_Child-Rights-Impact-Assessment_Wales_September-2017.pdf)

<sup>41</sup> Welsh Government, *Compliance Report 2013–15*, pp.9–11.

<sup>42</sup> Extracted from: Welsh Government, *Compliance Report 2015–18*, p.10.



We will return to discuss CRIA after considering how stakeholders perceive the impact of the Measure on policy development.

Stakeholders are generally agreed that the Measure has had a positive influence on the way policy is undertaken by the Welsh Government, with more attention being given to the Convention in policy processes. One stakeholder told us:

In a broad sense ... children's rights are more frequently talked about and recognised by officials developing policies. **Anon 5**

The same respondent also commented:

...a strong positive of the Measure is that it enables us to refer to the [Convention], a rights-based approach ... as part of any consultation responses [etc.] that we submit ... . We are aware from conversations with our counterparts in England that it is not necessarily the case for them, the language of rights is not seen as acceptable or common place at a UK Government level. **Anon 5**

Others also commented positively on the impact of the Measure on policy development, and in particular how Wales is differentiated from the rest of the UK. For example:

The due regard duty means that the Convention cannot be ignored or kept in the background when policy is being worked on by [Welsh Government] officials. It has to, at the very least, be considered alongside other priorities. This makes policy different in Wales than, say in England, or even Scotland. Civil servants

and Ministers in England and Scotland may think about the [Convention], or they might not, in Wales they have to think about it. **Anon 11**

Some stakeholders, while noting the impact on Welsh Government policy development also commented on how it has had an impact on their own engagement with the policy process:

While our work has always been rooted in the principles of children's rights, we now have clear legislative principles to refer to in Wales. ... we present our work in a different way ... because the [Convention] is embedded into law here. **Anon 1**

... the Measure has opened up a great space for [us] to work together with the Welsh Government. **Anon 10**

Our findings confirm that most stakeholders see the Measure as having established a new and important framework for policy on children in Wales, which has provided impetus and room ('space') for dialogue on how to give effect to the Convention through policy. One contributor summed it up as follows:

The Measure creates expectations of compliance, and even if these are difficult to enforce legally there is a clear signal and a heightened expectation that policy will take account of the [Convention]. The Measure makes the [Convention] a common focus, a set of standards to inform and assess policy, and how it's carried out, and represents, if you like, a solemn promise from Ministers to children. **Anon 11**

While stakeholders were generally in agreement about the impact of the Measure to ensure the Convention is 'on the radar' of officials working on policy, there was some ambivalence and difference of opinion about its impact on the quality of policy decision-making. Some stakeholders gave examples of policy decision-making underpinned by the due regard duty which had fully taken the Convention into account.<sup>43</sup> One example we identified of how the due regard duty promotes thinking about how to give effect to children's rights through policy is set out in Box 1. It concerns the ***Well-being of Future Generations (Wales) Act 2015*** (WBFGA).

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<sup>43</sup> Including the Housing (Wales) Act 2014, where provisions on homeless homelessness and provision of sites for Gypsy Travellers in Wales had been introduced taking account of Convention guarantees; and, Special Guardianship Regulations and accompanying guidance.

### Box 1: The Well-being of Future Generations (Wales) Act 2015

The WBFGA requires local Public Services Boards to identify local well-being objectives, and to plan how to meet those objectives. To inform the planning process a board is required to carry out an assessment of local well-being. The draft legislation was amended during legislative scrutiny to allow boards to make specific reference to children, and looked after children in their well-being assessments. In its compliance report in 2015 the Welsh Government attributes this amendment to a combination of:

- ‘active consideration’ of the due regard duty
- discussions between departments within the Welsh Government
- direct engagement with children’s and young people’s organisations, and
- [NAW] scrutiny process, ‘heavily influenced by the due regard duty and more specifically...CRIA.’

Guidance issued under the WBFGA expressly refers to the due regard duty to encourage public bodies to think about how they can support children to realise their rights when setting well-being objectives, including by taking the Convention into account in local well-being plans.<sup>44</sup>

While there are examples of similar attention to the Convention in policy development underpinned by the due regard duty (see also Box 2 and Box 3), a number of stakeholders expressed concerns about the quality of consideration given to children’s rights in policy development generally across the Welsh Government. Comments included:

...the quality of consideration and analysis given to children’s rights in Welsh Government policy development is often patchy and inconsistent. **Anon 5**

The [Measure] is an innovation in human rights and child rights implementation. But the impact of this law has been very uneven so far **Anon 10**

<sup>44</sup> SPSF 2: Individual Role (public bodies), paras. 58–60; SPSF 3: Collective role (public services boards), paras. 116–118, and Annex B.

Officials take the [Convention] into account, but some do so in quite a superficial way, without fully considering the implications of children's rights. We cannot be 100% confident that the Measure has led to an improvement in the way policy is decided in every instance, but we are aware of some policies that are certainly better as a result of more detailed thinking about children's rights brought about by the Measure. **Anon 11**

A number of stakeholders expressed similar concerns about the application of CRIA by the Welsh Government, suggesting that practice is not consistent, undermining the impact of the due regard duty. For example:

CRIAs ... became more common although nowhere near universal since the Measure came into force. However, in my experience the variable quality of the CRIAs and their variable application leaves a lot to be desired. **Anon 6**

CRIA is not always carried out in a way that means it is a genuine contribution to policy thinking and policy processes. You can get the impression sometimes, not always, that CRIA is an after-thought. **Anon 11**

And:

Despite their completion at times being patchy and inconsistent, CRIAs remain the best way for the Welsh Government to demonstrate how the due regard duty has been met. **Anon 5**

Anon 11 again:

...there are problems with CRIA at present, but we would regard [CRIA] as a very important mechanism, one which brings home the due regard duty in practice. The picture in practice is mixed, but we have no doubt that overall the introduction of CRIA has resulted in better attention to children's rights in policy procedures, and from there some better policy as a result. **Anon 11**

These findings are consistent with earlier research on CRIA: see Box 2.

## Box 2: Existing research on CRIA

An independent evaluation in 2015 found that CRIA had contributed toward improved awareness of the Convention amongst officials working on policy, concluding that CRIA: *‘...establish[es] fit-for-purpose practices that help identify the impact of a legislative or policy proposal on children and children’s rights ... CRIA is a contribution to embedding children’s rights in the legislative and policy-making processes of the Welsh Government.’*<sup>45</sup>

However, while the evaluation found examples of CRIA good practice, it noted inconsistent application and variation in quality.<sup>46</sup> A UNICEF briefing in 2017 on CRIA makes the same point: *‘Practice has varied quite extensively to date – while we found many good examples of CRIA, we also found CRIA that were drafted too late in the policy development process, becoming one-off products drafted to record and communicate decisions rather than to inform them.’*<sup>47</sup>

Despite these concerns there was notable consensus amongst stakeholders on the importance of CRIA to ensure the Convention is taken into account in Welsh Government policy decision-making. A number of stakeholders pointed to CRIA as a key aspect of policy development, supporting better realisation of the Convention through policy.

Our case studies show how CRIA can be used effectively to draw attention to relevant Convention rights in policy development. In three of the five policies we examined as cases studies a CRIA was completed. One of these has already been mentioned, in Box 1. Two further examples are the Welsh Government’s **Revised Child Poverty**

<sup>45</sup> Simon Hoffman (Rhian Morse RA), *Evaluation of the Welsh Government’s Child Rights Impact Assessment* (2015), <https://cronfa.swan.ac.uk/record/cronfa30963>

<sup>46</sup> Ibid. Including: include capacity issues, limited understanding of CRC obligations amongst officials, and a lack of participation by children and young people. These issues are discussed in the Welsh Government’s latest compliance report which includes a commitment to ensure that officials are trained on the CRC, and to take account of recommendations for improvement made in the CRIA evaluation. Welsh Government, *Compliance Report 2015–18*, p.14. It is too early to comment on whether this will result in improvements to the CRIA procedure.

<sup>47</sup> UNICEF Briefing, *Strengthening CRIA in Wales* (2017): [https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-Briefing\\_Child-Rights-Impact-Assessment\\_Wales\\_September-2017.pdf](https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-Briefing_Child-Rights-Impact-Assessment_Wales_September-2017.pdf)

**Strategy 2015** and its **Active Travel Action Plan for Wales**. These are summarised in Box 3 and Box 4.

### Box 3: Revised Child Poverty Strategy 2015

The CRIA carried out on the draft CPS carefully explains how the Convention has been taken into account in developing the proposal.<sup>48</sup> It identifies specific articles from the Convention as being directly relevant to child poverty, and provides a reflective account of how these are supported by revised strategy. The CRIA narrative makes links between the objectives set out in the CPS and other Ministerial duties e.g. the duty to publish a Child Poverty Strategy: *Children and Families (Wales) Measure 2010*, as well as other Welsh Government priorities e.g. Welsh Government targets for tackling poverty: *Tackling Poverty Action Plan 2013*. The CRIA discusses how the proposals contemplated by the CPS complement other Welsh Government initiatives on child poverty, and links the CPS to future developments, by emphasising the need to ensure: ‘due regard to the [Convention] as we develop policies and programmes to support children [which] will be critical to addressing child poverty and improving outcomes’, and suggesting that CRIA on follow-up proposals would provide and ‘ideal opportunity to link both the children’s rights and child poverty agendas’.

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<sup>48</sup> CRIA are available on request from the Welsh Government.

### Box 4: Active Travel Action Plan for Wales

The *Active Travel (Wales) Act 2013* was introduced with the intention of requiring local authorities to improve facilities for walkers and cyclists. The CRIA completed on the draft legislation suggested a need to ensure that local authorities ‘consider the potential benefits and impacts on children of the legislation. As a result, the draft legislation was amended to include a requirement on local authorities to consider whether routes used by walkers or cyclists, including children, are safe. In addition, stemming from the original CRIA, delivery guidance to accompany the legislation, the *Active Travel Action Plan for Wales*<sup>49</sup> reiterates the statutory requirement, and introduces a further requirement for local authorities to consult with children (as recommended by the CRIA). This expressly recognises the need ‘to create environments where children are safe to get around on foot or by bicycle for the journeys they want to make as part of their daily routines’ and reiterates the requirement for local authorities to consult with children as they plan travel networks.<sup>50</sup>

While these case studies show how CRIA can be effective to inform and improve policy development to take account of children’s rights, previous studies and the present research suggest that in other instances the impact of CRIA, and therefore the due regard duty, is undermined by inconsistent application. This is summed up by this comment:

Because of the due regard duty, the Welsh Government has to conduct a [CRIA], but we know that the quality of these is inconsistent, so while children’s rights are being considered as part of the process, I don’t think that the full impact of policy development on children’s rights is being thoroughly assessed every time. **Anon**

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<sup>49</sup> <https://beta.gov.wales/sites/default/files/publications/2017-09/active-travel-action-plan.pdf>

<sup>50</sup> In addition, new statutory guidance on walked routes to school has been developed which expressly refers to the due regard duty, and again makes clear that local authorities must consult with children when considering pupil travel arrangements to school, and requiring a risk assessment of any walked routes: <http://gov.wales/topics/educationandskills/allsectorpolicies/learner-travel/?lang=en>



In the course of commenting on CRIA as an aspect of policy development, a number of stakeholders noted the failure to prescribe CRIA as a statutory requirement for all policy as a weakness of the Measure.

### **Policy advocacy: the NAW**

An aspect of policy development affected by the Measure is the opportunity to use the due regard duty as the basis for policy advocacy in Wales. We undertook a limited examination of how Assembly Members have embraced this opportunity<sup>51</sup> covering 40 plenary sessions in 2016. The First Minister and other Ministers were in regular attendance at these sessions. Issues raised included health and well-being, mental health services, looked-after children, child poverty, child protection, unaccompanied asylum-seeking children, social services, education and housing: all of which are relevant to children's rights. We found that while Assembly Members frequently urge Ministers to take specific action in support of 'children's interests' or on occasion 'children's rights',<sup>52</sup> Assembly Members made very little reference to the due regard duty to underpin or amplify these contributions.<sup>53</sup>

When we looked at the work of the Children, Young People and Education Committee in 2016 we found some effective use of the due regard duty as the basis for policy advocacy. One example relates to the ***Additional Learning Needs and Education Tribunal (Wales) Act 2018*** (ALNETA). This is summarised in Box 5.

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<sup>51</sup> See Part One 'Scope of the research and limitations'.

<sup>52</sup> In fact, in every plenary session in 2016 the NAW discussed issues affecting children, and children are expressly mentioned in questions, debates etc.

<sup>53</sup> We found one exception to the finding set out in this paragraph. On 19 October 2016, the NAW held a debate on (re)establishing a youth parliament in Wales. Darren Millar AM referred directly to the Measure to illustrate how progress had been made on children's rights in Wales and to set the context, and to urge support for a motion establish a youth parliament. NAW, The Record, 19 October 2016, Welsh Conservatives Debate: A Youth Parliament, para. 341.

### Box 5: The Additional Learning Needs and Education Tribunal (Wales) Act 2018

In 2017 the CYPEC undertook the task of scrutinising a Welsh Government proposal for legislation to improve educational provision for children with additional learning needs in Wales. Based in part on evidence provided by stakeholders, the CYPEC recommended a Welsh Government amendment to require relevant authorities exercising functions under the legislation to have due regard to the Convention.<sup>54</sup> This was not accepted by the Welsh Government. Despite this the CYPEC (and others) continued to argue the case. On 4 October 2017, the CYPEC in a meeting with the Minister deployed the Measure to argue for an extension of the due regard duty to local education authorities. For example, Darren Millar (Assembly Member), used the Measure as an illustration of ‘ground breaking’ legislation, something Wales can be ‘very, very proud of indeed’, and urged the Minister to extend the approach taken in the Measure to local authorities.<sup>55</sup> Eventually the Welsh Government was persuaded, and introduced amendments to place a due regard duty on organisations exercising strategic functions under the legislation. The Minister, when setting out the Welsh Government’s revised position in plenary, said she had ‘listened very carefully to what had been said in previous committees.’<sup>56</sup>

The example in Box 5 shows how the due regard duty may be used to underpin policy advocacy by the CYPEC, but also other NAW committees. However, we also found instances where the CYPEC chose not to use reference to the due regard duty as an opportunity to strengthen its recommendations to the Welsh Government. For example, in 2016 the CYPEC carried out six inquiries into issues affecting children in Wales, all of which engaged Convention rights.<sup>57</sup> Only one of the reports published following these

<sup>54</sup> CYPEC, *Report on the Additional Learning Needs and Educational Tribunal (Wales) Bill* (2017). Recommendations 31 and 32. Available at <http://www.assembly.wales/laid%20documents/cr-ld11055/cr-ld11055-e.pdf>

<sup>55</sup> Transcript of Meeting, CYPEC, 4 October 2017, para. 129.

<sup>56</sup> NAW, *The Record*, 21 November 2017, para. 332.

<sup>57</sup> Links to CYPEC inquiries here:

<http://senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=15142>

inquiries referred to the due regard duty as an express underpinning for a recommendation to the Welsh Government.<sup>58</sup>

While we did not carry out a detailed analysis of the work of other NAW committees, we note that the Committee for the Scrutiny of the First Minister scrutinised the First Minister on the rights of children and young people.<sup>59</sup> In addition, in the course of the case study on the WBFGA (Box 1) we noted that the Environment and Sustainability Committee used the Ministerial due regard duty to underpin a recommendation to extend the coverage of due regard to local authorities when exercising functions under the legislation.

### Policy advocacy: stakeholders

A number of stakeholders commented on the opportunity presented by the Measure and the due regard duty to strengthen policy advocacy. For example:

[The Measure has] increased opportunities to use rights-based approaches in developing policy and challenging national and local policy development and decisions from a rights-based perspective. **Anon 2**

It [the Measure] is powerful when looking at services for children and young people. **Anon 4**

We use the due regard duty as leverage to persuade Ministers to adopt particular policy approaches. For example, on reasonable chastisement, for us the starting point is that if Ministers have due regard to [the Convention] they have no option but to remove the defence in Wales. **Anon 11**

In addition to providing a foundation for policy arguments in favour of preferred policy approaches, a number of stakeholders commented that the Measure had ‘legitimised’

<sup>58</sup> We looked at reports for 2016 and 2017, as there were only two reports in 2016. The relevant report is: CYPEC, *Inquiry report into the Education Improvement Grant: Gypsy, Roma and Traveller and Minority Ethnic Children*, February 2017. Reports are here:

<http://senedd.assembly.wales/mglssueHistoryHome.aspx?Id=15121>

<sup>59</sup> Lynne Neagle (Assembly Member) asked the Deputy Director of the Children and Families department of the Welsh Government, about the key Welsh Government policies: ‘What role did due regard and the CRIA process play, both in developing the programme for government and also ‘Prosperity for All’? Was there a CRIA for those?’ Transcript of meeting, Committee on Scrutiny of the First Minister, 27 October 2017, para. 171.

the use of the Convention and child rights language in policy debates, forums, consultations etc. For example:

[There is] a greater expectation that rights language ... will be taken seriously.  
**Anon 3**

We find that using the language and duties of the Measure helps progress our objectives, as it now has a greater legitimacy and status ... the Measure strengthens our ability to use child rights language in our dealings with the Welsh Government. **Anon 9**

It is now acceptable to refer to children's rights as an obligation in Wales when communicating with the Welsh Government. From discussion with organisations in England who work with the UK Government, we know that the Measure provides a different setting off point for policy in Wales, one that focuses on the [Convention]. **Anon 11**

### **The views of young people**

There was a degree of consensus amongst young people that having rights in legislation was a positive development since it helps ensure that these are given a greater profile, and helps ensure that the Welsh Government is more accountable. Comments included:

It means people making policy take children's rights more seriously.

When it is law, it is more accountable, it has more weight behind it.

It can put more pressure on the Welsh Government to make sure they do more.

Young people taking part in the workshops groups gave examples of the perceived difference having rights in legislation made in terms of greater opportunities to help shape policy and practice both at a local and national level. For example: opportunities for consultation with young people on shared priorities; direct engagement with Ministers and Assembly Members who are 'more willing to sit on panels and meet with young people', and opportunities to be involved in interview panels for 'senior positions ... and other places'.

## Accountability

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The Measure introduces new opportunities for accountability for children's rights in Wales. First, by adding a new basis for legal accountability;<sup>60</sup> second, by introducing due regard as a policy audit framework for reference by Assembly Members and stakeholders; and, by providing a complaints mechanism (via the Children's Scheme).

### Legal accountability

The literature review suggested that judicial review might not be a frequent occurrence following introduction of the Measure. Our research confirmed this. There are no reported cases where alleged breach of the due regard duty is relied on to challenge Ministerial decisions or Welsh Government policy. We found one case, *Re P-S* in which the due regard duty is mentioned in the Court of Appeal.<sup>61</sup> This concerned the right of a child to be heard in legal proceedings. The due regard duty was of no significance to the outcome of the case, but the court suggested that in the future the approach taken to cases involving children in Wales may be different because the Convention is part of Welsh law.<sup>62</sup> The court did not explain in what way the approach might be different in Wales.

Legal professionals participating in our research had mixed views on the impact of the Measure to strengthen legal accountability. One suggested that the due regard duty is 'remote from practice' as it applies to Ministers, and Ministers do not engage in the day-to-day practices which most affect children (**Legal 1**). The same contributor also observed that a successful judicial review requires strong evidence to establish any failure to have due regard, whether the failing is Ministerial or by social services authorities. This is seen as a deterrent to legal challenge:

... policy needs to be shown to be so out of sync [with the Convention], so unreasonable, that it makes challenging it very difficult. **Legal 1**

Other legal professionals agreed with this assessment. Despite this, there was considerable consensus that the Measure had changed the legal landscape in Wales,

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<sup>60</sup> See Williams, above note 23.

<sup>61</sup> *Re P-S (children) [2013] EWCA Civ.223*.

<sup>62</sup> *Ibid*, per the Rt Hon. Sir Alan Ward at paragraph 35.

and that in general this was likely to benefit children by strengthening their claim to have their interests taken into account when Ministers take decisions about policy that affects them. One legal professional told us:

The child rights Measure brings home the Convention into our law in Wales ... it puts the Convention on the radar. **Legal 3**

This contributor explained that while the due regard duty may be difficult to enforce, the Children's Scheme, and in particular CRIA had introduced:

... rigour [to decision-making], a process to be followed, with greater adherence to Convention requirements, and does create an evidence base for compliance with the due regard duty, adding to accountability. **Legal 3**

**Legal 1** noted that the extension of a due regard duty to authorities exercising functions under the ***Social Services and Well-being (Wales) Act 2014*** (SSWBA) was a significant development, bringing the due regard duty closer to practice. **Legal 1** added that the due regard duty under the SSWBA provides good grounds for insisting on 'coproduction' of care plans for individual children, and observing on the influence of the Measure in this context:

...in the absence of the Ministerial duty it would have been unlikely that the [SSWBA] would have imposed a similar requirement on social services authorities. The due regard duty on Ministers was the reason behind its inclusion in debates around the content of the [SSWBA]. **Legal 1**

Another contributor, **Legal 2** was able to provide an example of how the due regard duty had proved useful in a legal context, although not in the manner suggested by the Measure. **Legal 2** explained that 'deploying the Measure' in cases involving children in the family court to challenge decisions made by relevant authorities in care proceedings can help 'amplify' arguments made by representatives of the child or young person and can the strengthen welfare-based arguments. **Legal 2** recognised that the due regard duty under the Measure and under the SSWBA may be conflated in such cases. However, **Legal 2** did not see this as significant or problematic as both could be deployed simultaneously to make the case for outcomes more consistent with the interests of the children involved.

A similar point was made by **Legal 4**:

It seems logical whatever duty Welsh Ministers impose on themselves should also apply to local authorities who carry out functions decided for them by Welsh Ministers. **Legal 4**

Taking a similar pragmatic approach, but on this occasion focusing solely on the conduct of Ministers, **Legal 3** suggested that the Ministerial due regard duty needed to be ‘overlaid’ with other duties in order to properly assess the legal requirements on Ministers to take account of the Convention in public law in Wales.

The above contributors suggested that more use may be made of the Measure to challenge Welsh Government policy as practitioners become increasingly familiar with the interplay between the various obligations placed on public authorities in Wales, including Ministers, by Welsh law.<sup>63</sup> A final contributor also made this point, noting the need for practitioners to become more aware of the opportunity presented by the due regard duty:

The legal profession needs to be more aware of the differences in Wales. It hasn’t yet woken up to the possibility of the due regard duty to assist child clients, or perhaps their families, adversely affected by [Welsh] Government policy in Wales. **Legal 6**

### **The Measure as an audit framework**

One impact of the Measure is to introduce a requirement for a periodic compliance report. This is an opportunity for public debate, including in the NAW, on progress on children’s rights in Wales. The last debate took place in plenary on 30 June 2015 following the Compliance Report in 2015.<sup>64</sup>

Ministers may be held accountable for compliance with the due regard duty by Assembly Members in NAW plenary. We found, however, that while Assembly Members frequently questioned and challenged Ministers on their policies and how these affected children, they made hardly any reference to the due regard duty in the 40 plenary sessions we examined in 2016. This was the case even where the Ministerial duty to have due regard to the Convention is clearly engaged. For example, on 29 June

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<sup>63</sup> We were informed about a case currently before the courts concerning the provision of services for children in Wales (we are unable to say which services as this could be used to identify the case and therefore the individual practitioner concerned). This is an interesting case as it concerns a non-devolved matter (the service falls within the policy ambit of the UK Government), but engages policy in Wales through the operation of the SSWBA.

<sup>64</sup> A debate on the 2015 compliance report took place on 30 June 2015.



2016 the Minister for Communities and Children introduced a debate on Looked After Children by referring to a Children's Commissioner for Wales report on 'children's *rights* in residential care' (our emphasis). On 15 November 2016 the same Minister introduced a debate on the CCfW's annual report by noting progress in Wales to realise children's rights. Neither of these references to children's rights prompted Assembly Members to refer to the due regard duty in the questioning that followed.

In the period covered by our research we did find examples of the CYPEC referring to the Measure, and the due regard duty, to scrutinise Ministers. For example: on Welsh Government cabinet portfolio responsibilities;<sup>65</sup> and on the Welsh Government draft budget for 2017–18 (but see Box 5).<sup>66</sup> However, our research also identified several instances where the due regard was not used to hold Ministers to account when it might have been: for example, evidence sessions relating to the inquiries noted in the Policy development and policy advocacy section above.

The due regard duty was seen by some stakeholders as strengthening Ministerial accountability to the NAW. More broadly stakeholders, with some exceptions, agreed that the Measure has added to accountability for children's rights in Wales. One respondent commented:

... the incorporation of the Measure's legislative duties has, to some degree, enhanced [our] ability to hold the Welsh Government to account on their obligations to children's rights ... . The Measure provides a directly enforceable duty that would otherwise not be available. **Anon 5**

This comment alludes to the possibility of judicial review ('directly enforceable duty'). This is an option identified by other stakeholders, although most referred to different mechanisms introduced by, or as a consequence of, the Measure as more significant than judicial review. For example:

... the Child Rights Scheme and compliance reports are important accountability mechanisms and create opportunities to hold the Welsh Government to account. **Anon 10**

... the compliance report and CRIA must mean that accountability is strengthened. The extent to which the Welsh Government is now more

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<sup>65</sup> CYPEC Session 13 July 2016.

<sup>66</sup> CYPEC Session 2 November 2016.



accountable might be open to debate, but at least they are more accountable now than before we had the [Measure]. **Anon 11**

Some stakeholders questioned whether the due regard provides an adequate mechanism for holding Ministers properly to account. For example:

Committee scrutiny and follow-up letters allow for greater scrutiny, but ultimately it remains open to Ministers to disagree with what is raised, and there is no formal way to challenge this. **Anon 5**

A number of stakeholders gave the example of the draft budget for 2017–18 as an illustration of how the Welsh Government ‘is not fully accountable’ (**Anon 1**): see Box 6. The Welsh Government budget is a key aspect of delivery of Welsh Government programmes, and underpins progress toward its policy objectives for children. It is linked to delivery of the Welsh Government’s programme for government, ***Taking Wales Forward***, which includes several priorities affecting children (health, social care, tackling poverty, education). It would therefore be anticipated that a CRIA would be carried out on the draft budget.

### Box 6: Welsh Government Draft Budget 2017–18

In October 2016 the Welsh Government published its draft budget for 2017–18 setting out expenditure under a number of Main Expenditure Groups, including Communities and Children; Health, Well-being and Sport; and, Education. The Welsh Government did not to complete a CRIA on the draft budget (in contradiction of the Children’s Scheme), but instead prepared a Strategic Integrated Assessment. This includes reference a number of objectives, including children’s rights. The CYPEC examined the Minister for Communities and Children on the draft budget on 2 November 2016. The Chair asked the Minister whether a CRIA had been completed on the budget, and if not, why not? The Minister responded by simply asserting that as an aspect of a Strategic Integrated Assessment ‘...the UN convention has to be considered as well’. The completed assessment however, while referring to the Article 28, the right to education,<sup>67</sup> makes no further reference to the Convention and does not include any explanation of how budget allocations might support better realisation of Convention rights, or how Ministers have complied with the due regard duty in preparation of the budget as would be required by a CRIA.

While a number of stakeholders commented on CRIA as an important contribution toward holding the Welsh Government to account for policy decision-making (see also **Legal 3** above), many expressed concerns that CRIA practice may undermine its utility as an accountability mechanism (see comments below). Others were concerned that application of CRIA is not universal across the Welsh Government. For example:

...carrying out or publishing a [CRIA] is not a mandatory process under the Measure. Where [the Welsh Government] has not carried out or published a CRIA, there is a notable lack of visibility for children’s issues and children’s rights, and it is often very difficult to discern how individual policies and decisions might impact children. **Anon 5**

<sup>67</sup> Welsh Government, *Draft Budget 2017/18*, October 2016, para. 44.

It is left to individuals to determine whether a CRIA is necessary. CRIA should be applied to all policies but it isn't. The budget is one example, there are others, or examples where lip service is paid to CRIA. **Anon 11**

Adopting a slightly different perspective on this issue, one stakeholder raised a concern that the Measure is not seen as pervasive across all Welsh Government departments, and that there is a view that compliance with children's rights is the responsibility of a single Minister rather than 'the Welsh Ministers' as required by Section 1 of the Measure and the due regard duty:

What we see is that Ministers seem to think the due regard duty is the responsibility of one Minister, the Minister who happens to have responsibility for children. **Anon 11**

Another stakeholder made a similar point:

Many policy developments which have a direct impact on children and young people fall outside the main responsibility of the Minister for Children, such as curriculum reform and youth work, yet there is no consistent use made of the [Convention], children's rights or due regard across all Ministerial portfolio areas. **Anon 12**

To some extent these observations are confirmed by our examination of the NAW in 2016. For example, although issues affecting children cut across several Ministerial portfolios, we noted a tendency to focus on the Minister with direct responsibility for children as being required to address all such issues in plenary. See for example the exchange set out in Box 7, in which the questioner asks how the Welsh Government intends to work with public authorities in Wales on children's rights. Although the work of public authorities covers many aspects of Welsh Government policy for which several Ministers have responsibility (e.g. health, social services, environment, and housing), the Leader of the House identifies the Minister for Communities and Children as solely responsible for providing a response.

### Box 7: National Assembly for Wales, The Record, 5 July 2016

*Para. 152:* Suzy Davies AM – I wonder if we could have a Government update statement ... on the work done by the Welsh Government speaking with public bodies, to ensure that the policy objectives of this place [referring directly to the commitment made to the Convention] are not undermined by competing pressures on local authorities...?

*Para. 153:* Jane Hutt AM, Leader of the House – Well, I'm sure that the Minister for Communities and Children would welcome that opportunity to clarify how seriously the Welsh Government takes its commitment to the [Convention], to ensure that children's rights underline all our policy objectives, and indeed, financial and budgetary proposals...it is for the Minister for Communities and Children to, again, respond to this in terms of, I'm sure, an update and he will be open to questions and opportunities at committee ... .

When asked about possible mechanisms for enhancing Welsh Government accountability for compliance with the children's rights none of the stakeholders surveyed suggested a revised legal duty. Instead a number of stakeholders focused on the need to improve and strengthen existing mechanisms introduced by the Measure. One participant suggested the need for:

...transparent decision-making, clearer complaints procedure, more rigorous reporting ... the compliance report could be stronger **Anon 3**

Another commented:

We all need to be more aware of how we can use the due regard duty to challenge Ministers by working with lawyers, or the [CCfW], or by highlighting CRIA poor practice during [NAW] enquiries. **Anon 11**

Some stakeholders identified weaknesses in CRIA, suggesting how this might be improved to strengthen accountability including by: stronger specification of the processes to be followed; ensuring CRIA is applied to all policies; including the Welsh Government budget; and full publication of all CRIA.

## Complaints

Only two stakeholders mentioned the complaints mechanism introduced by the Children's Scheme. These contributors had doubts about whether this is an effective mechanism for accountability:

...children quite simply don't have the information available to them to use the complaints mechanism that was set up under the Measure. **Anon 3**

And:

The complaints mechanism exists but it seems to be very much underused. It has potential, but that potential is not being met as yet. **Anon 11**

Several stakeholders echoed the concern expressed above that children may not be in a position to exercise their rights, or to challenge decisions and seek redress. For example, referring to judicial review:

The task of judicially reviewing the Government is not one that your average child or family will be in a position to take on. **Anon 3**

And more generally:

... we have been struck by the gap that appears to exist between children and young people's familiarity with the language of the Convention and their (lack of) awareness [and] understanding of when their rights are infringed and the mechanisms for redress where they exist ... . **Anon 7**

The Welsh Government compliance reports in 2016 and 2018 do not provide information about the use of the complaints procedure. We asked the Welsh Government and were informally told that there had been no complaints in the period covered by the 2018 report (2015–18).<sup>68</sup> We also sought information from the CCfW who is empowered to support children to bring a complaint. The CCfW informed us that the current CCfW has not been asked to provide assistance but that through its

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<sup>68</sup> Enquiry by email, date of response 27 February 2018. The timescale for the research did not allow for a freedom of information request.

investigations and advice service, and through its policy work, the CCfW had advised professionals working with children about the availability of a complaints mechanism.<sup>69</sup>

## Awareness of convention principles

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The Welsh Government compliance report for 2015–18 lists a number of initiatives it has taken to raise awareness and knowledge of the principles of the Convention amongst the public and children. These take place alongside other work to promote knowledge and awareness of the Convention, including by the Welsh Government, but also NGOs and others in Wales such as the CCfW. For example, since 2010 the Welsh Government has supported MEIC, an information and advice service for children and young people. In addition, the Welsh Government supports a number of participation initiatives which contribute to raising awareness of the principles of the Convention, such as *Young Wales*. We have found it difficult to establish how these projects, and other initiatives that contribute to raising awareness of the Convention might be linked (if at all) to the Measure. As claimed in the Welsh Government Compliance Report, projects may be supported because Ministers have the obligation to promote knowledge and understanding of the Convention in mind. Alternatively, support for projects which help raise rights awareness amongst children and young people may be supported for other policy reasons (for example, as an aspect of work on children's participation, or as part of a safeguarding strategy).

While the majority of stakeholders in our research were agreed that the Measure had not contributed to better awareness of Convention principles either amongst children or the public in Wales, this was not necessarily seen as attributable to any failure by the Welsh Government to take action. A number of stakeholders noted that the Welsh Government had made resources available to promote knowledge and understanding of the Convention.

Some stakeholders recognised the role of organisations generally in Wales to promote the Convention. For example

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<sup>69</sup> Enquiry by email, date of response 28 February 2018.

... they [the Welsh Government] have a leadership role to play in promoting children's rights ... [but they] can't do this on their own – it requires a long term and well considered collaboration with many people. **Anon 7**

And noting the important contribution to be made by the CCfW and NGOs:

I feel that the work of the Children's Commissioner's office and third sector organisations does a great deal to support awareness **Anon 2**

While recognising a shared responsibility to promote awareness of the Convention, the majority of stakeholders felt the Welsh Government could do more to promote this objective, including by targeting children via the school curriculum and social media, and professionals via professional training.

### **The views of young people**

The young people who participated in the workshops believed that children's rights are still not visible enough in Wales and there is a need for greater awareness raising through mainstreaming information: not just through school councils or youth forums. Although the young people were able to talk about some of their experiences of accessing their rights, in particular Article 12 through participatory structures, they did not always link this with Welsh Government and the Measure.

## **Conclusions: What works**

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The primary purpose of the Measure is to ensure closer attention to the Convention, and therefore to children's rights in policy development in Wales. In order to achieve this the Measure integrates the Convention into Welsh domestic law by imposing a requirement on Ministers to have due regard to the Convention when exercising any of their functions. We find that the Measure meets the expectations of the UN Committee on integration of the Convention into domestic law as a general legislative measure of implementation. However, we note that it does not meet in full the prescription for incorporation set out by the UN Committee.

We have no reservations in concluding that the Measure has achieved its objective of embedding the Convention in policy-making in Wales. The due regard duty has

established a new framework for policy development, which in turn has resulted in greater attention to, and visibility for, children's rights in policy processes undertaken by Ministers and their officials. In our assessment, the Measure has had a significant impact on the way policy is undertaken by the Welsh Government: it has clearly established the Convention as a reference framework for policy decision-making in Wales. In this respect, the introduction of CRIA is a progressive innovation. Insofar as the implementation of the due regard duty led directly to the introduction of CRIA via the Children's Scheme, this is a positive impact of the Measure consistent with recommendations by the UN Committee.

Although in our view the Measure has resulted in closer attention to the Convention in policy undertaken by the Welsh Government, especially through the introduction of CRIA, we are not convinced that this has resulted in consistent good practice in the substantive application of the Convention as a reference framework for policy across the Welsh Government. In our opinion, the problem is not attributable to the legal form adopted by the Measure, but is one of uneven application of CRIA. This is consistent with the findings from the independent 2015 evaluation of CRIA, and is supported by the evidence we have received from stakeholders and from our case studies.

The Measure has introduced new opportunities for policy advocacy. The due regard duty is potential leverage for Assembly Members and others to argue that Ministers should take account of the Convention while policy is in development, and to argue for preferred policy choices consistent with the rights guaranteed by the Convention. The Measure has provided new 'space' and a new basis for policy participants to engage with the Welsh Government, and has given stakeholders the confidence to deploy rights-based arguments and rights language in policy dialogue. The due regard duty has contributed a strong underpinning for policy advocacy on behalf of children in Wales.

The Measure has introduced a number of mechanisms to strengthen accountability for children's rights in policy in Wales. The due regard duty has enhanced legal accountability for attention to the Convention in policy development through the addition of a new basis for judicial review of Ministerial action, and has introduced the Convention as a legitimate audit framework for policy affecting children in Wales. The requirement for a periodic Compliance Report, and the introduction of CRIA have reinforced accountability for children's rights in Wales. The Compliance Report provides an opportunity for public debate on children's rights generally in Wales, while CRIA



enhances transparency and strengthens accountability for decisions affecting children arising in the course of development of specific policies.

However, despite the opportunities the Measure has introduced to hold Ministers to account for policy affecting children in Wales, we conclude that Ministers are not always fully accountable for the decisions they take in the course of policy development. In our assessment this is likely to be attributable to a number of factors. Amongst these is that the Measure has not had a significant impact as an accountability device in the legal domain. Legal practitioners have not made use of the due regard to challenge Ministerial decisions in court by way of judicial review (there is some suggestion that this is more likely in the future, and there may be interesting developments as the interplay between Ministerial and public sector due regard duties becomes clear). It is also significant, in our view, that the complaints mechanism introduced as an alternative to judicial review is seemingly underused. Another factor limiting the impact of the Measure to enhance accountability for children's rights in policy is inconsistent practice in the application of CRIA.

Finally, overall we conclude that the Measure has integrated the Convention in Welsh law. The due regard duty has embedded the Convention as a framework for policy development in Wales including through the introduction of CRIA. It has provided new impetus and confidence to stakeholders to use the Convention in policy advocacy. To a lesser extent the Measure has enhanced Ministerial accountability for the way in which the Convention is taken into account in policy decision-making, although in practice its potential contribution to strengthening Ministerial accountability for policy decisions has yet to be fully realised.

## Incorporation and the measure

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The UN Committee recommends incorporation of the Convention in national legal systems. This means that the Convention should be capable of being directly invoked

before national courts and will prevail when in conflict with domestic law, and that a remedy is provided for violation.<sup>70</sup>

The UK Government, in its most recent report to the Committee in 2014, claimed that Wales had incorporated the Convention.<sup>71</sup> The Measure has added a new basis for judicial review and the Convention may be relied on before a UK court to challenge a decision taken by a Welsh Minister. Arguably this meets the UN Committee's first requirement for incorporation. However, incorporation as contemplated by the UN Committee also requires a remedy and suitable reparation where Convention rights are violated, including compensation. Remedies on judicial review do not usually include damages.<sup>72</sup> In any event, the due regard formula falls short of incorporation as it does not give the Convention superior status over policy determined by the Welsh Government.

While the Welsh Government has gone further than the UK Government and any other devolved authority in the UK to integrate the Convention in domestic law, it cannot be said to have incorporated the Convention as anticipated by the UN Committee. Rather, the Measure is a legislative measure of implementation to integrate the Convention into Welsh law.

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<sup>70</sup> See UN Committee, General Comment No.5, 2003, at paras. 24–25

<sup>71</sup> UK Government, *Report on Progress Toward Compliance with the UN Convention on the Rights of the Child*, 2014.

<sup>72</sup> Only available in limited circumstances There must be either: a recognisable action in private law; or, a breach of the HRA.

# Appendix

## The Rights of Children and Young Persons (Wales) Measure: Collated feedback from three workshops with young people

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### Context

Three workshops were held with young people during February 2018. The workshops were convened in North Wales, South West Wales and West Wales through the Children in Wales Young Wales project. Thirty-seven people participated in the events. Young people were aged between 13 and 19 years old.

South West Wales (SWW) x 11 young people

West Wales (WW) x 16 young people

North Wales (NW) x 10 young people

Young people were engaged through youth forums, youth assemblies and secondary schools.

To ensure consistency with the process of engaging professional stakeholders, it was anticipated that most, if not all of the young people would have some level of knowledge of children's rights, the UNCRC, and potentially the Welsh policy context in which they sit.

Each workshop was designed to be interactive, fun and informative, and a range of tools and activities were applied to capture feedback from young people to a predetermined set of themes consistent with the objectives of the study.

### Theme 1 – Knowledge and awareness of the UNCRC (Section 5 of the Measure)

The first theme explored young people's self-reported existing knowledge and awareness of children's rights and the UNCRC, with acknowledgement to the duty

placed on Welsh Government to raise awareness of children's rights in Wales under Section 5 of the Measure.

***'Have you heard about children's rights?'***

All young people reported that they had heard and knew about children's rights (100%)

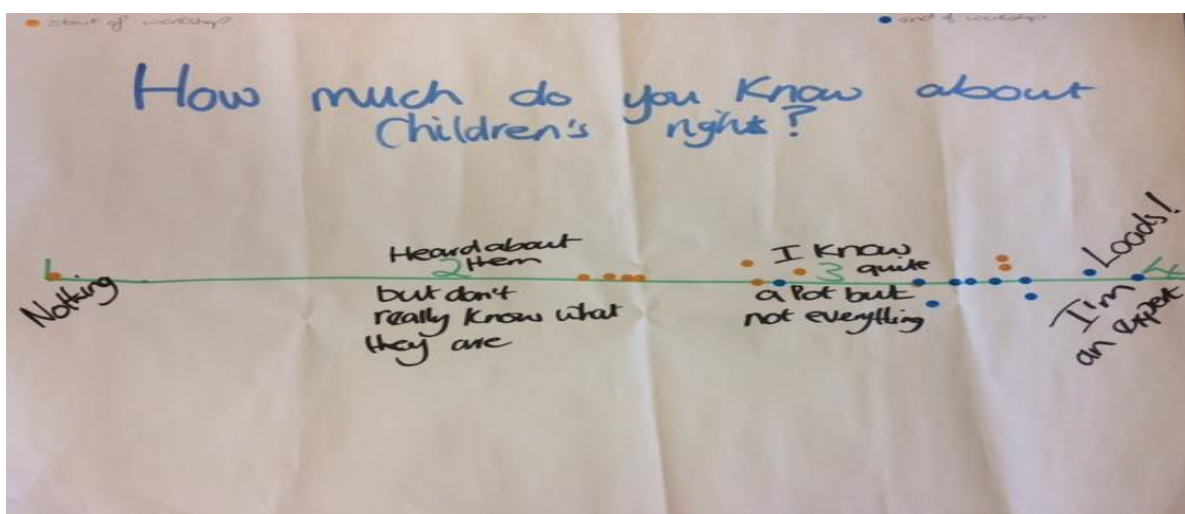
***'Have you heard about the UNCRC?'***

All except three young people had heard and knew about the UNCRC (92%)

***'How much do you know about CR & the UNCRC?'***

A continuum exercise was used at the SWW workshop to explore how much young people considered they knew about children's rights and the UNCRC. Participants were asked to place an orange dot on a continuum – ranging from 1 (nothing) to 4 (expert).

The majority placed their dots in the middle indicating some knowledge and a couple placed their dots further to the right indicating they felt that they were quite knowledgeable. Only one participant, who knew about children's rights reported that they did not know about the UNCRC.



A similar exercise was used in the WW workshop with the results showing ...

I know nothing

I know quite a lot



I've heard of them

I'm an expert

***‘Where does your knowledge come from?’***

Each workshop was keen to hear from young people where their knowledge on children’s rights and the UNCRC had come from. This was principally a discussion-based exercise

Examples from young people included:

- I’m a child rights ambassador in my school
- I am a member of the Junior Safeguarding Board
- I attended a conference with the United Nations
- I have gained knowledge through the media
- I have learnt about children’s rights and the UNCRC through my studies
- I am a member of the school council
- I am involved with my local youth service
- I attend my local youth club
- I went to a Children’s Rights Ambassador Conference
- I learnt on a school trip to the National Assembly
- I have attended workshops

***‘Have you heard of the Rights of Children and Young People (Wales) Measure 2011 – often called the ‘rights measure’ or the child rights measure?’***

Each workshop was interested in discovering whether participants had heard of the ‘Child Rights Measure’

Only 11 (30%) of young people had heard of the Measure.

SWW	Yes 2	No 9
WW	Yes 5	No 11
NW	Yes 4	No 6

Of those young people who reported that they had heard of the Measure, they further reported that they had heard about it though ‘being a child rights ambassador in school’, ‘through their education’ or ‘through their involvement in their youth forum’.

***How visible are children's rights? Where can young people hear about rights, see them, and be told about them?***

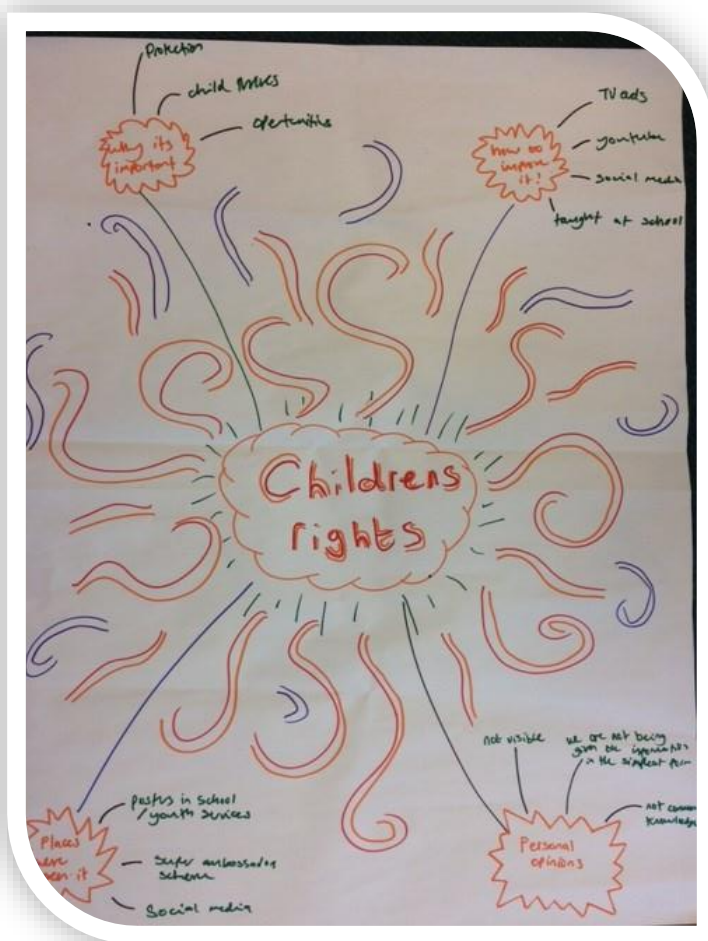
Through group work, each of the workshops explored young people's perception of how visible children's rights were, where young people could be told and learn about them.

The following themes emerged from the SWW workshop:

- Not many students know about children's rights, in some schools, if you're on the school council you find out about them but information is not shared across the whole school. Pupils on school councils should pass it on.
- Only a handful of people in school know about them.
- Teachers are scared to make young people aware of children's rights.
- Through Children's Rights Ambassadors in schools, awards presentations etc.
- County Councils do a lot to promote children's rights.
- Social media, but could be used more to promote children's rights.
- There are a lot of things in place because of children's rights but people aren't always aware that's the reason why they're in place.
- School Councils – some good and proactive others not so good.

**Main themes**

- Children's rights are not common knowledge



- YouTube
- Social media
- Taught at school

- They are not being given the information in the simplest form
- Children's rights are not visible.

Places where they've been exposed to children's rights:

- posters in school / youth service
- super ambassadors' scheme
- social media

Why children's rights are important:

- Protection
- Child thrives
- Opportunities

How to improve visibility:

- TV ads

The key message from young people in discussions that followed was that generally young people don't know about their rights, they are not sufficiently visible and if you want to find out about them you have to proactively go and find out yourself. One young person said:

Children's rights need to be normalised, be common knowledge.

The West Wales workshop chose to respond to this theme by considering the visibility of children's rights under three interrelated headings – Access, See and Hear

**Access**

- Social media
- Websites
- All the time
- Governing bodies in school
- Youth clubs
- Mobiles
- Home
- Pembrokeshire Youth Assembly
- School Council

**See**

- Websites
- School
- Youth councils
- Pembrokeshire Youth Assembly
- Pembrokeshire County Council
- Leaflets
- Posters
- Word of mouth
- Youth Workers
- Children's Commissioner

**Hear**

- UK Youth Parliament
- Welsh Assembly
- Workshops
- Meetings
- School
- Conferences



The participants in the NW workshop did not consider children's rights to be sufficiently visible and, consistent with the responses from the other events, felt that young people had to be proactive to access knowledge and information, and were required to be involved in a structured activity or organised forum, for example:

- Young Wales
- Further Education (A levels)
- News items (e.g. Refugee crisis)
- Required to join a local forum.

Generally young people said that they thought children's rights were more visible now than in 2011 and that their knowledge had improved through involvement in participatory structures

Some believed that safeguarding of children and young people in particular was an issue that was now a lot more prominent.

Several believed that their LA, Councillors and Cabinet Members were more interested in children and young people's issues now than they were. For example, Pembrokeshire local authority adopted a Rights Promise in 2014 and Carmarthenshire in 2017

Some believed that UK Youth Parliament work and involvement in Young Wales had given young people a platform to meet with Ministers at Welsh Government.

Most of the young people believed that there are now more opportunities for (some) young people to have a voice, but not all. However, whilst their knowledge may have improved through their actions, there was some uncertainty as to whether this was true for all young people, and that having knowledge is only the beginning. One young person said:

Being aware of children's rights when you're a child or young person is only useful if you really understand what they are there for and what you can do if they are not being met, it's more about knowing what support is needed if you're missing out on basic needs or if you need help from bullying or help with mental health

***'What Children's Rights based projects/organisations can you name that are funded by Welsh Government?' Have you been involved in any***

***initiatives/opportunities supported by the Welsh Government to raise knowledge and/or awareness of the UNCRC? Can you give some examples?***

This theme sought to learn what understanding participants had of existing project and initiatives in place to promote and raise awareness of children's rights and the UNCRC, and to what extent, if at all, young people were aware of any link with Welsh Government (for example, through funding arrangements etc.)

The following were identified:

- Young Wales (and an understanding that this was funded by the Welsh Government)
- Children's Commissioner for Wales
- National Participation Standards
- Youth Forums (an understanding that this was funded by the local authority from funds from Welsh Government)
- A number of prompts were subsequently used, including reference to MEIC Cymru and the Welsh Government child rights website.

***'What more could the Welsh Government do to promote knowledge and awareness of the UNCRC'***

A number of recurring themes emerged, which included:

- social media
- PSE lessons
- in schools
- improve awareness of the children's commissioner
- more funding into awareness raising activity
- adverts on children's TV programmes
- posters
- investigate neglect of rights
- apply into school curriculum
- advertisements on buses and trains
- YouTube
- schools

- school councils
- worksheets/activity sheets for young children

## **Theme 2: Children's Rights in Policy Development in Wales (Section 1 of the Measure)**

In the second section of the workshop events with young people, we were interested in their level of knowledge and understanding of the role of children's rights in Welsh Government policy and legislative developments. It should be noted that as only 30% reported having heard of the Child Rights Measure at the beginning of the exercise, their ability to identify links with developments and this legislation would inevitably be somewhat limited.

***Do you think that having children's rights in legislation has made a difference to how policy is made? Do you know of any examples where children's rights have been used in policy? If yes, can you give some examples?***

The response to this theme was overwhelmingly yes. Reasons given included:

It means people making policy take children's rights more seriously.

Yes! Because if enough isn't being done then as it is law, young people can point the finger and ask why enough isn't being done.

When it is law, it is more accountable, it has more weight behind it

In law, it is legal and more likely for things to happen for children

It means that children can better hold parents/guardians etc. accountable for their rights

It can put more pressure on the Welsh Government to make sure they do more.

Young people also made reference to a number of rights which were now better protected in law, such as the right to survival and healthy development, with the priority given to improving healthy eating in schools as an example.

***'Do you think that having children's rights in legislation has resulted in children/young people being more involved in policy and practice development in***

***Wales? Can you give an example of your involvement or (forum/school etc.) or someone else you know?’***

We were also interested to capture some examples of any process outcomes of having children’s rights in policy and legislation.

In response, young people through group work made reference to the following:

- councillors being more involved in work of Youth Assembly and Youth Councils.
- young people more involved in interview panels for senior positions in the Council and other places.
- opportunities to shadow council members.
- getting young people’s voices heard by meeting directly with Welsh Government Ministers with Young Wales.
- Children’s Rights Ambassadors and the Children’s Commissioners Super Children’s Rights Ambassador Panel.
- able to be involved in different national projects e.g. anti-bullying project with Young Wales
- Young Inspectors Programme.
- Votes at 16 Campaign.

We also explored young people’s knowledge of developments at a national level which they felt had been improved due to children’s rights being incorporated into policy and legislation.

Amongst the examples given were:

- Opportunities for consultation with young people, for example about the ban on smacking children and the Votes at 16 campaign
- They thought that Welsh Government Ministers and AMs seem to be more willing to sit on panels and meet with young people now e.g. YW Question Time in the Assembly.
- Questionnaires / surveys with young people from Welsh Government
- Programmes to consult with young people
- Examples of rights in policies e.g. Free swimming for under 16s (although UNCRC goes up to 18 so why isn’t there free swimming for 17/18-year-olds) and

the Discounted Travel Scheme were good but some young people thought the travel scheme was only for young people up to age 16 too

However, many believed that more should be done. One young person for example who had moved to the area said that in his opinion geography plays a part and that in his experience there is much less going on in North Wales, fewer opportunities to get your voice heard and councils are less likely to listen to children and young people.

***‘Do you think the Welsh Government should be more accountable for children’s rights? If so, how?’***

Generally, the response to this final theme was yes. When prompted on how they should be more responsible, most respondents focused on ways in which children’s rights could be promoted and embedded more consistently and widely across Wales. Predominantly, education and improving teaching and awareness through the curriculum were referenced.

Other comments were:

No one would actively seek out Welsh Government consultations to see what they are doing to be able to have a say – it’s too boring and not accessible.

Welsh Government should be more active in reaching young people – They should be more ‘visible’ either through infomercials/social media/in schools.

Information should be understandable and not just information, it’s got to be the whole story so knowing what impact it might have for young people.

If you want to know something from young people then you have to speak to them.

***‘Now that you know more about the Measure, do you think, after today, you’ll be more likely to get involved in local and national consultations / opportunities to get your voice heard?’***

Overwhelmingly and enthusiastically yes!

## Summary

The young people who participated in the workshops believed that children's rights are still not visible enough in Wales and there is a need for greater awareness raising through mainstreaming information, i.e. not just through school councils or youth forums. Although the young people were able to talk about some of their experiences of accessing their rights, in particular Article 12, they did not link this with Welsh Government and the Children's Rights Measure. However, at the end of the workshop, when they could see the connections, they felt more empowered as they could understand that they had a right in Welsh law to access their rights, which was more impactful than only linking it back to the UNCRC, a big international agreement.

Some of them thought there were more opportunities now to get their voices heard but only if they were linked to a particular group or youth forum or were a Children's Commissioner Ambassador.

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