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Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Cymry Ifanc
Young Wales

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Welsh Assembly Government

Consultation Document

Proposals for a Rights of Children and Young Persons (Wales) Measure

Date of issue: **17 March 2010**

Action required: Responses by **7 May 2010**



Proposals for a Rights of Children and Young Persons (Wales) Measure

- Audience** This will be of particular interest to children and young people, and all those that work with them, or on their behalf.
- Overview** The Welsh Assembly Government intends to put before the National Assembly for Wales a proposal for a new 'Rights of Children and Young Persons (Wales) Measure' which relates to the United Nations Convention on the Rights of the Child ('the UNCRC').
- The Welsh Assembly Government believes that the proposed new Measure is a good way of making sure that, in doing its work, the Welsh Assembly Government tries even harder than before to help children and young people in Wales to access the rights which are set out in the UNCRC, as a step towards them all achieving well-being. We want to know what the public, including children and young people, thinks about the proposed new Measure.
- Action required** Responses to this consultation document should be sent to the Welsh Assembly Government by **Friday 7 May 2010**. Comments can be made in writing by answering the questions in Section 5 or by e-mailing chyprightsmeasure@wales.gsi.gov.uk
- Further information** Responses, enquiries and requests for hard copies of the consultation should be directed to:
- Nerys Peyton
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Department for Children, Education and Lifelong Learning
Welsh Assembly Government
Cathays Park
Cardiff CF10 3NQ
Tel: 029 2082 5863
- How the views and information you give us will be used** The Welsh Assembly Government is the data controller for all personal data relating to your consultation response. This means we are responsible for making sure that information which we hold about you is handled properly. The Welsh Assembly Government intends to publish a summary of the responses to this document. We may also publish some responses in full if we think it is right and practical to do so. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response.
- Full responses and details of who sent them, may be seen by Welsh Assembly Government staff who need them to follow up the issues which this consultation is about. They may also be seen by Welsh Assembly Government staff who need them to help with planning future consultations.
- The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Assembly Government. This includes information which has not been published. This does not automatically mean that, if you have asked for your name and address not to be published, and a member of the public later asks to see them, we will reveal them.
- The law allows us to withhold information in some circumstances. If someone has asked for their name and address not to be published, that is an important fact we would take into account when deciding to reveal or withhold that information if a member of the public asked to see it. However, though we do not think this would happen very often, there might sometimes be important reasons why we have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we decided to reveal the information.



Introduction from the Minister

This document sets out our proposals for a 'Rights of Children and Young Persons (Wales) Measure'.

Your views are important to the Welsh Assembly Government in helping to improve the lives of children and young people in Wales. All of us, young and old, have an important contribution to make to the communities in which we live.

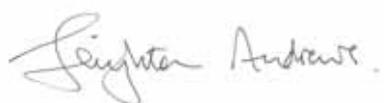
If this Measure is agreed by the National Assembly for Wales, we will be working hard as the Welsh Assembly Government to make sure that we do our best to support children and young people across Wales to enjoy and benefit from all of the rights which are set out in the United Nations Convention on the Rights of the Child.

If this Measure is agreed, Wales will be the first country in the United Kingdom and one of the few in Europe who have committed to getting the Convention integrated into law.

Once your views are received, we will consider them all and it will help us to decide whether we have got the Measure right before we put it before the Assembly for approval.

Under Article 12 of the UN Convention, children and young people of all ages up to 18 have the right to say what they think on issues that affect their lives, and for those views to be taken into account when decisions are made.

Please use your right and let us have your views!!



Leighton Andrews AM
**Minister for Children, Education
and Lifelong Learning**



Huw Lewis AM
Deputy Minister for Children

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Note: We talk about different age groups in this document. This note is to make it clear what we mean:

Children = people from birth who have not yet reached 18

0 to 17 = people who have not yet reached 18

0 to 24 = people who have not yet reached 25

0 to 25 = people who have not yet reached 26

18 to 24 = people who have reached 18 but not yet reached 25

Section 1

Background

1.1 The Welsh Assembly Government is the devolved government of Wales. It has powers to do things in Wales in many subject areas (health, education and the environment are examples of these subject areas). The National Assembly for Wales is the devolved law-making body for Wales. It can pass a type of law for Wales called an Assembly Measure.

1.2 The Welsh Assembly Government intends to put before the National Assembly for Wales a proposal for a new law, relating to the United Nations Convention on the Rights of the Child ('the UNCRC'). This would be called the Rights of Children and Young Persons (Wales) Measure. These proposals will only become law for Wales if the National Assembly agrees to them and the Queen also agrees.

1.3 This document explains what the Welsh Assembly Government thinks this new law should contain. The Welsh Assembly Government wants to know what the public, including children and young people, thinks about the proposed new law. We will then look at what people have said and decide whether we should change anything in the proposed new law before we ask the National Assembly for Wales to agree to it.

1.4 The UNCRC is an agreement entered into by all but two¹ of the countries who are members of the United Nations. The United Nations was set up by a group of countries just after the end of World War II, with the aim of countries working together to try to avoid war. One

¹ The United States of America and Somalia are the two countries which, although they have signed the UNCRC, have not agreed to be legally bound by it. However, the government of Somalia recently said that it intended to become legally bound by it.

hundred and ninety two countries are now members. The United Nations tries to find ways of solving the world's biggest problems.

1.5 The UNCRC sets out what things (for example, in education and health care) those countries agree a person aged 0 to 17 should have when they are growing up. These are called their 'rights'. The UNCRC contains 54 provisions which are called 'articles'. Nearly 40 of these articles set out particular rights that people aged 0 to 17 have, as well as duties on governments to respect those rights.

1.6 Because the UNCRC applies to countries across the world at different stages of development, some of the rights it includes are things which we take for granted in Wales. For example, the right to clean drinking water.

1.7 Children also have the same human rights as adults, but the UNCRC contains extra ones because people aged 0 to 17 are younger and may need extra help and protection.

1.8 The UK agreed in December 1991 to be bound by the UNCRC as part of international law. International law deals with relationships between countries (domestic law is the name given to laws made by a country about the rights and duties between it and its people, and about the rights and duties between people in that country).

1.9 As well as the UNCRC agreement, the UK and other countries have entered into two other agreements which are called the Optional Protocols to the UNCRC. These are about protecting children from taking part in wars, and protecting children from being harmed. These protocols can be found in Part 2 of the Schedule at the end of the draft Assembly Measure which is in Section 3 of this consultation document.

1.10 A United Nations Committee on the Rights of the Child ('the UNCRC Committee') was set up under the UNCRC. Countries that

have entered into the UNCRC agreement must report to and appear before this Committee every five years. They must provide details of what progress their country has made towards putting the UNCRC into effect. The UNCRC Committee then produces its own report and says what further things it thinks should be done.

1.11 When the UK Government reports to the UNCRC Committee, it should include in its report details of what action has been taken by the Welsh Assembly Government, and what laws have been passed by the National Assembly for Wales, which have helped in Wales to put the UNCRC into effect.

1.12 In 2002 the Welsh Assembly Government decided that in carrying out all of its work for children and young people (0 to 25), it should work towards these Seven Core (overall) aims:

- that children and young people should have a flying start in life
- that they should have a comprehensive range of education and learning opportunities
- that they should enjoy the best possible health and be free from abuse, victimisation and exploitation
- that they should have access to play, leisure, sporting and cultural activities
- that they should be listened to, treated with respect, and have their race and cultural identity recognised
- that they should have a safe home and a community which supports physical and emotional wellbeing
- that they should not be disadvantaged by poverty.

1.13 These Seven Core aims were put together by drawing on some of the main children's rights in the UNCRC. In 2004 the Welsh Assembly Government went further still and decided that whenever it developed policies for children and young people (0 to 25), it would do so with the aim of achieving for them the rights which are set out in the UNCRC.

1.14 In 2008, when the UK Government last appeared before the UNCRC Committee to report on the UK's progress in putting the UNCRC into effect, the Welsh Assembly Government helped with that appearance. Having heard the evidence put forward by the UK, the UNCRC Committee (in its 'Concluding Observations') said:

The Committee welcomes the fact that the Convention has been referred to in the Seven Core Aims for children and young people in Wales . . . however the Committee remains concerned that the Convention is not regularly used as a framework for the development of strategies . . . and at the lack of an overarching policy to ensure the full realisation of principles, values and goals of the Convention.

1.15 The Committee also said:

The Committee remain concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State Party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it. The Committee recommends that the State Party continue to take measures to bring its legislation in line with the Convention, e.g. by having a special section in [a Bill of Rights in Northern Ireland] devoted to child rights.

1.16 The Committee said that it would like to see that:

. . . steps are taken across the UK State Party including in the devolved administrations to incorporate the Convention into domestic law.

1.17 For many years the UK has been making written laws (often called legislation) which aim to improve the lives of children and young people. The devolved governments (such as the Welsh Assembly Government) and devolved law-making bodies (such as the National Assembly for Wales) have also been doing this since they were set up.

1.18 A lot of these laws place duties on public bodies (like local councils and health services) which are about things that affect children and young people's lives. If public bodies do not carry out these duties they can be taken to court. For example, the Education Act 1996 puts duties on the UK and Welsh Assembly Governments, and on local councils, relating to providing education.

1.19 Therefore, many of the things which are set out in the UNCRC as things which children and young people need are safeguarded by laws which already exist in Wales and the rest of the UK. These laws are often quite complicated because they have to deal with lots of different issues.

1.20 However, some people may think that, as well as laws that cover particular areas like education, the UK should also have a simpler law which says that children have the rights which are in the UNCRC. They think that children should then be able to use that law to take public bodies to court if they do things which go against those rights.

1.21 The Welsh Assembly Government thinks that this may not be best way of working towards achieving for children the rights in the UNCRC. The Welsh Assembly Government wants to create a law that will allow the rights and duties in the UNCRC to be carefully thought about by the Welsh Ministers and the First Minister in the important decisions that they are making all the time. That may result in new and better ways to support and improve the well-being of children.

1.22 Also, it may mean that, in some cases, the Welsh Ministers will propose new laws and/or find new and better ways that will allow children to use the rights set out in the UNCRC. Having to go to court is expensive and often takes quite a long time, although sometimes it is the only way to settle a dispute.

1.23 The Welsh Assembly Government thinks that this Measure will allow it to think about new and better ways in which children can use the rights in the UNCRC without needing to go to court. However, we think that, to achieve that, the best approach is to think about it in each of the particular areas for which it has responsibility (e.g. health, education).

1.24 The rights and duties in the UNCRC and its Optional Protocols will then become an important part of what the Welsh Ministers and the First Minister think about when making decisions, along with all the other important and complicated issues they must think about.

1.25 Some of the rights in the UNCRC are in the European Convention on Human Rights ('the Human Rights Convention') and are already part of UK law because of the Human Rights Act 1998. These include the right to life, the right to say what you think (or freedom of expression) and the right to follow the religion you choose.

1.26 Like the UNCRC, the Human Rights Convention is an agreement between a number of countries, including the UK. The countries which have entered into it have agreed that people (including children and young people) have the rights which are set out in the Human Rights Convention.

1.27 The UK Parliament (in the Houses of Parliament in London) has passed the Human Rights Act 1998 which is a law that means that people in the UK can take public bodies to court if they think that their human rights have not been respected by those bodies.

1.28 The courts in the UK can sometimes take the UNCRC into account when they are making a decision in a case which has been brought to them. For example, there might be a situation in which it is not clear what a piece of legislation means. The legislation could have one meaning which is in line with the UNCRC and one which is not. The courts can decide that the meaning which is in line with the UNCRC is the right one. However, there are not many of these types of situations.

1.29 The Government of Wales Act 2006 allows the UK Government to make the Welsh Assembly Government do things (or not do things) so that they are not going against the agreements that the UK has entered into with other countries (like the UNCRC).

1.30 However, there is no law applying in Wales that means the Welsh Ministers have to take the UNCRC into account when they are making decisions that affect the public (including children and young people). We intend that this Measure should change that.

1.31 Over the last ten years since the National Assembly for Wales was set up, a lot of changes have happened in Wales to improve the lives of children and young people aged 0 to 25. We do quite a lot of this in a different way from England, Scotland and Northern Ireland now. Because of this, the Welsh Assembly Government wants to find more ways in which the rights of children and young people can be safeguarded in Wales.

1.32 In July 2009, Rhodri Morgan, who was then First Minister for Wales (the leader of the Welsh Assembly Government) announced that the Welsh Assembly Government was going to look at whether an Assembly Measure (a law for Wales, made by the National Assembly for Wales) could be passed “to embed the principles of the United Nations Convention on the Rights of the Child into law.”

1.33 The Welsh Assembly Government wants to propose to the National Assembly for Wales that it makes a new law called the Rights of Children and Young Persons (Wales) Measure. The proposed new law is in section 3 of this document.

1.34 The Welsh Assembly Government believes that the proposed new law is a good way of making sure that, in doing its work, the Welsh Assembly Government tries even harder than before to help children and young people in Wales to access the rights which are set out in the UNCRC, as a step towards them all achieving well-being.

1.35 The National Assembly for Wales cannot pass an Assembly Measure about any subject it likes. The subjects (or 'Matters' as they are called in the laws) about which it can make Measures are listed in the Government of Wales Act 2006. Below is detail about the subject in the Government of Wales Act 2006 which the Welsh Assembly Government thinks would allow the Rights of Children and Young Persons (Wales) Measure to be passed:

Matter 15.6

Co-operation and arrangements to safeguard and promote the well-being of children or young persons.

This matter applies to co-operation by, and arrangements made by-

- (a) public authorities whose principal functions relate to any one or more of the fields in this part;
- (b) police authorities and chief officers of police for police areas in Wales;
- (c) the British Transport Police Authority;
- (d) local probation boards for areas in Wales;
- (e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and 3 of the Offender Management

Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;

(f) youth offending teams for areas in Wales;

(g) the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);

(h) persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.

1.36 In the subject above, 'child' means someone who has not reached 18. 'Young person' means someone who is 18 or over, but has not yet reached 25.

1.37 'Well-being' covers:

- health and emotional-being
- protection from harm and neglect
- education, training and recreation
- the contribution made by the under 25s to society
- social and economic well-being
- securing the rights of the under 25s.

Section 2

Summary of the draft Measure Proposals

You can also find the consultation questions in this section in the complete list of questions at the end of this document. You may want to look at the draft Explanatory Notes (Section 4 of this document) for a more detailed explanation of what is in the Measure.

2.1 This summary and the draft Rights of Children and Young Persons (Wales) Measure use the terms ‘the Welsh Ministers’ and the ‘First Minister’. They are both parts of the Welsh Assembly Government and between them have legal responsibility for most of what the Welsh Assembly Government does.

Section 1 of the Measure – The ‘Due Regard’ Duty

2.2 The Welsh Ministers and the First Minister must have ‘due regard’ to the UNCRC and its Optional Protocols when they are carrying out ‘relevant functions’.

2.3 ‘Function’ means something that the Welsh Ministers ‘have the power to do’ or ‘have a duty to do’. An example of something which is a function is the Welsh Ministers’ power under section 60 of the Government of Wales 2006 to do things for improving the economic, social or environmental well-being of Wales.

2.4 The Measure says that a function (a legal power or duty) will only be a ‘relevant’ function if the Welsh Ministers have put it in the children’s scheme which the Welsh Ministers must make (Section 2 of the Measure). Once a function is in the children’s scheme, every time the Welsh Ministers do something using that function they will have to have ‘due regard’ to the UNCRC and its Optional Protocols.

2.5 Our view is that putting this duty on the Welsh Ministers and the First Minister will mean that, when they are doing something using any function which is a relevant function, they must:

- (a) think about which rights and duties in the UNCRC and its Optional Protocols are relevant to the decision they are about to take
- (b) think about whether, when carrying out that function, they could do it in a way that helps to achieve those rights and duties better
- (c) think about whether what they are intending to do might go against the rights and duties in the UNCRC and its Optional Protocols; and
- (d) weigh up correctly what they think about a), b) and c), along with everything else which they need to think about, to decide what they are going to do using the function.

2.6 We have thought a lot about what duties this new law should put on the Welsh Ministers and the First Minister. We have also thought a lot about whether or not the duties should apply to everything they do.

2.7 We think that the best approach is that the Welsh Ministers and the First Minister should be able to put their efforts, at least to start with, into areas where the rights and duties in the UNCRC and its Optional Protocols are most likely to make the biggest difference to the lives of children in Wales.

2.8 This does not mean that we will ignore other areas, it just means that we think that the law should allow the Welsh Ministers to choose where to concentrate their efforts for the best result. Therefore, we think that the 'due regard' duty should apply only to functions which have been put in the children's scheme.

2.9 As you will see if you read on, before they decide which functions they think should be in the children's scheme, the Welsh Ministers will have to ask the public (including children and young people, and the Children's Commissioner for Wales) what they think about this.

2.10 Once they have done this, the Welsh Ministers will then have to get the National Assembly for Wales' agreement to what they have put in the scheme. If the National Assembly refuses to give its agreement because it thinks that other functions should be in the scheme, the Welsh Ministers will have to think again and change the scheme.

2.11 The Measure explains that when it puts a duty on the Welsh Ministers and the First Minister to have 'due regard' to 'the UNCRC and its Optional Protocols', it actually means certain parts of those agreements, not the whole of them. The parts which are included have been put at the back of the Measure in the Schedule.

2.12 Some of the UNCRC and its Optional Protocols deal with things such as procedures in the United Nations. We do not think we need to include those. We have included what we think are the **rights** and **duties** towards children.

Q1. Is 'due regard' the right duty to put on the Welsh Ministers and the First Minister?

Q2. Do you think it is right to apply the 'due regard' duty only to functions which the Welsh Ministers have put in the children's scheme?

Q3. Have we included in the Schedule the right parts of the UNCRC and its Optional Protocols in order to reflect the rights and duties in them?

Sections 2 and 3 of the Measure – The children’s scheme

2.13 The Welsh Ministers must make a children’s scheme. This is a document in which they will say which of their functions (and functions of the First Minister) the ‘due regard’ duty will apply to.

2.14 We have been thinking already about the best way of setting out in the children’s scheme which functions the ‘due regard’ duty will apply to. It may be sensible to set them out by referring to particular policies, policy areas or service areas which have a relevance to children.

2.15 We think that setting out the functions this way may help everyone to understand more easily which areas of the Welsh Ministers’ work are affected by the ‘due regard’ duty.

2.16 However, we need to think about whether, if the scheme was written in that way, we could be sure that we had captured all the functions we meant to capture.

2.17 We also need to think about whether writing the scheme in that way would result in the scheme being clear from a legal point of view.

2.18 By that we mean, if the Welsh Ministers were taken to court because someone thought that they hadn’t met the ‘due regard’ duty when doing a particular thing, would the court be able to work out whether or not the function they had used to do that thing was in the scheme?

Q4. What do you think about the idea of writing the scheme by referring to particular policies, policy areas or service areas which have a relevance to children?

Q5. Do you think that would help everyone to understand more easily which areas of the Welsh Ministers' work are affected by the 'due regard' duty?

Q6. Do you think that a scheme written in that way would be clear from a legal point of view?

Q7. Have you any other thoughts or ideas about the best way of setting out in the scheme which functions the 'due regard' duty applies to?

2.19 We have also been thinking about which policies and policy areas are likely to be amongst those that will be considered when it comes to setting out in the scheme which functions the due regard duty will apply to. The ones we have thought of at this stage are listed below.

2.20 As you will see if you read on, the public will be asked for their views on the draft scheme. They will have a chance to say then what they think about the way in which the scheme sets out the functions to which the 'due regard' duty applies, and the functions which have been captured in the scheme.

2.21 However, we are asking for your views now because it will help us when we are thinking about the best way to write the scheme, and about what functions should possibly go in it. These are the policies and policy areas we think are likely to be amongst those considered :

Delivering Beyond Boundaries

The Learning Country: Vision into Action

Extending Entitlement: Services and Support for 11-25 year olds in Wales

Youth Support Services: Directions and Guidance on Extending Entitlement 2002

Rights to Action

Young People; Youth Work: the Youth Service: the National Youth Service Strategy for Wales 2007

The School Effectiveness Framework (SEF)

Learning Pathways 14–19

Quality and Effectiveness Framework for post-16 learning in Wales: Delivering Skills that Work for Wales

Skills that Work for Wales: A skills and employment strategy and action plan

Reducing the proportion of young people not in education, employment and training in Wales: Delivering Skills that Work for Wales

Reaching Higher

National Behaviour and Attendance Review (NBAR) Action Plan

The Pedagogy Initiative

The Child Poverty Implementation Plan (2006)

Children and Young People's Partnerships and Children and Young People's Plans and associated guidance

Community Focused Schools

The review of special educational needs

The development of a new annual census collecting information on children and young people educated otherwise than at school (EOTAS)

The Parenting Action Plan

Specific approaches being developed for specific groups of pupils with additional learning needs (for example looked after children, pupils with English as an additional language and young offenders)

Anti-bullying approaches

Plans for primary to secondary school transition

The development of community-focused schools

The introduction of the revised National Curriculum from September 2008, particularly Personal and Social Education

Raising Attainment and Individual Standards in Education (RAISE)

Forced Marriage Action Plan

The Welsh Network of Healthy School Schemes

Health and Well Being Strategy

The All Wales Youth Offending Strategy

All Wales Schools Liaison Core Programme
The Safeguarding Vulnerable Children Review
The Inclusion Quality Mark currently being developed by the inclusion group of the Association of Directors of Education in Wales (ADEW)
The review of the National Service Framework for Children, Young People and Maternity Services
The School-Based Counselling Strategy
The Common Assessment Framework
The Integrated Specialist Advocacy Services
The Family Nurse Strategy
Suicide Prevention Action Plan
Working Together to Reduce Harm: The Substance Misuse Strategy for Wales 2008-2018
Child and Adolescent Mental Health Services: Everybody's Business
Children and Young People Workforce Development Strategy
Children First
Towards a Stable Life and a Brighter Future
Learner Travel Operational Guidance (Published April 2009)
All Wales Guidance for Educational Visits and Outdoor Learning 2009

Q8. Are the policies and policy areas on this list ones which should be considered when it comes to writing the children's scheme?

Q9. Are there any others that should be considered?

2.22 The Welsh Ministers must also say in the scheme what they will do to make sure that they meet the 'due regard' duty.

2.23 Before the Welsh Ministers make this scheme they must look at certain documents and information written by the UNCRC Committee. They must also publish a draft of the scheme which they want to make.

2.24 They must also find out what:

- children and young people
- the Children's Commissioner for Wales, and
- anybody else they think should be asked

think about the draft scheme.

2.25 They must also put the draft before the National Assembly for Wales. They must do this no later than 1 November 2011. The reason for this date is to make sure that progress is made towards the scheme being made, in a reasonable time after the Measure becomes law.

2.26 If the National Assembly for Wales is not happy with the draft of the scheme and refuses to agree it, the Welsh Ministers cannot make it in that form. The Welsh Ministers will then need to think again about what should be in that draft scheme. They will need to understand why the National Assembly was not happy with it, and will need to make changes until they find a draft that the National Assembly will agree. They will need to do all of this because the Measure puts a duty on them to make a scheme.

2.27 Once the Welsh Ministers have made the scheme they must publish it so that the public (including children and young people) can see what has finally been agreed with the National Assembly for Wales.

2.28 If the Welsh Ministers want to change the scheme (for example, to put more functions in it, or take some out), they have to go through steps which are similar to the ones they went through when they made it the first time. This will mean that the public and the National Assembly for Wales are always involved in any changes to the scheme.

2.29 The UNCRC Committee can, having heard what the UK has said to it about the progress made by the UK to give effect to the UNCRC and its Optional Protocols, make suggestions or recommendations about other things it thinks should be done. These are often called 'Concluding Observations' (we mentioned them earlier on). If the UNCRC Committee does this, the Welsh Ministers have six months to think about whether they should change the scheme because of the Committee's suggestion or recommendation.

Q10. Is there a benefit in the children's scheme having to include what the Welsh Ministers say they will do to make sure that they meet the 'due regard' duty?

Q11. Is it right that the Welsh Ministers should have to get agreement from the National Assembly for Wales before the children's scheme can be made or changed?

Q12. Is 1 November 2011 (the date by which the Welsh Ministers must have put a draft of their first children's scheme before the National Assembly for Wales) the right date?

Q13. Is it right that, no later than six months after the United Nations Committee on the Rights of the Child has made a suggestion or recommendation, the Welsh Ministers must think about whether they should change their children's scheme?

Q14. Is it right that, apart from this, it should be up to the Welsh Ministers to decide when to think about changing their children's scheme?

Q15. Are the things which the Welsh Ministers must think about when they are making or changing the children's scheme, the right things?

Q16. Is the list of people the Welsh Ministers must ask for views when making or changing the children's scheme, the right list?

Section 4 of the Measure – Reports on whether the due regard duty has been met

2.30 The Welsh Ministers must publish reports every so often about how they and the First Minister have met the 'due regard duty'. Their first report must be no later than 31 January 2013. We have chosen this date because the UK's next report to the UNCRC Committee about the UK's progress is due in January 2014.

2.31 The contents of the Welsh Ministers' report could then be included in or attached to the UK's report, so that the UNCRC Committee will know what steps they have taken to give effect to the UNCRC and its Optional Protocols in Wales.

2.32 The duty on the Welsh Ministers to report again every five year fits in with the duty on the UK to report to the UNCRC Committee every five years. Each time the UK reports on its progress to the UNCRC Committee, the Welsh Ministers' progress report will be available and can be included in the UK's report.

Q17. Is it right that the Welsh Ministers should have to publish reports about how they and the First Minister have met the 'due regard' duty?

Q18. Are the dates by which the reports must be published the right dates?

Section 5 of the Measure – Knowing about and understanding the Convention

2.33 The Welsh Ministers must do things so that more people (including children and young people) may know about **and understand** the UNCRC and its Optional Protocols. This duty is similar to a duty in the UNCRC (article 42) but we think this duty is better and goes further because it means that the Welsh Ministers must try to help people understand the UNCRC and its Optional Protocols, not just know about them.

2.34 The Welsh Ministers must take steps ‘that are appropriate’ to achieve this. We think this means that the Welsh Ministers will need to explain the UNCRC and its Optional Protocols to people so that they can understand them. They will need to think about explaining them to young children in a way which is different from the way they explain them to older people.

Q19. Is this the right duty to help everyone to know about and understand the UNCRC and its Optional Protocols?

Q20. Does the duty to do things so that more people (including children and young people) may know about and understand the UNCRC and its Optional Protocols, meet the duty in the UNCRC (article 42)?

Section 6 of the Measure – Changing laws

2.35 The Welsh Ministers will be able to change some laws and documents. Usually, a law can only be changed by making a new law. The Measure will let the Welsh Ministers make new laws in certain circumstances to change existing laws.

2.36 The Welsh Ministers will be able to make these changes if, in the report which they have to publish (under Section 4) saying how they

have met the 'due regard' duty, they decide that the changes would be a good way of giving better effect to the rights and duties which are in the UNCRC and its Optional Protocols.

2.37 The types of laws they can change are:

- a) Acts of Parliament (laws for the UK made in the Houses of Parliament in London)
- b) Assembly Measures (laws for Wales passed by the National Assembly for Wales in Cardiff)
- c) Subordinate legislation (laws which Parliament or the National Assembly for Wales have allowed governments to make).

2.38 However, the Welsh Ministers can only make changes if the changes are ones which the National Assembly for Wales could do itself. As we said earlier, the National Assembly for Wales can make new laws called Assembly Measures, but only if those laws are about subjects which are listed in the Government of Wales Act 2006.

2.39 The National Assembly for Wales must have agreed to the changes before the Welsh Ministers can make them.

2.40 You may be wondering, why do the Welsh Ministers need this power to change laws if they can only make changes which the National Assembly for Wales could have made itself anyway? Why not just let the National Assembly make a new Measure to make the changes?

2.41 The reason for giving the Welsh Ministers this power is because a lot of changes to laws might be needed over time. Also, some of those changes might need to be made quickly. It takes quite a bit of time for the National Assembly for Wales to make a Measure, and there is only

time to make a certain number of Measures during a year. We think it is sensible to give the Welsh Ministers this power, so that they can decide what they think the changes should be, and then ask the Assembly to agree them.

Q21. Is it right that the Welsh Ministers should be able to change some laws where they have decided in one of their reports that this would be a good idea?

Q22. Is there a benefit in them being able to do that?

Section 7 of the Measure – Young People aged 18 to 25

2.42 The UNCRC and its Optional Protocols only cover children (0 to 17). However, since 2002 the Welsh Assembly Government has tried, whenever making policies for children **and** young people (0 to 25) to achieve for them the rights which are set out in the UNCRC and its Optional Protocols.

2.43. The ‘due regard’ duty in this Measure only covers children at the moment because they are the people covered by the UNCRC and its Optional Protocols. However, the Measure will put a duty on the Welsh Ministers to think more about:

a) whether the things in the UNCRC and its Optional Protocols are also important for young people aged 18 to 24

b) whether parts of this Measure (like the ‘due regard’ duty) should cover young people aged 18 to 24.

2.44 The Welsh Ministers must say in their first children’s scheme what they are going to do to find out what people (including children and young people) think about a) and b).

2.45 The Welsh Ministers must publish a report saying what they have decided about the UNCRC and its Optional Protocols being important to young people aged 18 to 24, and about whether parts of this Measure should cover them. They must give this report to the National Assembly for Wales.

2.46 If the Welsh Ministers decide that parts of this Measure should cover young people aged 18 to 24, they can make laws to change this Measure to make this happen. The National Assembly for Wales must have agreed to those laws before the Welsh Ministers can make them.

2.47 The Welsh Assembly Government includes 25-year-olds as 'young people' in their work at the moment, but this section of the Measure says that the Welsh Ministers must think about young people aged 18 to 24.

2.48 The reason for this difference is that, as we explained earlier on, the National Assembly for Wales can only pass Measures about the subjects which are listed in the Government of Wales Act 2006. In the subjects which this Measure is about (see paragraph 1.35 in Section 1 of this document), 'young people' means people who are 18 to 24.

Q23. Is there a benefit in making the Welsh Ministers think about whether the things in the UNCRC and its Optional Protocols are also important for young people aged 18 to 24?

Q24. Should the Welsh Ministers think instead about other ways of protecting the rights of young people aged 18 to 24?

Q25. Is there a benefit in making the Welsh Ministers think about whether parts of this Measure (like the 'due regard' duty) should cover young people aged 18 to 24?

Q26. Is there a benefit in making the Welsh Ministers say in their children's scheme what they are going to do to find out what people (including children and young people) think about this issue?

Q27. Is it right that the Welsh Ministers should be able to make laws to change this Measure to make it, or parts of it, cover young people aged 18 to 24?

Q28. Is it right that before the Welsh Ministers can do this, they must get the agreement of the National Assembly for Wales?

Section 8 of the Measure – The Schedule and making changes to it

2.49 We explained earlier on that when the Measure says that the Welsh Ministers and the First Minister must have 'due regard' to the UNCRC and its Optional Protocols, it actually means those parts that we think contain the rights and duties towards children. The parts which are included are set out at the back of the Measure in the Schedule.

2.50 If there are changes to those agreements, the Measure will let the Welsh Ministers make laws to change what is in the Schedule so that it is kept up to date with the agreements. If certain things have happened, they **must** make those laws. These laws must be put before the National Assembly for Wales after they are made. However, the National Assembly for Wales has no role in agreeing those laws.

2.51 There are two reasons why the Assembly Government has included the text (actual words) of the rights and duties from the UNCRC and its Optional Protocols in the Schedule.

2.52 The first reason is that we think it is helpful to people reading the Measure, to be able to look at the back of the Measure to find out what are the rights and duties in the UNCRC towards children.

2.53 The second reason is a bit more complicated to understand, but we try to explain it below.

2.54 Countries make laws which are rules about how people in the country must behave to each other. For example, laws which make it a crime to steal from other people. As we said earlier, these are called domestic laws.

2.55 There are other laws which cover relationships between countries (like the UNCRC and its Optional Protocols). These laws are international laws. Sometimes courts are set up (international courts) so that if countries have disagreements about what they are expected to do under the international law, the international court can be asked to decide the matter. In many cases only the governments of countries can take cases to the international court. However, in some cases people in the countries are allowed to do so.

2.56 There is an international court called the International Court of Justice (ICJ). This court can decide what the UNCRC means in particular cases. Only governments of countries which have entered into the UNCRC can take a case to the ICJ. People (including people in the UK) cannot do so.

2.57 In some countries, when the country agrees to an international law (like the UNCRC) that law automatically becomes part of the law of that country (its domestic law). People in that country are then able to go to a court in that country if they think that rights which that law has given them have not been respected.

2.58 The UK is not a country where international laws apply automatically in that way. Instead, if the government wants to make an international law part of the law that applies in the UK, a new law must be made to make that happen. The UK has not made such a law in the case of the UNCRC. Therefore, children in the UK cannot (nor adults on their behalf) go to a court to enforce all of the rights in the UNCRC if they think those rights have not been respected.

2.59 This Measure will not mean that children (or adults on their behalf) in Wales **can** go to court to enforce all of the rights in the UNCRC. Instead, this Measure will make the Welsh Ministers and the First Minister think about, in particular cases, whether and how they could help to achieve those rights better, and whether they should do that.

2.60 Because people cannot go to court to enforce all of the rights in the UNCRC, and only countries can go to the ICJ, there are not many court decisions about the UNCRC. At the end of the day it is for the courts to say what laws mean, and what those laws require should be done.

2.61 When a court in the UK has a reason to look at the UNCRC and decide what it means, it will look at, among other things, any decisions made by the ICJ on that part. It will not give a meaning to the UNCRC which means that children in the UK are protected less under the UNCRC than in other countries.

2.62 We have put into the Schedule to this Measure the text (actual words) of the rights and duties in the UNCRC and its Optional Protocols, because we intend that text to become part of the law applying in Wales for the purpose of the Measure.

2.63 It will be for the courts in England and Wales to decide the meaning of the text of the rights and duties in the Schedule. We think that would allow the courts to reach a decision on the meaning of that

text bearing in mind how we live in the UK compared with other countries.

Q29. Is it right that the National Assembly for Wales should have no role in agreeing laws changing what it is in the Schedule?

Q30. Is there a benefit in having the Schedule?

Q31. Do you think it is right that the courts in England and Wales should be able to decide the meaning of the text of the rights and duties in the Schedule, bearing in mind how we live in the UK compared with other countries?

Q32. Do you think that the Measure is flexible enough to allow the courts to do that?

2.64 We want to make sure that we have used the correct technical terms (in the language of the law) in section 8 of the Measure. Section 8 deals with keeping the text in the Schedule up to date with changes to the UNCRC and its Optional Protocols (including the possibility of new Optional Protocols in the future).

2.65 The Assembly Government has used the phrases 'signed or otherwise indicated agreement to' and 'ratified' to explain the formal steps that generally lead to the UK becoming bound in international law by international agreements like the UNCRC.

Q33. Are the terms in Section 8, in particular the phrases 'signed or otherwise indicated agreement to' and 'ratified', the correct ones?

2.66. We have thought about whether the Public Services Ombudsman for Wales ('the Ombudsman') or the Children's Commissioner ('the Commissioner'), in appropriate cases, could look at whether the Welsh

Ministers or the First Minister have met the duties in the Measure. We think that they could.

2.67 The Ombudsman can look at complaints from the public that the Welsh Ministers or the First Minister have, for example, failed to provide a particular service or have dealt with something badly.

2.68 We think that the Ombudsman could, therefore, look at a complaint that the Welsh Ministers or the First Minister have failed to meet their duties in the Measure.

2.69 We also think that the Commissioner (who is also under a duty to consider the UNCRC) could look at whether the Welsh Ministers or the First Minister have met their duties in the Measure. The Commissioner can do that even if nobody has complained to them about the Welsh Ministers or the First Minister.

Q34. Do you agree that the Ombudsman can look at a complaint that the Welsh Ministers or the First Minister have failed to meet their duties in the Measure?

Q35. Do you agree that the Children's Commissioner can look at whether the Welsh Ministers or the First Minister have failed to meet their duties in the Measure?

Q36. Do you think that it is right that the Ombudsman and the Children's Commissioner should be able to do that?

Q37. Is this Measure a good way of safeguarding and improving the well-being of children and young people, and will it make a difference?

Q38. Is there anything else you want to say to us about the Rights of Children and Young Persons (Wales) Measure, or about anything else we have said in this document?

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

Proposed Rights of Children and Young Persons (Wales) Measure

[AS INTRODUCED]

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Schedule – The Convention, Protocols, declarations and reservations

Proposed Rights of Children and Young Persons (Wales) Measure

[AS INTRODUCED]

A MEASURE of the National Assembly for Wales to make provision for and in connection with giving further effect in Wales to the rights and obligations set out in the United Nations Convention on the Rights of the Child; and for connected purposes.

1 Duty to have due regard to Convention on Rights of the Child

- 5 (1) The Welsh Ministers must, in exercising any relevant function, have due regard to the requirements of—
- (a) Part I of the Convention,
 - (b) articles 1 to 7 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, except article 6(2), and
 - 10 (c) articles 1 to 10 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
- (2) A relevant function is any function which is specified in a scheme made by the Welsh Ministers under section 2.
- (3) This section applies to the First Minister as to the Welsh Ministers (and any reference
- 15 in this Measure to the duty under this section is to be read accordingly).

2 The children's scheme

- (1) The Welsh Ministers must make a scheme ("the children's scheme")—
- (a) specifying which of the functions of the Welsh Ministers and the First Minister are to be relevant functions for the purposes of section 1, and
 - 20 (b) setting out the arrangements they have made, or propose to make, for the purpose of securing compliance with the duty under section 1.
- (2) The scheme may—
- (a) require the Welsh Ministers to publish reports on the operation of the scheme or on any other matter mentioned in it (in addition to the reports required
 - 25 under section 4(1)), and
 - (b) specify matters which must be included in such reports or in reports under

section 4(1).

(3) The scheme may contain such other matters as the Welsh Ministers consider appropriate.

(4) The Welsh Ministers must lay a draft of the scheme before the Assembly (in accordance with section 3(5)) on or before 1 November 2011.

(5) The Welsh Ministers must, within six months of the Committee making any suggestion or general recommendation under article 45(d) based on a UK report, consider whether to revise or remake the scheme in the light of that suggestion or recommendation.

(6) The Welsh Ministers may revise or remake the scheme at any time.

(7) In this section—

(a) “the Committee” means the Committee on the Rights of the Child established under article 43(1);

(b) “UK report” means a report submitted by the United Kingdom under article 44(1)(b); and

(c) any reference to an article is a reference to that article of the Convention.

3 Preparation and publication of the scheme

(1) In preparing, remaking or revising the children’s scheme, the Welsh Ministers must have regard to—

(a) any report of the Committee under article 44(5) or study undertaken under article 45(c);

(b) any other reports, suggestions, general recommendations or other documents issued by the Committee relating to the implementation of the Convention or the Protocols by the United Kingdom.

(2) In preparing, remaking or revising the children’s scheme, the Welsh Ministers may have regard to any other documents (whether or not issued by the Committee) and to any other matters which they consider to be relevant.

(3) Before making, remaking or revising the children’s scheme, the Welsh Ministers must publish a draft of—

(a) the scheme, or

(b) where they intend to revise the scheme, either the revisions or the scheme as revised.

- (4) Before making, remaking or revising the children’s scheme, the Welsh Ministers must consult the following persons on the draft published under subsection (3)—
- (a) children and young persons,
 - (b) the Children’s Commissioner for Wales, and
 - (c) such other persons or bodies as the Welsh Ministers consider appropriate.
- (5) The Welsh Ministers must not make, remake or revise the children’s scheme unless a draft of—
- (a) the scheme, or
 - (b) where they intend to revise the scheme, either the revisions or the scheme as revised,
- has been laid before, and approved by a resolution of, the Assembly.
- (6) The Welsh Ministers must publish the children’s scheme when they make it and whenever they remake it; and, if they revise the scheme without remaking it, they must publish either the revisions or the scheme as revised (as they consider appropriate).
- (7) If the Welsh Ministers publish a scheme or revisions under subsection (6) they must lay a copy of the scheme or revisions before the Assembly.
- (8) In this section—
- (a) “the Committee” means the Committee on the Rights of the Child established under article 43(1); and
 - (b) any reference to an article is a reference to that article of the Convention.

4 Reports

- (1) The Welsh Ministers must—
- (a) on or before 31 January 2013, and
 - (b) at or before the end of each succeeding period of five years, or of such other length as may be specified in the children’s scheme,
- publish a report on how they and the First Minister have complied with the duty under section 1.
- (2) The Welsh Ministers must publish such other reports as may be required in pursuance of section 2(2)(a).
- (3) The Welsh Ministers must lay before the Assembly a copy of each report published

under subsection (1) or (2).

5 Duty to promote knowledge of the Convention

The Welsh Ministers must take such steps as they consider appropriate to promote knowledge and understanding amongst the public (including children) of the Convention and the Protocols.

6 Power to amend legislation etc

(1) This section applies if a report published under section 4(1) or (2) concludes that it would be desirable, for the purpose of giving further or better effect to the rights and obligations set out in Part I of the Convention and the Protocols, to amend any enactment or prerogative instrument falling within subsection (3).

(2) The Welsh Ministers may by order make such amendments of that enactment or instrument as they consider appropriate in the light of the report.

(3) An enactment or prerogative instrument falls within this subsection if provision amending it would be within the legislative competence for the time being of the Assembly.

(4) Before making an order under this section the Welsh Ministers must consult such persons or bodies as they consider appropriate.

(5) An order under this section is to be made by statutory instrument.

(6) A statutory instrument containing an order under this section must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Assembly.

(7) In this section “enactment” means—

(a) Act of Parliament,

(b) Measure of the Assembly,

(c) subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978 (c. 30), or

(d) subordinate legislation made under any Measure of the Assembly.

7 Application to young persons

(1) The Welsh Ministers must consider whether and (if so) to what extent and with what amendments—

(a) the requirements of Part I of the Convention and the Protocols may be

relevant to young persons, and

(b) the provisions of this Measure may be applied in relation to young persons.

(2) The children's scheme must (when first made) include a statement of the Welsh Ministers' proposals to consult on the matters mentioned in subsection (1).

5 (3) The Welsh Ministers may, when consulting on the matters mentioned in subsection (1), consult on any other matter relating to young persons that they consider appropriate.

(4) The Welsh Ministers must publish a report of their conclusions under subsection (1).

10 (5) The Welsh Ministers must lay before the Assembly a copy of any report published under subsection (4).

(6) The Welsh Ministers may by order—

(a) apply any provision of this Measure in relation to young persons;

15 (b) make such other provision as they consider appropriate for giving effect, in relation to young persons, to any of the requirements of Part I of the Convention and the Protocols.

(7) An order under subsection (6)(a) may make such modifications of the provisions applied by it as the Welsh Ministers consider appropriate.

(8) Before making an order under subsection (6) the Welsh Ministers must—

(a) publish a draft of the order, and

20 (b) consult such persons or bodies as they consider appropriate on the draft.

(9) An order under subsection (6) is to be made by statutory instrument.

(10) A statutory instrument containing an order under subsection (6) must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Assembly.

25 **8 The Convention on the Rights of the Child**

(1) In this Measure—

(a) "the Convention" means the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, and

30 (b) "the Protocols" means the Optional Protocols mentioned in section 1(1)(b) and (c).

(2) In the Schedule to this Measure—

(a) Part 1 sets out the text of Part I of the Convention,

(b) Part 2 sets out the text of the articles of the Protocols referred to in section 1(1)(b) and (c), and

5 (c) Part 3 sets out the text of the declarations by the United Kingdom to the Convention and the Protocols.

(3) For the purposes of this Measure, the Convention and Protocols are to be treated as having effect—

(a) as set out for the time being in Parts 1 and 2 of the Schedule, but

10 (b) subject to any declaration or reservation as set out for the time being in Part 3 of the Schedule.

(4) Subsection (5) applies if the United Kingdom has signed or otherwise indicated its agreement to—

15 (a) an amendment to the Convention or to a protocol for the time being set out in the Schedule, or

(b) an additional protocol to the Convention.

But that subsection does not apply if subsection (7) applies in relation to the amendment or protocol.

20 (5) The Welsh Ministers may by order make such amendments to this Measure as they consider appropriate to reflect—

(a) the amendment or protocol, and

(b) any declaration or reservation by the United Kingdom to the amendment or protocol.

(6) Subsection (7) applies if the United Kingdom has ratified—

25 (a) an amendment to the Convention or to a protocol for the time being set out in the Schedule, or

(b) an additional protocol to the Convention.

(7) The Welsh Ministers must by order make such amendments to this Measure as they consider appropriate to reflect—

30 (a) the amendment or protocol, and

(b) any declaration or reservation by the United Kingdom to the amendment or protocol.

(8) The Welsh Ministers must by order make such amendments to Part 3 of the Schedule as they consider appropriate to reflect any amendment to or withdrawal of any declaration or reservation for the time being set out in that Part.

5 (9) Any order under this section is to be made by statutory instrument, which must be laid before the Assembly.

9 Other interpretive provisions

In this Measure—

(a) “the Assembly” means the National Assembly for Wales;

(b) “child” means a person who has not attained the age of 18;

10 (c) “young person” means a person who has attained the age of 18 but not the age of 25.

10 Commencement

This Measure comes into force at the end of the period of two months beginning on the day on which it is approved by Her Majesty in Council.

11 Short title

15 This Measure may be cited as the Rights of Children and Young Persons (Wales) Measure 2010.

SCHEDULE

(introduced by section 8)

THE CONVENTION, PROTOCOLS, DECLARATIONS AND RESERVATIONS

5

PART 1

PART I OF THE CONVENTION

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

10 *Article 2*

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

15 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

20 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take
25 all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their

staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to
5 economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where
10 applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

- 15 1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

- 20 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

25 *Article 8*

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity,
30 States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) for respect of the rights or reputations of others; or

(b) for the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) encourage the production and dissemination of children's books;

(d) encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both

parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

5 2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

10 3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, 15 neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, 20 reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled 25 to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering 30 solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best

interests of the child shall be the paramount consideration and they shall:

- 5 (a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- 10 (b) recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- 15 (e) promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

20 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international
25 human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in
30 order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) to diminish infant and child mortality;

(b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and

through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) to ensure appropriate pre-natal and post-natal health care for mothers;

5 (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) to develop preventive health care, guidance for parents and family planning education and services.

10 3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

15 *Article 25*

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

20 *Article 26*

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

25 2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

30 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's

development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes,
5 particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall
10 promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

15 (a) make primary education compulsory and available free to all;

(b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

20 (c) make higher education accessible to all on the basis of capacity by every appropriate means;

(d) make educational and vocational information and guidance available and accessible to all children;

25 (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to
30 education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;

5 (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations
10 different from his or her own;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) the development of respect for the natural environment.

15 2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

20 *Article 30*

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

25 *Article 31*

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for
30 cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

5 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) provide for a minimum age or minimum ages for admission to employment;

(b) provide for appropriate regulation of the hours and conditions of employment;

10 (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and
15 psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national,
20 bilateral and multilateral measures to prevent:

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c) the exploitative use of children in pornographic performances and materials.

Article 35

25 States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- 5 (a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- 10 (b) no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- 15 (c) every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- 20 (d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

- 25 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
- 30 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or
5 armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of
10 the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments,
15 States Parties shall, in particular, ensure that:

(a) no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) every child alleged as or accused of having infringed the penal law has at least the
20 following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her
25 defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her
30 age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any

measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

5 (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

10 (a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

15 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

20 Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) the law of a State party; or

(b) international law in force for that State.

25

PART 2

PROTOCOLS

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

30 *Article 1*

States Parties shall take all feasible measures to ensure that members of their armed forces

who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

5 *Article 3*

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to
10 special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

15 3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

(a) such recruitment is genuinely voluntary;

(b) such recruitment is done with the informed consent of the person's parents or legal guardians;

20 (c) such persons are fully informed of the duties involved in such military service;

(d) such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties.

25 Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

30 *Article 4*

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

10 *Article 6*

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.

2. ...

15 3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

20 *Article 7*

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

30

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

5 For the purpose of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

10 (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully
15 covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) The offering, delivering or accepting, by whatever means, a child for the purpose of:

20 a. sexual exploitation of the child;

b. transfer of organs of the child for profit;

c. engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

25 (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt
30 to commit any of these acts and to complicity or participation in any of these acts.

3. Each State Party shall make these offences punishable by appropriate penalties that take

into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall

recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) take measures to provide for the seizure and confiscation, as appropriate, of:

(i) goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol;

(ii) proceeds derived from such offences;

(b) execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a)(i);

(c) take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- (b) informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- 5 (c) allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) providing appropriate support services to child victims throughout the legal process;
- (e) protecting, as appropriate, the privacy and identity of child victims and taking
10 measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) avoiding unnecessary delay in the disposition of cases and the execution of orders or
15 decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children
20 who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

25 5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

30 *Article 9*

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable

to these practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling
5 their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full
10 physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the
15 production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation,
20 prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their
25 physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

30 4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

PART 3

DECLARATIONS AND RESERVATIONS

Declarations

- 5 (a) The United Kingdom interprets the Convention as applicable only following a live birth.
- (b) The United Kingdom interprets the references in the Convention to 'parents' to mean only those persons who, as a matter of national law, are treated as parents. This includes cases where the law regards a child as having only one parent, for example where a child has
10 been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent.

Rights of Children and Young Persons (Wales) Measure 2010

Explanatory Notes

Introduction

These explanatory notes relate to the proposed Rights of Children and Young Persons (Wales) Measure 2010. The notes have been prepared by the Welsh Assembly Government's Department of Children, Education and Lifelong Learning in order to assist the reader in understanding the proposed Measure. They do not form part of the proposed Measure and have not been endorsed by the National Assembly for Wales.

The notes should be read in conjunction with the proposed Measure. They are not, and are not intended to be, a comprehensive description of the proposed Measure. So where a section or part of a section does not seem to require any explanation or comment, none is given.

These Explanatory Notes are for an Assembly Measure to give further effect in domestic law to the provisions of the United Nations Convention on the Rights of the Child and the Optional Protocols to it.

Background

The United Nations Convention on the Rights of the Child ("the Convention") 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 20th November 1989.

On the 16th December 1991, the Government of the United Kingdom of Great Britain and Northern Ireland ratified the Convention and it came into force in the United Kingdom on 15th January 1992.

The United Kingdom has also ratified two Optional Protocols to the Convention. 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.

Countries that have ratified the Convention are required by article 44(1)(b) of it 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. 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.

In January 2004, the National Assembly for Wales constituted under the Government of Wales Act 1998 adopted the Convention as the underpinning basis for its policies concerning children and young people aged 0 to 25 (i.e. including those aged 25) thus reinforcing "Seven Core Aims" it had developed in 2002 in respect of children and young people, based on the Convention. Most of the functions of the National Assembly for Wales constituted under the Government of Wales Act 1998 were transferred to the Welsh Ministers by the Government of Wales Act 2006. The Welsh Ministers are part of the Welsh Assembly Government.

When developing its policies concerning children and young people in Wales the Welsh Assembly 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". In this Measure people aged under 18 are referred to as "children" and those aged 18 to 24 (i.e. including those aged 24) years are referred to as "young persons". This approach has been adopted in order to be consistent with Matter 15.6 in Schedule 5 to the Government of Wales Act 2006, from which the legislative competence for this Measure is principally derived.

Section 1 - Duty to have regard to the Convention on Rights of the Child

Subsection (1) – This places a duty on the Welsh Ministers to have due regard to the requirements of –

- (a) Part 1 of the Convention,
- (b) articles 1 to 7, excluding article 6(2), of the Optional Protocol to the Convention on the involvement of children in armed conflict, and
- (c) articles 1 to 10 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography,

when exercising their functions ("the main duty"). This main duty requires the Welsh Ministers, when exercising "relevant functions", to give the weight that is appropriate in all the circumstances of the case to the provisions referred to in subsection (1) balancing them against all the other factors that are relevant to their exercise of the particular function in question.

Section 8 of the Measure, the explanatory note to that section and the Schedule to the Measure should be referred to in order to find the content of

the provisions of the Convention and its Optional Protocols to which the Welsh Ministers must have due regard.

Subsection (2) – This explains what a “relevant function” is. It is a ministerial function that is specified in the children’s scheme that the Welsh Ministers are required to make under section 2(1) of the Measure. It is a function to which the main duty will apply.

Subsection (3) – This makes the First Minister subject to the same main duty as the Welsh Ministers when he or she is carrying out functions which are conferred on the First Minister alone. Under the Government of Wales Act 2006, the First Minister also counts as one of the Welsh Ministers and may carry out any function which has been conferred on the Welsh Ministers. Therefore, the First Minister must have due regard to the provisions referred to in subsection (1) when carrying out a function which is their function alone, as well as when carrying out a function which is exercisable by the Welsh Ministers.

Section 2 – The children’s scheme

Subsection (1) – Subsection (1)(a) allows the Welsh Ministers to specify in the scheme those functions of the Welsh Ministers and the First Minister that are to be “relevant functions” and, therefore, subject to the main duty.

Subsection (1)(b) requires the Welsh Ministers to make a scheme which is to be known as the children’s scheme. This must set out the arrangements that the Welsh Ministers have made, or propose to make, in order to secure that they and the First Minister comply with the main duty.

Subsection (2) - This makes provision about other matters that may be included in the children’s scheme. The scheme may require the Welsh Ministers to publish reports on the operation of the scheme or on any other matter mentioned in it. In addition the scheme may specify matters which must be included in those reports or in reports which the Welsh Ministers must publish under section 4(1) to explain how they and the First Minister have complied with the main duty.

Subsection (3) – This allows the scheme to include any other matters that the Welsh Ministers consider appropriate.

Subsection (4) – This requires the Welsh Ministers to lay a draft of the first children’s scheme before the Assembly on or before 1 November 2011.

Subsection (5) – This makes provision about revising or remaking a children’s scheme. The Welsh Ministers must consider whether to revise or remake the scheme within six months of the Committee making any suggestion or general recommendation under article 45(d) of the Convention, based on a

report submitted to the Committee by the United Kingdom under its obligation in article 44(1)(b).

Subsection (6) – This permits the Welsh Ministers to revise or remake the children’s scheme at any other time.

Subsection (7) – This defines terms used in section 2.

Section 3 - Preparation and publication of the scheme

Subsection (1) – This provides that when preparing, remaking or revising the children’s scheme, the Welsh Ministers must have regard to the following documents –

(i) the Committee’s reports on its activities, which article 44(5) of the Convention requires the Committee to submit every two years to the General Assembly of the United Nations;

(ii) any studies on specific issues relating to the rights of the child which have been undertaken by the United Nations’ Secretary-General under article 45(c) of the Convention, and

(iii) any other documents issued by the Committee relating to implementation of the Convention or Protocols by the United Kingdom, such as documents relating to the General Days of Discussion.

Subsection (2) – This permits the Welsh Ministers to have regard to any other documents (whether or not issued by the Committee) or matters that they consider to be relevant when preparing, remaking or revising the children’s scheme.

Subsection (3) – This requires the Welsh Ministers, before making or remaking the children’s scheme to publish the scheme in draft. If they are revising the scheme they are permitted to publish the revisions alone or the scheme as a whole with those revisions included.

Subsection (4) – This requires the Welsh Ministers, before making, remaking or revising the children’s scheme, to consult certain people on the draft. They must consult children and young people, the Children’s Commissioner for Wales and any other persons or bodies which the Welsh Ministers consider appropriate.

Subsection (5) – The effect of this subsection is that the Welsh Ministers must not make or remake the scheme unless a draft of what is to be made or remade has been laid before the Assembly and has been approved by a resolution of the Assembly. The Welsh Ministers must not revise the scheme

unless either the revisions alone, or the whole scheme with the revisions included, has been laid before and approved by the Assembly.

Subsection (6) – This requires the Welsh Ministers to publish the children’s scheme when it is made and whenever it is remade. Where they have revised the scheme they are permitted to publish the revisions alone or the whole scheme with the revisions included.

Subsection (7) – This requires the Welsh Ministers to lay before the Assembly the document they have published under subsection (6), whether that be the whole scheme or revisions to the scheme.

Subsection (8) – This defines terms used in section 3.

Section 4 - Reports

Subsection (1) – This requires the Welsh Ministers to publish reports about how they and the First Minister have complied with their main duty. Their first report must be published on or before 31 January 2013. After that, they must publish a report every five years. The timing of these reports is designed to fit in with the timing of the United Kingdom’s reports to the Committee on the progress the United Kingdom has made towards achieving the rights contained in the provisions of the Convention and its Optional Protocols. Under Article 44 (1)(b) of the Convention, the United Kingdom has to report to the Committee every five years. The children’s scheme may specify that the Welsh Ministers are to publish their reports at longer or shorter intervals.

Subsection (2) – The effect of this is that, if the children’s scheme has required (as it may under section 2(2)(a)), the Welsh Ministers to publish a report on the operation of the scheme or any matter mentioned in it, the Welsh Ministers must publish that report.

Subsection (3) – This requires the Welsh Ministers to lay before the Assembly reports which they publish under sections 4(1) or 4(2).

Section 5 – Duty to promote knowledge of the Convention

This requires the Welsh Ministers to take such steps as they consider appropriate to promote public knowledge and understanding of the Convention and the Optional Protocols. The provision makes clear that the “public” includes children.

This provision is based to a large extent upon article 42 of the Convention and article 6(2) of the Optional Protocol on the involvement of children in armed conflict, in which States have undertaken to make the principles and provisions of the Convention and that Protocol widely known by adults and children. However, section 5 requires the Welsh Ministers to promote public understanding, as well as knowledge.

Section 1(1), section 8, the explanatory note to section 8 and the Schedule to the Measure should be referred to in order to find the content of the provisions of the Convention and its Optional Protocols in respect of which the Welsh Ministers must promote public knowledge and understanding.

Section 6 – Power to amend legislation etc

Subsection (1) – The effect of this is to set out the circumstances in which the Welsh Ministers' power under section 6 to amend certain legislation and prerogative instruments (e.g. Royal Charters) is triggered. There are limitations on the power which are set out in section 6.

The Welsh Ministers will have that power if, in a report which they have published under section 4, they have concluded that it would be desirable to amend certain legislation or prerogative instruments, in order to give further or better effect to the rights and obligations set out in Part I of the Convention and its Optional Protocols. See section 1(1), section 8, the explanatory note to section 8 and the Schedule to the Measure in order to find the content of the those rights and obligations.

The type of legislation which is able to be amended using this power is dealt with in subsection (7), as explained below.

Subsection (2) – This provides that the Welsh Ministers may, using this power, make amendments to legislation or prerogative instruments which they consider to be appropriate in the light of a report which they will have published under section 4. The Welsh Ministers are to make the amendments by making an order.

Subsection (3) – The effect of this is that the Welsh Ministers will only be able to use this power to make amendments to legislation or prerogative instruments if those amendments are ones which, at that particular time, the Assembly has legislative power to make.

At the time of enacting this Measure, the Assembly's legislative power is governed by Part 3 (Assembly Measures) of the Government of Wales Act 2006. Section 94 of and Schedule 5 to that Act should be referred to in order to see the Matters in relation to which the Assembly may pass Measures. In the future, the Assembly's legislative power may instead be governed by Part 4 (Acts of the Assembly) of the Government of Wales Act 2006, following a "yes" vote in a referendum in Wales.

Subsection (4) – This requires the Welsh Ministers to consult whoever they consider appropriate before making an order using this power.

Subsection (5) – This requires that any order which the Welsh Ministers may make using this power must be made by statutory instrument. This means

that the instrument is subject to procedural and other requirements which are set out in the Statutory Instruments Act 1946.

Subsection (6) – The effect of this is that the Welsh Ministers must not make an order using this power unless a draft of it has been laid before the Assembly and approved by a resolution of the Assembly.

Subsection (7) – This sets out the type of legislation which may be amended by the Welsh Ministers using this power. They may amend Acts of the United Kingdom Parliament, Measures of the Assembly and subordinate legislation made under either of those. Orders, rules and regulations are examples of types of subordinate legislation.

Section 7 – Application to young persons

The purpose of the provisions in this section is to require consideration of, and allow potential for the appropriate application in relation to young people of, Part I of the Convention and its Optional Protocols, or provisions of this Measure.

Subsection (1) – This requires the Welsh Ministers to consider whether and to what extent the requirements of Part I of the Convention and its Optional Protocols may be relevant to young people, and whether and to what extent the provisions of this Measure could be applied to young people.

This includes considering whether Part I of the Convention and its Optional Protocols could be relevant to young people, or this Measure could be applied in relation to them, in an amended form.

“Young persons” is defined in Section 9(c) and means 18 to 24 year olds (i.e., those who are under 25).

Subsection (2) - This requires that the first time the Welsh Ministers make and publish the children’s scheme, they must include in that scheme their proposals to carry out consultation on the relevance of Part I of the Convention and its Optional Protocols to young people, and on the potential application of the Measure to them.

Subsection (3) – This allows the Welsh Ministers, alongside the consultation under subsection (2), to also carry out consultation about any other matter relating to young people which they consider appropriate. This may cover a consultation on whether there are other more appropriate ways to address the rights of young people.

Subsection (4) – This requires the Welsh Ministers to publish a report on their conclusions under subsection (1) as to the relevance of Part I of the Convention and its Optional Protocols to young people, and on the potential application of the Measure to them.

Subsection (5) – This requires the Welsh Ministers to lay before the Assembly a copy of the report which they have published under subsection (4).

Subsections (6) and (7) – These allow the Welsh Ministers to apply the whole of, or any provision of, this Measure, in a modified form if that is what they consider appropriate, in relation to young people by making an order. The Welsh Ministers may also make any other provision which they consider appropriate to apply the requirements of Part I of the Convention and its Optional Protocols in relation to young people.

Subsection (8) – This requires the Welsh Ministers, before making an order under subsection (6), to publish the order in draft and to consult whoever they consider appropriate about that draft.

Subsection (9) – This requires that any order applying a provision of this Measure in relation to young people has to be made by statutory instrument.

Subsection (10) - The effect of this is that the Welsh Ministers must not make an order under subsection (6) unless a draft of the order has been laid before the Assembly and approved by a resolution of the Assembly.

Section 1(1), section 8, the explanatory note to section 8 and the Schedule to the Measure should be referred to in order to find the content of the provisions of Part 1 of the Convention and its Optional Protocols which are relevant for the purposes of this section.

Section 8 – The Convention on the Rights of the Child

Subsection (1) - This explains what is meant by “the Convention” and “the Protocols” in this Measure.

“the Convention” means the United Nations Convention on the Rights of the Child which was adopted and opened for signature, ratification and accession by resolution 44/25 of the General Assembly of the United Nations, dated 20 November 1989.

“the Protocols” means Articles 1 to 7, excluding article 6(2), of the Optional Protocol to the Convention on the involvement of children in armed conflict, and Articles 1 to 10 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.

Article 6(2) of the Optional Protocol to the Convention on the involvement of children in armed conflict is the provision under which States have undertaken to make the principles and provisions of that Protocol widely known by adults and children. Section 5 of the Measure places the Welsh Ministers under a duty which is similar to that undertaking.

Subsection (2) – This provides that the Schedule to this Measure (“the Schedule”) sets out the text of:

(1) Part I of the Convention (the Preamble, and Parts II and III which deal with procedural and similar matters in relation to the United Nations, have not been included) – this is in Part 1 of the Schedule,

(2) The two Optional Protocols as mentioned above in this explanatory note to section 8 – these are in Part 2 of the Schedule,

(3) Declarations by the United Kingdom to the Convention and its Optional Protocols – these are in Part 3 of the Schedule.

Subsection (3) – The effect of this is that whenever, for the purposes of this Measure (for example, where the Welsh Ministers are complying with their main duty in carrying out some particular function), the requirements of the Convention or the Protocols need to be referred to, then what must be referred to is the text which, at that particular time, is in Parts 1 and 2 of the Schedule.

However, that text must be read subject to any declarations or reservations which are set out at that particular time in Part 3 of the Schedule. At the time of enacting this Measure there are no reservations by the United Kingdom to the Convention and its Optional Protocols and therefore none appear in Part 3 of the Schedule. The powers and obligations of the Welsh Ministers to amend Part 3 appear in subsections (5), (7) and (8).

Subsections (4) and (5) – These provisions are relevant where the United Kingdom has signed or indicated agreement to, but not actually ratified:

(i) an amendment to the Convention as set out at that particular time in Part 1 of the Schedule,

(ii) an amendment to the Protocols as set out at that particular time in Part 2 of the Schedule, or

(iii) a new Protocol.

In those circumstances the Welsh Ministers may amend the text in the Schedule to reflect:

(i) the amendment to the Convention or Protocols,

(ii) the new Protocol, or

(iii) any declaration or reservation by the United Kingdom to the amended Convention or Protocols, or to the new Protocol.

Subsections (6) and (7) - These provisions are relevant where the United Kingdom has ratified:

- (i) an amendment to the Convention as set out at that particular time in Part 1 of the Schedule,
- (ii) an amendment to the Protocols as set out at that particular time in Part 2 of the Schedule, or
- (iii) a new Protocol.

In those circumstances the Welsh Ministers must amend the text in the Schedule to reflect:

- (i) the amendment to the Convention or Protocols,
- (ii) the new Protocol, or
- (iii) any declaration or reservation by the United Kingdom to the amended Convention or Protocols, or to the new Protocol.

Subsection (8) – The effect of this is that the Welsh Ministers are required to amend the text in Part 3 of the Schedule (declarations and reservations by the United Kingdom) so that Part 3 will reflect any changes to the declarations and reservations which it contains.

Subsection (9) - This requires that an order amending the Schedule has to be made by statutory instrument and must be laid before the Assembly after being made.

Section 9 – Other interpretive provisions

This defines various terms used in the Measure.

Section 10 – Commencement

This provides that the Measure will come into force once two months have elapsed after the date that the Measure is enacted. A Measure is enacted once it is passed by the Assembly and then approved by Her Majesty at a meeting of the Privy Council.

Section 11 – Short Title

This provides that this Measure may be referred to as the Rights of Children and Young Persons (Wales) Measure 2010.

Rights of Children and Young Persons (Wales) Measure 2010

Explanatory Notes

Introduction

These explanatory notes relate to the proposed Rights of Children and Young Persons (Wales) Measure 2010. The notes have been prepared by the Welsh Assembly Government's Department of Children, Education and Lifelong Learning in order to assist the reader in understanding the proposed Measure. They do not form part of the proposed Measure and have not been endorsed by the National Assembly for Wales.

The notes should be read in conjunction with the proposed Measure. They are not, and are not intended to be, a comprehensive description of the proposed Measure. So where a section or part of a section does not seem to require any explanation or comment, none is given.

These Explanatory Notes are for an Assembly Measure to give further effect in domestic law to the provisions of the United Nations Convention on the Rights of the Child and the Optional Protocols to it.

Background

The United Nations Convention on the Rights of the Child ("the Convention") 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 20th November 1989.

On the 16th December 1991, the Government of the United Kingdom of Great Britain and Northern Ireland ratified the Convention and it came into force in the United Kingdom on 15th January 1992.

The United Kingdom has also ratified two Optional Protocols to the Convention. 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.

Countries that have ratified the Convention are required by article 44(1)(b) of it 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. 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.

In January 2004, the National Assembly for Wales constituted under the Government of Wales Act 1998 adopted the Convention as the underpinning basis for its policies concerning children and young people aged 0 to 25 (i.e. including those aged 25) thus reinforcing "Seven Core Aims" it had developed in 2002 in respect of children and young people, based on the Convention. Most of the functions of the National Assembly for Wales constituted under the Government of Wales Act 1998 were transferred to the Welsh Ministers by the Government of Wales Act 2006. The Welsh Ministers are part of the Welsh Assembly Government.

When developing its policies concerning children and young people in Wales the Welsh Assembly 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". In this Measure people aged under 18 are referred to as "children" and those aged 18 to 24 (i.e. including those aged 24) years are referred to as "young persons". This approach has been adopted in order to be consistent with Matter 15.6 in Schedule 5 to the Government of Wales Act 2006, from which the legislative competence for this Measure is principally derived.

Section 1 - Duty to have regard to the Convention on Rights of the Child

Subsection (1) – This places a duty on the Welsh Ministers to have due regard to the requirements of –

- (a) Part 1 of the Convention,
- (b) articles 1 to 7, excluding article 6(2), of the Optional Protocol to the Convention on the involvement of children in armed conflict, and
- (c) articles 1 to 10 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography,

when exercising their functions ("the main duty"). This main duty requires the Welsh Ministers, when exercising "relevant functions", to give the weight that is appropriate in all the circumstances of the case to the provisions referred to in subsection (1) balancing them against all the other factors that are relevant to their exercise of the particular function in question.

Section 8 of the Measure, the explanatory note to that section and the Schedule to the Measure should be referred to in order to find the content of

the provisions of the Convention and its Optional Protocols to which the Welsh Ministers must have due regard.

Subsection (2) – This explains what a “relevant function” is. It is a ministerial function that is specified in the children’s scheme that the Welsh Ministers are required to make under section 2(1) of the Measure. It is a function to which the main duty will apply.

Subsection (3) – This makes the First Minister subject to the same main duty as the Welsh Ministers when he or she is carrying out functions which are conferred on the First Minister alone. Under the Government of Wales Act 2006, the First Minister also counts as one of the Welsh Ministers and may carry out any function which has been conferred on the Welsh Ministers. Therefore, the First Minister must have due regard to the provisions referred to in subsection (1) when carrying out a function which is their function alone, as well as when carrying out a function which is exercisable by the Welsh Ministers.

Section 2 – The children’s scheme

Subsection (1) – Subsection (1)(a) allows the Welsh Ministers to specify in the scheme those functions of the Welsh Ministers and the First Minister that are to be “relevant functions” and, therefore, subject to the main duty.

Subsection (1)(b) requires the Welsh Ministers to make a scheme which is to be known as the children’s scheme. This must set out the arrangements that the Welsh Ministers have made, or propose to make, in order to secure that they and the First Minister comply with the main duty.

Subsection (2) - This makes provision about other matters that may be included in the children’s scheme. The scheme may require the Welsh Ministers to publish reports on the operation of the scheme or on any other matter mentioned in it. In addition the scheme may specify matters which must be included in those reports or in reports which the Welsh Ministers must publish under section 4(1) to explain how they and the First Minister have complied with the main duty.

Subsection (3) – This allows the scheme to include any other matters that the Welsh Ministers consider appropriate.

Subsection (4) – This requires the Welsh Ministers to lay a draft of the first children’s scheme before the Assembly on or before 1 November 2011.

Subsection (5) – This makes provision about revising or remaking a children’s scheme. The Welsh Ministers must consider whether to revise or remake the scheme within six months of the Committee making any suggestion or general recommendation under article 45(d) of the Convention, based on a

report submitted to the Committee by the United Kingdom under its obligation in article 44(1)(b).

Subsection (6) – This permits the Welsh Ministers to revise or remake the children’s scheme at any other time.

Subsection (7) – This defines terms used in section 2.

Section 3 - Preparation and publication of the scheme

Subsection (1) – This provides that when preparing, remaking or revising the children’s scheme, the Welsh Ministers must have regard to the following documents –

(i) the Committee’s reports on its activities, which article 44(5) of the Convention requires the Committee to submit every two years to the General Assembly of the United Nations;

(ii) any studies on specific issues relating to the rights of the child which have been undertaken by the United Nations’ Secretary-General under article 45(c) of the Convention, and

(iii) any other documents issued by the Committee relating to implementation of the Convention or Protocols by the United Kingdom, such as documents relating to the General Days of Discussion.

Subsection (2) – This permits the Welsh Ministers to have regard to any other documents (whether or not issued by the Committee) or matters that they consider to be relevant when preparing, remaking or revising the children’s scheme.

Subsection (3) – This requires the Welsh Ministers, before making or remaking the children’s scheme to publish the scheme in draft. If they are revising the scheme they are permitted to publish the revisions alone or the scheme as a whole with those revisions included.

Subsection (4) – This requires the Welsh Ministers, before making, remaking or revising the children’s scheme, to consult certain people on the draft. They must consult children and young people, the Children’s Commissioner for Wales and any other persons or bodies which the Welsh Ministers consider appropriate.

Subsection (5) – The effect of this subsection is that the Welsh Ministers must not make or remake the scheme unless a draft of what is to be made or remade has been laid before the Assembly and has been approved by a resolution of the Assembly. The Welsh Ministers must not revise the scheme

unless either the revisions alone, or the whole scheme with the revisions included, has been laid before and approved by the Assembly.

Subsection (6) – This requires the Welsh Ministers to publish the children’s scheme when it is made and whenever it is remade. Where they have revised the scheme they are permitted to publish the revisions alone or the whole scheme with the revisions included.

Subsection (7) – This requires the Welsh Ministers to lay before the Assembly the document they have published under subsection (6), whether that be the whole scheme or revisions to the scheme.

Subsection (8) – This defines terms used in section 3.

Section 4 - Reports

Subsection (1) – This requires the Welsh Ministers to publish reports about how they and the First Minister have complied with their main duty. Their first report must be published on or before 31 January 2013. After that, they must publish a report every five years. The timing of these reports is designed to fit in with the timing of the United Kingdom’s reports to the Committee on the progress the United Kingdom has made towards achieving the rights contained in the provisions of the Convention and its Optional Protocols. Under Article 44 (1)(b) of the Convention, the United Kingdom has to report to the Committee every five years. The children’s scheme may specify that the Welsh Ministers are to publish their reports at longer or shorter intervals.

Subsection (2) – The effect of this is that, if the children’s scheme has required (as it may under section 2(2)(a)), the Welsh Ministers to publish a report on the operation of the scheme or any matter mentioned in it, the Welsh Ministers must publish that report.

Subsection (3) – This requires the Welsh Ministers to lay before the Assembly reports which they publish under sections 4(1) or 4(2).

Section 5 – Duty to promote knowledge of the Convention

This requires the Welsh Ministers to take such steps as they consider appropriate to promote public knowledge and understanding of the Convention and the Optional Protocols. The provision makes clear that the “public” includes children.

This provision is based to a large extent upon article 42 of the Convention and article 6(2) of the Optional Protocol on the involvement of children in armed conflict, in which States have undertaken to make the principles and provisions of the Convention and that Protocol widely known by adults and children. However, section 5 requires the Welsh Ministers to promote public understanding, as well as knowledge.

Section 1(1), section 8, the explanatory note to section 8 and the Schedule to the Measure should be referred to in order to find the content of the provisions of the Convention and its Optional Protocols in respect of which the Welsh Ministers must promote public knowledge and understanding.

Section 6 – Power to amend legislation etc

Subsection (1) – The effect of this is to set out the circumstances in which the Welsh Ministers' power under section 6 to amend certain legislation and prerogative instruments (e.g. Royal Charters) is triggered. There are limitations on the power which are set out in section 6.

The Welsh Ministers will have that power if, in a report which they have published under section 4, they have concluded that it would be desirable to amend certain legislation or prerogative instruments, in order to give further or better effect to the rights and obligations set out in Part I of the Convention and its Optional Protocols. See section 1(1), section 8, the explanatory note to section 8 and the Schedule to the Measure in order to find the content of the those rights and obligations.

The type of legislation which is able to be amended using this power is dealt with in subsection (7), as explained below.

Subsection (2) – This provides that the Welsh Ministers may, using this power, make amendments to legislation or prerogative instruments which they consider to be appropriate in the light of a report which they will have published under section 4. The Welsh Ministers are to make the amendments by making an order.

Subsection (3) – The effect of this is that the Welsh Ministers will only be able to use this power to make amendments to legislation or prerogative instruments if those amendments are ones which, at that particular time, the Assembly has legislative power to make.

At the time of enacting this Measure, the Assembly's legislative power is governed by Part 3 (Assembly Measures) of the Government of Wales Act 2006. Section 94 of and Schedule 5 to that Act should be referred to in order to see the Matters in relation to which the Assembly may pass Measures. In the future, the Assembly's legislative power may instead be governed by Part 4 (Acts of the Assembly) of the Government of Wales Act 2006, following a "yes" vote in a referendum in Wales.

Subsection (4) – This requires the Welsh Ministers to consult whoever they consider appropriate before making an order using this power.

Subsection (5) – This requires that any order which the Welsh Ministers may make using this power must be made by statutory instrument. This means

that the instrument is subject to procedural and other requirements which are set out in the Statutory Instruments Act 1946.

Subsection (6) – The effect of this is that the Welsh Ministers must not make an order using this power unless a draft of it has been laid before the Assembly and approved by a resolution of the Assembly.

Subsection (7) – This sets out the type of legislation which may be amended by the Welsh Ministers using this power. They may amend Acts of the United Kingdom Parliament, Measures of the Assembly and subordinate legislation made under either of those. Orders, rules and regulations are examples of types of subordinate legislation.

Section 7 – Application to young persons

The purpose of the provisions in this section is to require consideration of, and allow potential for the appropriate application in relation to young people of, Part I of the Convention and its Optional Protocols, or provisions of this Measure.

Subsection (1) – This requires the Welsh Ministers to consider whether and to what extent the requirements of Part I of the Convention and its Optional Protocols may be relevant to young people, and whether and to what extent the provisions of this Measure could be applied to young people.

This includes considering whether Part I of the Convention and its Optional Protocols could be relevant to young people, or this Measure could be applied in relation to them, in an amended form.

“Young persons” is defined in Section 9(c) and means 18 to 24 year olds (i.e., those who are under 25).

Subsection (2) - This requires that the first time the Welsh Ministers make and publish the children’s scheme, they must include in that scheme their proposals to carry out consultation on the relevance of Part I of the Convention and its Optional Protocols to young people, and on the potential application of the Measure to them.

Subsection (3) – This allows the Welsh Ministers, alongside the consultation under subsection (2), to also carry out consultation about any other matter relating to young people which they consider appropriate. This may cover a consultation on whether there are other more appropriate ways to address the rights of young people.

Subsection (4) – This requires the Welsh Ministers to publish a report on their conclusions under subsection (1) as to the relevance of Part I of the Convention and its Optional Protocols to young people, and on the potential application of the Measure to them.

Subsection (5) – This requires the Welsh Ministers to lay before the Assembly a copy of the report which they have published under subsection (4).

Subsections (6) and (7) – These allow the Welsh Ministers to apply the whole of, or any provision of, this Measure, in a modified form if that is what they consider appropriate, in relation to young people by making an order. The Welsh Ministers may also make any other provision which they consider appropriate to apply the requirements of Part I of the Convention and its Optional Protocols in relation to young people.

Subsection (8) – This requires the Welsh Ministers, before making an order under subsection (6), to publish the order in draft and to consult whoever they consider appropriate about that draft.

Subsection (9) – This requires that any order applying a provision of this Measure in relation to young people has to be made by statutory instrument.

Subsection (10) - The effect of this is that the Welsh Ministers must not make an order under subsection (6) unless a draft of the order has been laid before the Assembly and approved by a resolution of the Assembly.

Section 1(1), section 8, the explanatory note to section 8 and the Schedule to the Measure should be referred to in order to find the content of the provisions of Part 1 of the Convention and its Optional Protocols which are relevant for the purposes of this section.

Section 8 – The Convention on the Rights of the Child

Subsection (1) - This explains what is meant by “the Convention” and “the Protocols” in this Measure.

“the Convention” means the United Nations Convention on the Rights of the Child which was adopted and opened for signature, ratification and accession by resolution 44/25 of the General Assembly of the United Nations, dated 20 November 1989.

“the Protocols” means Articles 1 to 7, excluding article 6(2), of the Optional Protocol to the Convention on the involvement of children in armed conflict, and Articles 1 to 10 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.

Article 6(2) of the Optional Protocol to the Convention on the involvement of children in armed conflict is the provision under which States have undertaken to make the principles and provisions of that Protocol widely known by adults and children. Section 5 of the Measure places the Welsh Ministers under a duty which is similar to that undertaking.

Subsection (2) – This provides that the Schedule to this Measure (“the Schedule”) sets out the text of:

(1) Part I of the Convention (the Preamble, and Parts II and III which deal with procedural and similar matters in relation to the United Nations, have not been included) – this is in Part 1 of the Schedule,

(2) The two Optional Protocols as mentioned above in this explanatory note to section 8 – these are in Part 2 of the Schedule,

(3) Declarations by the United Kingdom to the Convention and its Optional Protocols – these are in Part 3 of the Schedule.

Subsection (3) – The effect of this is that whenever, for the purposes of this Measure (for example, where the Welsh Ministers are complying with their main duty in carrying out some particular function), the requirements of the Convention or the Protocols need to be referred to, then what must be referred to is the text which, at that particular time, is in Parts 1 and 2 of the Schedule.

However, that text must be read subject to any declarations or reservations which are set out at that particular time in Part 3 of the Schedule. At the time of enacting this Measure there are no reservations by the United Kingdom to the Convention and its Optional Protocols and therefore none appear in Part 3 of the Schedule. The powers and obligations of the Welsh Ministers to amend Part 3 appear in subsections (5), (7) and (8).

Subsections (4) and (5) – These provisions are relevant where the United Kingdom has signed or indicated agreement to, but not actually ratified:

(i) an amendment to the Convention as set out at that particular time in Part 1 of the Schedule,

(ii) an amendment to the Protocols as set out at that particular time in Part 2 of the Schedule, or

(iii) a new Protocol.

In those circumstances the Welsh Ministers may amend the text in the Schedule to reflect:

(i) the amendment to the Convention or Protocols,

(ii) the new Protocol, or

(iii) any declaration or reservation by the United Kingdom to the amended Convention or Protocols, or to the new Protocol.

Subsections (6) and (7) - These provisions are relevant where the United Kingdom has ratified:

- (i) an amendment to the Convention as set out at that particular time in Part 1 of the Schedule,
- (ii) an amendment to the Protocols as set out at that particular time in Part 2 of the Schedule, or
- (iii) a new Protocol.

In those circumstances the Welsh Ministers must amend the text in the Schedule to reflect:

- (i) the amendment to the Convention or Protocols,
- (ii) the new Protocol, or
- (iii) any declaration or reservation by the United Kingdom to the amended Convention or Protocols, or to the new Protocol.

Subsection (8) – The effect of this is that the Welsh Ministers are required to amend the text in Part 3 of the Schedule (declarations and reservations by the United Kingdom) so that Part 3 will reflect any changes to the declarations and reservations which it contains.

Subsection (9) - This requires that an order amending the Schedule has to be made by statutory instrument and must be laid before the Assembly after being made.

Section 9 – Other interpretive provisions

This defines various terms used in the Measure.

Section 10 – Commencement

This provides that the Measure will come into force once two months have elapsed after the date that the Measure is enacted. A Measure is enacted once it is passed by the Assembly and then approved by Her Majesty at a meeting of the Privy Council.

Section 11 – Short Title

This provides that this Measure may be referred to as the Rights of Children and Young Persons (Wales) Measure 2010.

