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Welsh Government

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## Children's Rights Scheme

Arrangements for having due regard to the United Nations Convention on the Rights of the Child (UNCRC) in the Welsh Government's work on policy and legislation.

Approved by the National Assembly for Wales  
on 27th March 2012

# Children's Rights Scheme

**Audience** Children and young people, Children's Commissioner for Wales, Non Government Organisations (NGO's), Welsh Local Government Association (WLGA), Public Bodies, Funky Dragon (The Children and Young People's National Assembly for Wales).

**Overview** The 'Rights of Children and Young Persons (Wales) Measure' 2011, received unanimous cross party support when it was passed at the National Assembly for Wales on the 18th of January 2011. It was given Royal Approval on 16th March 2011 and came into force on 16th May 2011.

The Measure strengthens and builds on the rights based approach of the Welsh Government to making policy for children and young people in Wales.

It places a duty on Welsh Ministers to have due regard to the rights and obligations within the United Nations Convention on the Rights of the Child (UNCRC) and its optional protocols. The duties within the Measure will be implemented in two stages;

- From 1st May 2012 – 30th April 2014, Welsh Ministers must have due regard to the rights in the UNCRC when making decisions about proposed new policies or legislation, or about reviewing or changing existing policies.
- From 1st May 2014 Welsh Ministers must have due regard to the rights in the UNCRC whenever they use any of their legal powers or duties.

## **Further information and related documents**

The 'Rights of Children and Young Persons (Wales) Measure' 2011 can be found at: <http://www.legislation.gov.uk/mwa/2011/2/contents>

Other sites for information include;

- UNCRC Lets Get it Right <http://www.uncrcletsgetitright.co.uk/>
- Children's Commissioner <http://www.childcomwales.org.uk/>
- Pupil Voice Wales <http://www.PupilVoiceWales.org.uk>
- Funky Dragon <http://www.funkydragon.org>
- Save the Children <http://www.savethechildren.org.uk>
- CLIC National Information and Advice Service for Children and Young People <http://www.cliconline.co.uk>
- Children in Wales <http://www.childreninwales.org.uk/>
- Barnardo's <http://www.barnardos.org.uk/wales>
- UNICEF Unite for Children <http://www.unicef.org/crc/>

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## Foreword

We as Welsh Ministers have set out in our Programme for Government<sup>1</sup> the difference that we want to make to the lives of people in Wales: healthy people living productive lives in a more prosperous and innovative economy; safer and more cohesive communities, with lower levels of poverty and greater equality; a resilient environment with more sustainable use of our natural resources and a society with a vital sense of its own culture and heritage.

This of course applies to children and young people and I believe Ministers have shown their commitment again and again to improving the lives of children and young people, to provide opportunities and experience for them to grow, and to give additional support to those that need it the most.

Being the first administration in the UK to enshrine the UNCRC in domestic law, the Rights of Children and Young Persons (Wales) Measure 2011 is an example of how we as Ministers are committed to putting the rights of children and young people at the heart of all that we do.

The Measure places a duty on us as Ministers to have due regard to the UNCRC, and we are responsible for making sure that it is complied with. The law does not allow us to pass our responsibility on to someone else, such as our staff. We have clearly stated in our Manifesto our commitment to ensure that the Measure is given full effect in government policies and programmes throughout the course of this administration.

We are accountable to the National Assembly for Wales in respect of the duty, and when we present our regular reports on compliance to the Assembly, we will have to explain what we have done. I am happy to do this as I believe that this duty will ultimately result in better services, better resources and better provision for children, young people and families.

Our aim is to achieve a culture in the Welsh Government where there is a full appreciation of children's rights, and that we consciously consider them in all our work.

I am delighted to introduce our first Children's Rights Scheme which sets out the practical steps we are putting in place now and what we are aiming to develop for the future, so that we can make concrete progress towards our goal. As Deputy Minister for Children, I am determined to ensure that the rights of children and young people are prioritised and I will work closely with my Ministerial colleagues to ensure this is the case across the Welsh Government.



**Gwenda Thomas AM**

Deputy Minister for Children and Social Services

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<sup>1</sup> <http://wales.gov.uk/about/programmeforgovernment/?lang=en>.

# Children's Rights Scheme

## Introduction

The 'Rights of Children and Young Persons (Wales) Measure 2011' (referred to as "the Measure" in the rest of this document), was passed by the National Assembly for Wales on 18<sup>th</sup> January 2011 and approved by Her Majesty in Council on 16<sup>th</sup> March 2011. The Measure embeds consideration of the UNCRC, and the Optional Protocols, into Welsh law.

The UNCRC<sup>2</sup> is an international convention setting out the civil, political, economic, social and cultural rights of children. The text of the Convention on the Rights of the Child was approved by the Member States of the United Nations on 20<sup>th</sup> November 1989.

On the 16<sup>th</sup> December 1991, the Government of the United Kingdom of Great Britain and Northern Ireland ratified the UNCRC and it came into force in respect of the United Kingdom on 15<sup>th</sup> January 1992. The United Kingdom has also ratified two 'Optional Protocols' to the UNCRC<sup>3</sup>.

Countries that have ratified the UNCRC are required by article 44(1) (b) to report to, and may appear before, the United Nations Committee on the Rights of the Child ("the Committee") every 5 years providing details of their progress towards full implementation of the Convention and its Optional Protocols.

In 2002 the National Assembly for Wales, set up by the Government of Wales Act 1998, developed the Seven Core Aims<sup>4</sup> for children and young people which summarised the UNCRC as a basis for planning, decisions on priorities and objectives nationally and on a local level.

In January 2004 the National Assembly for Wales adopted the Convention as the underpinning basis for its policies concerning children and young people aged 0 to 25 (including those aged 25) thus reinforcing the Seven Core Aims.

The commitment to the Convention and the Seven Core Aims became a commitment of the Welsh Ministers after the Government of Wales Act 2006. The Welsh Ministers are part of the Welsh Government.

When developing its policies concerning children and young people in Wales the Welsh Government makes reference to two age-groups. Children aged under 11 years old are referred to as "children", and people aged 11 to 25 years are referred to as "young people".

However, in the Measure, people aged under 18 are referred to as "children" and those aged 18 to 24 (including those aged 24 years) are referred to as "young persons". This approach has been adopted in order to be consistent with the

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<sup>2</sup> <http://www2.ohchr.org/english/law/crc.htm>.

<sup>3</sup> <http://www2.ohchr.org/english/law/crc-sale.htm>; <http://www2.ohchr.org/english/law/crc-conflict.htm>.

<sup>4</sup> <http://wales.gov.uk/topics/childrenyoungpeople/rights/sevencoreaims/?lang=en>.

Convention and with Matter 15.6 in Schedule 5 to the Government of Wales Act 2006, from which the legislative competence for this Measure was derived.

Article 2 of the UNCRC says that the UNCRC applies to all children on the basis of equality whatever their race, religion, abilities; whatever they think or say; and whatever type of family they come from. In addition, Article 23 gives children with disabilities the right to special care and support, so that they can lead full and independent lives.

The Welsh Ministers also have a duty under section 149 of the Equality Act 2010, when carrying out their work, to have due regard to the need to:

- (a) bring an end to discrimination, harassment, victimisation and other behaviour that is unlawful under the Equality Act 2010;
- (b) achieve more equality of opportunity between the different groups of people mentioned in the Equality Act – for example, between people who have a disability and people who do not have a disability;
- (c) encourage good relations between the different groups of people mentioned in the Equality Act.

In the same way that compliance with the duty to have due regard to the UNCRC has been embedded into the Welsh Government's arrangements for developing policy and legislation, compliance with this equality duty has also been embedded. The Welsh Government assesses the equality impact of its proposed policies and legislation.

The duty to have due regard to Articles 2 and 23 of the UNCRC, and the equality duty, work alongside each other and complement each other. This will help to ensure that full and proper consideration is given to delivering rights on the basis of equality, and to the right for children with disabilities to have special care and support.

The Children's Rights Scheme is made under section 2 of the Measure. The full details of this section and the rest of the Measure can be accessed via:

<http://www.legislation.gov.uk/mwa/2011/2/section/2>.

### **What is a Children's Rights Scheme?**

1<sup>st</sup> May 2012 marks the first time that any government in the United Kingdom has been under a duty to have due regard to children's rights.

This Children's Rights Scheme sets out the arrangements that Welsh Ministers will have in place to make sure that they, and Welsh Government staff, comply with the duty placed on them by the Measure – to "have due regard" to children's rights, when working on or developing proposed new legislation, proposed new policies and any review of, or change to, an existing policy.

This document provides the detail about how Welsh Ministers will comply with this duty. Welsh Ministers are required to produce this Children's Rights Scheme under the Rights of Children and Young Persons (Wales) Measure 2011<sup>5</sup>.

## **The Duty to have due regard to the United Nations Convention on the Rights of the Child**

The Measure places Welsh Ministers under a duty to have due regard to the requirements of the UNCRC. In this document, when we talk about the Welsh Ministers having due regard to the UNCRC, we include having due regard to the Optional Protocols; therefore Ministers will have a duty to have due regard to:

- The United Nations Convention on the Rights of the Child;
- The Optional Protocol to the Convention on the involvement of children in armed conflict; and
- The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.

From 1<sup>st</sup> May 2012, up to and including 30<sup>th</sup> April 2014, the due regard duty applies to decisions of the Welsh Ministers about any of the following:

- proposed new legislation;
- proposed new policies;
- a review of or change to an existing policy<sup>6</sup>.

From 1<sup>st</sup> May 2014, the due regard duty applies to all decisions and actions by the Welsh Ministers<sup>7</sup>.

A new Children's Rights Scheme will be prepared by May 2014 which will set out how the Welsh Ministers will comply with this wider duty. We will use the lessons we have learned from this Scheme in preparing our next one. We will involve others in its preparation and consult the public as we have done with this one. The new Scheme will need to get approval from the National Assembly for Wales as has this Scheme.

The due regard duty requires the Welsh Ministers to consider the UNCRC when making their decisions. It requires them to make sure that they do not breach the UNCRC, and to consider how they could give further effect to the UNCRC rights. When considering giving further effect to the UNCRC rights, they will need to weigh up all the issues which are relevant to the decision they are making.

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<sup>5</sup> Section 2(1), Rights of Children and Young Persons (Wales) Measure 2011.

<sup>6</sup> Section 1(2), Rights of Children and Young Persons (Wales) Measure 2011.

<sup>7</sup> Section 1(1), Rights of Children and Young Persons (Wales) Measure 2011.

## **How will Welsh Ministers achieve this?**

We have set out below the specific arrangements taken forward by specific people to make sure that Ministers and Welsh Government Staff comply with the due regard duty.

### **The Responsibilities and Roles of the Welsh Ministers**

The Measure places the due regard duty on Welsh Ministers. They must have due regard to the UNCRC when making decisions about proposed new legislation, proposed new policies and any review of, or change to, an existing policy.

Welsh Ministers are responsible for making sure that it is complied with. The law does not allow them to pass this responsibility on to someone else, such as Welsh Government staff.

Welsh Ministers are also responsible for the arrangements set out in this Scheme, and for making sure that those arrangements work effectively. They are accountable to the National Assembly for Wales in respect of the duty, and when they present their regular reports on compliance to the Assembly, they will have to explain what they have done.

However, Welsh Government staff play a very important part in developing legislation and policy, because Ministers can't develop all the detail themselves. Welsh Government staff give options and advice to Ministers about the policy and legislation that they want taken forward, and Ministers make decisions about what is going to be done. Then Welsh Government staff will work on this policy or legislation until Ministers are happy with it. Ministers therefore expect that their staff will have properly considered the UNCRC before they give options and advice to them.

Having said this, Ministers are still the ones responsible for making sure that the decisions they take have due regard to the UNCRC. They must be fully aware of the duty when they make their decisions.

Later on in this document, we explain what steps will need to be taken to consider the UNCRC.

### **The Responsibilities and Roles of the Implementation Steering Group**

The group contains representatives from all the Director General Areas within the Welsh Government, and its primary role is to oversee the implementation of this Scheme across those areas. Members of the group will play an important role in raising awareness of the Measure across their Director General areas and act as 'Champions' for the Measure and promoters of children's rights across their area of responsibility.

This group also provides advice and guidance to the Implementation Team to help them to improve the processes to implement the Measure and help steer their work, as well as bring feedback from their area as to how the Measure is being implemented and if there is any good practice to share or any difficulties to address.

## **The Responsibilities and Roles of the Implementation team**

A team of staff is in place in the Children, Young People and Families Division within the Welsh Government who lead on the implementation of the Measure. Their work includes developing internal processes that will make sure Welsh Ministers comply with the due regard duty. This includes providing information and advice, developing tools and recording mechanisms to help Welsh Government staff to consider the UNCRC in their work.

They are responsible for:

- Raising understanding of the UNCRC, the Measure and the duties within it.
- Implementing the Measure and the Children's Rights Scheme.
- Commissioning, co-ordinating training and supporting staff training.
- Taking samples of decisions about policy and legislation development, as part of monitoring whether the Welsh Government is complying with the due regard duty.
- Regular gathering and analysis of data.
- Producing reports on the Welsh Government's compliance with the due regard duty every 5 years as a minimum.
- Facilitating the Implementation Steering Group.

Detail of how they will do some of this is contained later in this Children's Rights Scheme.

The Measure places the Welsh Ministers under a duty to take steps to promote knowledge and understanding of the UNCRC amongst the public, including children<sup>8</sup>. The Implementation Team, working with others, lead on this area of work on behalf of Ministers. However, other organisations are also committed to raising awareness and promoting knowledge and understanding of the UNCRC, such as the Children's Commissioner and Save the Children, and we need to continue to work together to have the greatest impact.

## **The Responsibilities and Roles of Welsh Government Staff**

The duties within the Measure cover all Ministerial areas and, as stated previously, Welsh Government staff play a very important role in developing policy and legislation on behalf of Ministers.

It is very important that they have properly considered the UNCRC before they begin to develop their policy or legislation and then throughout the process. They must be clear about how due regard has been paid before giving options and advice to Ministers, and for this to be shown clearly to Ministers.

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<sup>8</sup> Section 5, Rights of Children and Young Persons (Wales) Measure 2011.

As a result, individual departments and their staff will have a responsibility for going through a process of having due regard to the UNCRC whenever developing policy or legislation.

Staff working on the development of policy and legislation will ensure that they have due regard to the UNCRC in the case of each individual piece of policy and legislation. Training will be given to these staff to help them understand and carry out their role. They will be:

- Undertaking assessments of proposed policy and legislation, using the Welsh Government's Six Steps to Due Regard process which includes the UNCRC Impact Assessment Tool (this is detailed further in this document).
- Considering options for policy and legislation, and providing options and advice on them to Ministers.
- Ensuring records of the assessment and decision process are kept on file which show that the due regard duty was complied with.

### **The Responsibilities and Roles of Heads of the Divisions within the Welsh Government Departments**

They will be responsible for ensuring that the options and advice that their staff put to Ministers, so that Ministers can make decisions, is of good quality and has paid due regard to the UNCRC. This will involve ensuring that all staff, including themselves, have a suitable level of knowledge of the UNCRC and the Measure and their implications for their work.

### **Other people outside the Welsh Government**

The views of stakeholders on how compliance with the Measure is working are extremely important to us. We very much valued the quality of feedback when we consulted with stakeholders on the draft Children's Rights Scheme and have taken many of the comments into account. Children and young people have been consulted on the Scheme and will continue to be involved in the future implementation of the Measure as a whole.

Welsh Government staff work closely with experts in children's rights and the UNCRC. This includes the Getting it Right Implementation Support Group who provide the Welsh Government with support and advice to take forward the actions within the Getting it Right Action Plan<sup>9</sup> which is a 5-year rolling Action Plan for Wales setting out our key priorities and actions in response to the Concluding Observations of the UN Committee on the Rights of the Child 2008. This Action Plan includes the actions to take forward the Measure as outlined in this document.

Staff are also observers as part of the UNCRC Non-Governmental Monitoring Group<sup>10</sup> who have a role in monitoring how Wales is complying with implementing

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<sup>9</sup> <http://wales.gov.uk/topics/childrenyoungpeople/publications/gettingitright2009/?lang=en>.

<sup>10</sup> <http://www.childrensrighswales.org.uk/uncrc-monitoring-group.aspx>.

the UNCRC. This group is able to provide us, and other organisations who have a part to play in implementing the UNCRC, with recommendations on how things can be done differently or better.

### **How will we make sure that we comply with the duty to have due regard to the UNCRC?**

Our aim is to achieve a culture in the Welsh Government where Ministers and staff have a full appreciation of children's rights, and consciously consider them in all their work.

We are committed to educate and train Welsh Government staff as this will play a very important part in achieving that goal. However the duty to have due regard to the UNCRC is a new duty and Welsh Government staff will also need a practical process they can follow in their work to enable them to pay due regard to the UNCRC before they give options and advice to Ministers.

This does not mean that we think of the due regard duty as if it just involves making sure we "go through the process" or "tick the boxes". Welsh Ministers are firmly committed to finding ways to deliver children's rights through the Measure and this Scheme. They will expect their staff to have had due regard to the UNCRC when developing the policies and legislation submitted to Ministers for a decision.

However, we need to recognise that if staff do not have a practical guide they can follow, particularly when the duty is very new, it is going to be much harder to reach our goal of a full appreciation of children's rights across the Welsh Government and a conscious consideration of them in our work. This knowledge and understanding will develop over time at which point they will have a fuller understanding of the due regard duty.

In designing our process we have taken into account decisions that the courts have made on what "due regard" means in the context of equality duties<sup>11</sup>.

The result is the Six Steps to Due Regard, which includes the UNCRC Impact Assessment Tool and can be accessed via Section 4, slide 5 of our electronic – learning<sup>12</sup>.

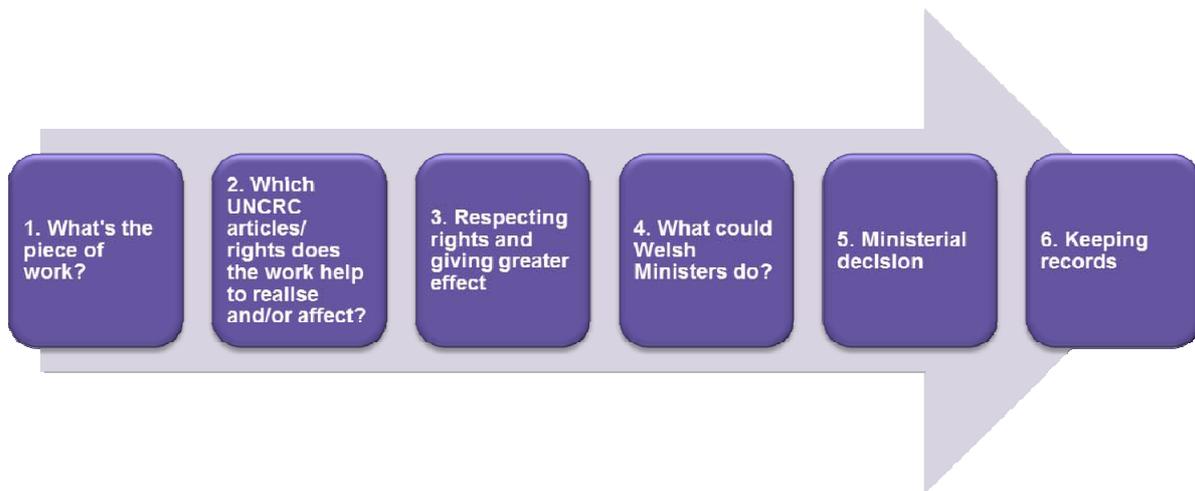
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<sup>11</sup> In particular: The Queen on the application of Baker & Others v Secretary of State for Communities and Local Government, [2008] EWCA Civ 141; The Queen on the application of Brown v Secretary of State for Work and Pensions [2008] EWHC 3158.

<sup>12</sup> <http://wales.gov.uk/topics/childrenyoungpeople/rights/uncrc/onlinecourse/?lang=en>.

## Six Steps to Due Regard

Under our process, staff will need to follow these steps:



- **Step 1 – What’s the piece of work?**

Staff need to identify whether they are working on a new policy or legislative proposal, or a change to, or review of, an existing policy. If they are, the due regard duty applies.

- **Step 2 – Which UNCRC rights does the work help to realise or affect?**

This is where staff will use the UNCRC Impact Assessment Tool. This helps them to identify which UNCRC rights are relevant to their piece of work. Over time, we aim to develop more guidance about what particular rights mean. We hope that we will be able to make use of external expertise to do this.

- **Step 3 – Respecting rights and giving greater effect to the UNCRC**

Once staff have identified relevant rights, they need to check that the proposed policy or legislation does not breach any of those rights. They then need to consider ways in which the proposal could give further effect to them.

- **Step 4 – What action could the Welsh Ministers take next?**

If staff have identified that a right would be breached by the proposal, they need to consider how it could be changed to stop that happening.

If they have identified that the proposal could give further effect to a right in a particular way, they need to consider all the other factors which are relevant. Different factors will be relevant to different proposals. Examples could be time constraints or resources. Other statutory duties will need to be considered, such as equality duties. Staff will need to give an

appropriately weighted consideration to the UNCRC and all the other relevant factors.

- **Step 5 – Ministerial Decision**

Staff will provide options and advice to Ministers on the policy or legislative proposal. They will put together this advice having had due regard to the UNCRC as described in the steps above.

Ministers are responsible for taking decisions and having due regard to the UNCRC when taking those decisions. The options and advice from Welsh Government staff will help them to carry out those responsibilities.

- **Step 6 – Keeping Records**

Records will be kept of how the due regard duty has been complied with. These will be used to inform our reporting to the National Assembly for Wales.

Very often, policy and legislation is developed in several stages, and Ministers may take a series of decisions about it. We will be under a continuing duty to have due regard to the UNCRC throughout that process.

### **Embedding the duty to have due regard to the UNCRC in the Welsh Government's wider arrangements for developing policy and legislation**

Compliance with the duty to have due regard to the UNCRC has been firmly embedded alongside other legal duties such as the equality duty in the Equality Act 2010<sup>13</sup> and our obligations under our Welsh Language Scheme made under the Welsh Language Act 1993. It is vital that the duty to have due regard to the UNCRC is rooted alongside the wider arrangements in the Welsh Government for ensuring that the policy and legislation we develop is lawful, of good quality and delivers good results for the people of Wales.

Sometimes we may change our wider arrangements for ensuring our work is lawful, of good quality and delivers good results for the people of Wales. However, we would always make sure that compliance with the duty to have due regard to the UNCRC, and other legal duties, is embedded within our new arrangements.

In terms of embedding the due regard duty to the UNCRC, there are a number of things that have been put in place. These include:

#### **Induction to the Welsh Government**

UNCRC awareness raising and training is now featured within the induction processes for all new Welsh Government staff.

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<sup>13</sup> Section 149, Equality Act 2010.

## **Raising awareness**

A dedicated UNCRC web resource is available on the intranet for colleagues to access; this includes the online learning in place, Frequently Asked Questions (FAQs) information sheets, the full legislation documentation, the full articles of the 'Convention' and links to the Getting it Right plan alongside a variety of external rights websites. A poster campaign highlighting timelines on the Measure implementation have been developed as well as virtual packs to all Heads of Divisions across the Welsh government. The Universal children's day was promoted internally alongside the Deputy Minister promoting the e-learning to every member of staff.

## **Training**

A range of training is available for Welsh Government staff to provide them with knowledge and understanding of the UNCRC and to help them to understand the process they need to follow to comply with the due regard duty.

A pack of information has been provided to all Heads of Divisions across the Welsh Government. This includes the Six Steps to Due Regard (which includes the UNCRC Impact Assessment Tool), Frequently Asked Questions (FAQs) information sheets and a link to the online training. Heads of Divisions are expected to promote the training to all staff and to ensure that they are content that they have complied with the duty to have due regard to the UNCRC when providing options and advice to Ministers.

Other internal focused training has included a series of lunch and listen seminars to raise awareness amongst staff in a more informal setting. Formal presentations about the Measure to the Departments of the Welsh Government have also taken place and will be ongoing.

## **Expert training for targeted staff**

In the run up to May 1<sup>st</sup> 2012 when the due regard duty starts, and as an ongoing process, a series of targeted expert led sessions have taken place with key members of staff involved in leading on developing policy and legislation. These involved analysing in greater detail the articles and themes of the UNCRC, rights based approaches and the requirements of the due regard duty.

Specialist training will be provided for the Welsh Government Legal Services in Spring 2012. This will cover the way in which the rights within the UNCRC have been interpreted internationally, as well as the Welsh Government's 6 Steps to Due Regard including the UNCRC Impact Assessment Tool.

## **Getting it Right Sessions**

People who work with adults to help them understand the UNCRC and how it relates to their area of work.

Awareness raising sessions were used to highlight the Measure and the due regard duty. This was very powerful when delivered by the children and young people themselves and the feedback was very positive.

### **Online training for Welsh Government staff**

Two interactive online training tools have been developed.

One is a ten minute training tool which provides a quick introduction to the UNCRC and the way it has been embedded into Welsh domestic law. This has been put in place for all Welsh government staff.

The second is more detailed and involves an overview and history of the UNCRC and a detailed analysis of the process of compliance with the new due regard duty.

The purpose of the training is to ensure that Welsh Government staff working on policy or legislation fully understand:

- how their work can directly or indirectly impact on children;
- how it relates to the UNCRC and can give greater effect to the rights and obligations within it;
- how they must check UNCRC rights are not breached;
- how to balance giving effect to the rights and obligations alongside other considerations.

Consideration will be given to how Welsh Government staff will be kept up to date on developments as and when they happen.

### **Reporting on our compliance with the due regard duty**

The Measure requires the Welsh Ministers to publish a report by 31 January 2013 explaining how they have complied with the duty to have due regard to the UNCRC. This report will be given to the National Assembly for Wales and be available to the public. The Measure requires the Welsh Ministers to then publish a report on compliance every five years.

The National Assembly for Wales has powers to call Welsh Ministers before it and ask questions about the report. The Assembly can also ask Ministers to provide information at any time about how they have complied with the due regard duty.

However, it is up to the Assembly to decide whether and when it wants to use those powers. This is a Welsh Ministers' Scheme and the Welsh Ministers cannot make commitments on behalf of the Assembly.

A new Scheme will be prepared for May 2014, which will set out the arrangements for complying with the wider duty to have due regard to the UNCRC in all our work. That Scheme will deal with arrangements for reporting on compliance with the wider duty, including how often those reports will be published.

As a result of complying with the due regard duty and operating this Scheme Ministers may identify further actions which the Welsh Government needs to take. These can be discussed with the Getting it Right Implementation Support Group and ultimately fed into the Getting it Right Action Plan and the UK's report to the UN Committee.

We would very much hope that in the longer term, by having due regard to the UNCRC in developing policy and legislation, this will have a positive effect on outcomes for children and young people and will be reflected in the Child Wellbeing Monitor<sup>14</sup>.

### **Proposals for consulting on applying the Measure to 18-24 year olds**

Section 7 of the Measure requires the Welsh Ministers to consider whether the rights in the UNCRC and its optional protocols, and the provisions in the Measure, can be applied to young people aged 18-24, and if so how i.e. with changes and/or amendments, etc.

The Welsh Ministers are going to consult on and consider whether and how to make their rights-based approach in respect of young people aged 18 to 24 part of the law in Wales.

A consultation process will begin in the Spring/Summer of 2012. It will involve holding workshops with young people and relevant stakeholders, which will result in a document for full public consultation.

### **Changing this Scheme and Future Schemes**

The Measure requires the Welsh Ministers to involve and consult children and young people, the Children's Commissioner for Wales and other appropriate people, when preparing a new Scheme or changing this existing one<sup>15</sup>. It also requires them to obtain the approval of the National Assembly for Wales before they publish a new or changed Scheme<sup>16</sup>.

Up to 400 children and young people have been involved in the development of this Scheme and the information they have provided will be used to inform further work in promoting knowledge and understanding, clarifying their relationships with Ministers and establishing good practice. This information has been collated in a summary document and is invaluable and we thank the children and young people who gave their time to be involved.

A further 26 organisations provided feedback on the draft Children's Scheme that went out for a 12 week consultation between 7<sup>th</sup> November 2011 and 30<sup>th</sup> January 2012. Some of the responses were from a collective group and others from individuals. Many of the comments received in this consultation exercise have been taken on board and reflected in this revised document. A summary document

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<sup>14</sup> <http://wales.gov.uk/about/aboutresearch/social/latestresearch/cypwellbeingmonitor/?lang=en>.

<sup>15</sup> Sections 3(4) and 3(5), Rights of Children and Young Persons (Wales) Measure 2011.

<sup>16</sup> Section 3(6), Rights of Children and Young Persons (Wales) Measure 2011.

has been produced that outlines the main themes of the consultation and again we thank the contributors for taking the time to respond.

In addition, meetings were held with representatives from the Children's Commissioners office and other key stakeholders, the Getting it Right Implementation Support Group and Funky Dragon to fully inform our development of this Scheme, and to allow for discussion and advice. This discussion is ongoing and we will again welcome their advice in the future.

This Scheme was approved by the National Assembly for Wales on 27<sup>th</sup> March 2012.

We will work to involve children and young people, the Children's Commissioner for Wales and other appropriate people in preparing a new Scheme for May 2014 as this will also need to set out how we will comply with the wider duty to have due regard to the UNCRC in all our work. This will be after we have published our first report on compliance with this Scheme. The report must be published no later than 31 January 2013<sup>17</sup>.

We will use the lessons we have learned from this Scheme in preparing our next one.

The Measure requires us to have regard to certain documents when preparing a new Scheme or changing an existing one<sup>18</sup>. These include the views of the UN Committee on the Rights of the Child on the progress made by the UK in implementing the UNCRC. These are often referred to as the Committee's "Concluding Observations"<sup>19</sup>.

The Committee's last concluding observations about the UK were issued in 2008<sup>20</sup> and we had regard to those in preparing this Scheme. The next set of concluding observations by the Committee will be issued after the UK submits its next report to the Committee in January 2014 on its progress in implementing the UNCRC.

We will need to consider whether the Scheme we have in place at that time needs to be changed in the light of those observations. This is a requirement of the Measure<sup>21</sup>.

In preparing this Scheme we had regard to the UN Committee's General Comments on the interpretation of the UNCRC rights<sup>22</sup>. We will again have regard to those as we develop further guidance for Welsh Government staff on the meaning of the rights within the UNCRC.

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<sup>17</sup> Section 4(1), Rights of Children and Young Persons (Wales) Measure 2011.

<sup>18</sup> Section 3(1), Rights of Children and Young Persons (Wales) Measure 2011.

<sup>19</sup> Formally called Consideration of Reports submitted by State Parties under article 44 of the UNCRC: Concluding Observations.

<sup>20</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>.

<sup>21</sup> Section 2(4), Rights of Children and Young Persons (Wales) Measure 2011.

<sup>22</sup> <http://www2.ohchr.org/english/bodies/crc/comments.htm>.

The Measure allows us, when preparing a new Scheme or changing an existing one, to have regard to other documents and matters we consider relevant<sup>23</sup>. This is a broad category, and can potentially include any document if its subject matter is relevant to the Welsh Ministers' arrangements for having due regard to the UNCRC. For example, it could include reports by the Children's Commissioner for Wales or Estyn.

We welcome suggestions from anyone, at any time, about what we should take into account in preparing our next Scheme. It always helps if the person making the suggestion can explain in practical terms how they believe our arrangements for having due regard to the UNCRC should be changed in the light of the particular document or other matter.

### **Welsh Ministers' powers to change legislation**

The Measure allows the Welsh Ministers to make orders changing existing legislation if, as a result of one of their reports on compliance, they decide that it would be desirable to do so to give greater effect to the UNCRC<sup>24</sup>. They can make changes if those changes are ones which would be within the power of the National Assembly for Wales to make. Before making these orders they must carry out a consultation and obtain the approval of the National Assembly for Wales<sup>25</sup>.

They will consider whether to use this power after they have issued their first report on compliance.

### **What can children or their representatives do if they think Welsh Ministers have not had due regard to the UNCRC?**

Children, individually or in a group, may:

- Contact the Welsh Government to raise the issue. We are committed to making the complaints process simple, quick and effective. This will mean producing a short and clear summary version on the process that will hopefully be clear to all. In the mean time we have a Code of Practice on Complaints which is available on the link below:

[http://wales.gov.uk/contact\\_us/complaints1/complaintspublications/codeofpractice/?jsessionid=RJmqT5LMsQkdbZvQ15vBp0MRhppCkPPwtPpT8pqZyCLwS5WVgJyB!823856201?lang=en](http://wales.gov.uk/contact_us/complaints1/complaintspublications/codeofpractice/?jsessionid=RJmqT5LMsQkdbZvQ15vBp0MRhppCkPPwtPpT8pqZyCLwS5WVgJyB!823856201?lang=en).

- Contact their Assembly Member. Assembly Members can raise issues affecting children with the Welsh Government or in the Assembly. Your Assembly Members can be found via this link:

<http://www.senedd.assemblywales.org/mgMemberIndex.aspx>.

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<sup>23</sup> Section 3(2), Rights of Children and Young Persons (Wales) Measure 2011.

<sup>24</sup> Section 6(2), Rights of Children and Young Persons (Wales) Measure 2011

<sup>25</sup> Sections 6(4), Rights of Children and Young Persons (Wales) Measure 2011.

- Send a petition to the National Assembly for Wales if ten or more people have signed it. Children could use this to draw the Assembly's attention to Welsh Government legislation or policy which they think may not have had due regard to the UNCRC. The Assembly has powers to call Welsh Government Ministers before it and ask them about how they have had due regard to the UNCRC in developing particular pieces of policy or legislation. This is a link to more information about petitions to the National Assembly for Wales:

<http://www.assemblywales.org/gethome/e-petitions.htm>.

- Apply to court to ask the court to rule on whether the Welsh Ministers have complied with the due regard duty. This is called a Judicial Review. Applications for a Judicial Review should be made as soon as possible, and usually no later than three months after the Welsh Ministers' decision was made. Sometimes a court will allow a person to make a late application if the person can show a very good reason for not applying earlier. While children are completely within their rights to apply for a Judicial Review, we would hope that the matter could be resolved through the other arrangements listed previously. That is why we are trying to make sure that our arrangements for having due regard, and our procedures for dealing with complaints, are effective. If however, children choose to follow this option, then the organisations below are able to provide advice and assistance.

Below is a link to explain more about Judicial Reviews:

<http://www.judiciary.gov.uk/you-and-the-judiciary/judicial-review>.

To pursue a Judicial Review, you would need legal advice. Below is some more information about this:

<http://www.direct.gov.uk/en/Governmentcitizensandrights/GettingLegalAdvice/index.htm>.

### **Support for children who want to complain about or challenge the Welsh Ministers**

When children, as an individual or as a group, want to challenge Ministers when they don't feel that the UNCRC has been considered in a policy or legislation, and that this affects them, they can be supported by:

- Any adult that they trust and who is able to spend time supporting them. This could be a relation, a friend or a professional who works with them. They should be considered an advocate for children.
- At a local level, a number of advocacy providers currently exist that could provide support and advice to children and young people. In the main these tend to focus on providing information and advocacy for children and young people who are considered to be vulnerable. However, they could

support children and young people within these categories to challenge Ministerial decisions. Use the link below to find out which advocacy providers are in which area:

<http://meiccymru.org/professional/in-your-area>.

- CLIC – This is the National Information and Advice service for Young People (11-25) in Wales. It is an online channel and printed zine offering information, news and advice for all young people aged 11 to 25 in Wales on a wide range of subjects and issues, including where to get support in their local area. This is a link to the CLIC website:

<http://www.cliconline.co.uk/news/>.

- Meic – This is the Advocacy and Advice helpline for children and young people in Wales. The advocates at meic help children to be heard by others. Meic is available to advise and provide information to children wishing to challenge Welsh Ministers. They can even contact others on behalf of children. This is a link to meic's website:

<http://www.meiccymru.org/>.

- The Children's Commissioner for Wales has power to provide advice, representation and assistance to children who may wish to challenge Welsh Ministers. The Care Standards Act 2000 gives the Children's Commissioner power to review how the Welsh Government's work has affected children in Wales<sup>26</sup>. This would include looking at whether the Welsh Government has complied with the due regard duty, and the effect that has had on children in Wales. This is a link to the contact details of the Commissioner's offices:

<http://www.childcom.org.uk/en/contact/>.

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<sup>26</sup> Section 72B, Care Standards Act 2000.

## Glossary of Terms

**Advocacy** – Advocacy is about speaking up for children and young people. Advocacy is about empowering children and young people to make sure that their rights are respected and their views and wishes heard at all times. Advocacy is about representing the views, wishes and needs of children and young people to decision makers, and helping them navigate the system.

**Funky Dragon** – Funky Dragon is the Children and Young People’s Assembly for Wales. Its mission is to enable children and young people in Wales to get their voices heard by Government and others who make decisions about policies and services that affect their lives.

**General Measures of Implementation** – General Measures refers to the basic tools states can use for implementing all the provisions in the UNCRC.

The tools are legislation, the establishment of co-ordinating and monitoring bodies, data collection, awareness-raising and training, the monitoring of budgets and the development and implementation of appropriate policies, services and programmes.

These should be a high priority for implementation in all states. States must do all they can to implement the rights contained in the Convention.

**Getting it Right** – This is a rolling action plan which was developed for Wales to identify actions that will take forward implementation of the UNCRC in Wales over the next five years.

**Legislation** – Laws

**Optional Protocols** – These are called “Optional” because it is optional for states who have agreed to be bound by the UNCRC to agree to be also bound by the rights and obligations in the Protocols. The first of these relates to the involvement of children in armed conflict, and the second relates to the sale of children, child prostitution and child pornography. The UK has agreed to be bound by both of these.

**Policy** – A plan or course of action intended to influence and determine decisions, actions, and other matters.

**Seven Core Aims** – Our seven core aims for children and young people summarise the UN Convention on the Rights of the Child (UNCRC) and form the basis for decisions on priorities and objectives nationally. They should also form the basis for decisions on strategy and service provision locally. This is expressed in seven core aims that all children and young people:

1. have a flying start in life;
2. have a comprehensive range of education and learning opportunities;
3. enjoy the best possible health and are free from abuse, victimisation and exploitation;
4. have access to play, leisure, sporting and cultural activities;

5. are listened to, treated with respect, and have their race and cultural identity recognised;
6. have a safe home and a community which supports physical and emotional wellbeing;
7. are not disadvantaged by poverty.

**UN Committee** – The Committee is established under article 43(1) of the Convention for the purpose of examining the progress made by State Parties towards its implementation. The Committee is composed of ten experts in the areas covered by the Convention, who are elected to the Committee by the States which are parties to the Convention.

**UNCRC – The United Nations Convention on the Rights of the Child** is an International Convention developed and agreed by the United Nations. 190 out of 192 states have ratified it, making it very important internationally. It has two Optional Protocols which have also been ratified by the UK. In the convention and the two protocols there are approximately 58 rights of children and obligations placed on Government and others. It recognises the development and vulnerabilities of children and places obligations on states and their agents to enable children to realise their rights.