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Welsh Government

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Consultation Document

Draft Children's Scheme

Arrangements for having due regard to the United Nations Convention on the Rights of the Child (UNCRC) in the work of the Welsh Government

Date of issue: **7 November 2011**

Action required: Responses by **30 January 2012**

Draft Children's Scheme

Overview

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

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

It places a duty on Welsh Ministers to have due regard to the rights and obligations within the UNCRC and its optional protocols. The duties within the Measure will be implemented in two stages, the first in May 2012 and the second in May 2014.

The 'Children's Scheme' must be laid before the National Assembly for Wales in draft by 31 March 2012, so that the Assembly can decide whether to approve it. It will set out:

- arrangements for compliance with the due regard duty, and
- a statement of the Welsh Ministers' proposals for consulting on the potential application of the Measure to the 18-24 age range.

The 'Children's Scheme' is being developed in partnership with external stakeholders including children and young people.

We are publishing and consulting on this draft scheme to see if it is fit for purpose. The Measure places us under a duty to publish and consult.

How to respond

Consultation responses should be completed using the form at page 12 of this document and returned to:

by post to:

Empowering Children and Young People's Branch
Health, Social Services and Children
Welsh Government
Ty'r Afon
Bedwas
Caerphilly
CF83 8WT

by e-mail to:

Childrensschemecons@wales.gsi.gov.uk

by using the online response form:

This is available on our webpage.

**Further
information
and related
documents**

Large print, Braille and alternate language versions of this document are available on request.

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

Other sites for information also include:

UNCRC Lets Get it Right
<http://www.uncrcletsgetitright.co.uk>

Children's Commissioner
<http://www.childcomwales.org.uk/>

Pupil Voice Wales
<http://www.PupilVoiceWales.org.uk>

Funky Dragon
<http://www.funkydragon.org>

Save the Children
<http://www.savethechildren.org.uk>

CLIC National Information and Advice Service for Children and Young People
<http://www.cliconline.co.uk>

Children in Wales
<http://www.childreninwales.org.uk/>

Barnados
<http://www.barnados.org.uk/wales>

UNICEF Unite for Children
<http://www.unicef.org/crc/>

**Contact
details**

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Data protection

How the views and information you give us will be used.

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. 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 will confirm 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. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. 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 Government. This includes information which has not been published.

However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will then have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account if someone else later asks to see that information.

However, there might sometimes be important reasons why we would 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 finally decided to reveal the information.

Draft Children's Scheme

Introduction

The 'Rights of Children and Young Persons (Wales) Measure 2011' (referred to as "the Measure" in the rest of this document), was passed by the National Assembly for Wales on 18 January 2011 and approved by Her Majesty in Council on 16 March 2011. The Measure gives further effect in domestic law to the provisions of the UNCRC and the Optional Protocols to it.

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

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

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

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.

In January 2004, the National Assembly for Wales set up by 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 the "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 set up by 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 Government.

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

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

The children's scheme comes under section 2 of the Measure The full details of the scheme subsections can be accessed in via:

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

The convention and protocols can be accessed via:

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

What is this document?

This document is a scheme which we (the Welsh Government) are required to produce under the Rights of Children and Young Persons (Wales) Measure 2011.

It sets out the arrangements we will be putting in place to make sure that we comply with the duty placed on us by that Measure to “have due regard” to children's rights, when working on or developing proposed new legislation, proposed new policies and any review of, or change to, an existing policy(further detail is provided below).

The document provides the detail about how compliance with this duty will take place. This includes a link to the electronic-learning in place which contains a children's rights assessment tool and a six step guide to help comply.

The Duty to have due regard to the United Nations Convention on the Rights of the Child and how the Welsh Government will comply.

The Measure places the Welsh Government under a duty to have due regard to the requirements of:

- The United Nations Convention on the Rights of the Child, the Optional Protocol to the Convention on the involvement of children in armed conflict, and the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.
- The due regard duty applies from 1 May 2012. From 1 May 2012, up to and including 30 April 2014, the due regard duty applies to decisions of the Welsh Government about any of the following:
 - a. proposed new legislation;
 - b. proposed new policies; and
 - c. a review of or change to an existing policy.
- Then, from 1 May 2014, the due regard duty applies to all decisions and actions by the Welsh Government.

The due regard duty requires the Welsh Government to give the weight that is appropriate in all the circumstances of the case to the UNCRC, balancing them against all the other factors that are relevant to the decision in question.

In this document, when we talk about the Welsh Government having due regard to the UNCRC, we include having due regard to the Optional Protocols on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography.

How will the Welsh Government achieve this?

Our arrangements for making sure that we comply with the due regard duty.

The Implementation team

A team of staff have been put in place and lead on the implementation of the Measure. Activity includes developing internal processes for compliance with the due regard duty and also a focus on the 'General Measures of Implementation' as those need to be put in place alongside this Measure, in order to maximise the increase in children in Wales accessing their rights.

Implementation Steering Group

The purpose of the group is to provide advice and guidance to the team, implementing the Measure within the 'Empowering Children and Young People Branch', to help steer the activity and implementation of the Measure. Members of the group will play an important role in raising awareness of the Measure across their Director General areas and act as 'Champions' for the Measure and promoters of children's rights across their area of responsibility. An implementation plan is in place and the group will check progress against the implementation plan. The group contains representatives from all the Director General Areas within the Welsh Government.

External Perspectives

The views of stakeholders on how compliance with the Measure is working will be captured through the 'Getting it Right (National Action Plan) Implementation Support Group' and ongoing dialogue with the UNCRC Non-Governmental Monitoring group. Children and young people have been consulted on the Scheme and will be continuously involved in the future implementation of the Measure as a whole.

The Role of Ministers in the Welsh Government

Ministers must have due regard to the UNCRC when making decisions about proposed new legislation, proposed new policies and any review of, or change to, an existing policy

The due regard duty requires them to give the weight that is appropriate in all the circumstances of the case to the UNCRC, balancing it against all the other factors that are relevant to the decision they are making.

Ministers will receive advice from staff and make their decisions.

The Roles of Welsh Government Staff

The duties within the Measure cover all Ministerial areas and as a result, compliance with the due regard duty is a responsibility of individual departments and their staff. To ensure that compliance takes place, there are three main areas of responsibility which fall to:

- Staff teams.
- The Heads of the Divisions within Welsh Government Departments.
- The Central Measure Implementation Team.

The roles of each are described further below.

Role of Staff

Staff working on the development of policy and legislation will work to ensure there is due regard to the UNCRC in the case of each individual piece of policy and legislation. Specialist training will be given to these staff to help them understand and carry out their role. Their role includes:

- Undertaking assessments of proposed policy and legislation, using the Welsh Government's children's rights impact assessment tool (see below for more about this).
- Considering options for policy and legislation, and providing advice to Ministers on them.
- Ensuring records of the assessment and decision process are kept on file which show that the due regard duty was complied with.

Heads of the Divisions within the Welsh Government Departments

They will be responsible for:

- Ensuring that the advice that their staff put to Ministers, so that Ministers can make decisions, is of good quality and has had due regard to the UNCRC.

Role of Central Team in implementing the Measure

The Central Team, which is in the Empowering Children and Young People Branch in the Welsh Government, has responsibility for the following:

- Raising understanding of the Measure and the duties within it.
- Commissioning, co-ordinating training and supporting staff training.
- Delivering training to staff.

- Taking samples of decisions about policy and legislation development, as part of monitoring whether the Welsh Government is complying with the due regard duty.
- Periodic gathering and analysis of data.
- Producing reports on the Welsh Government's compliance with the due regard duty.

Making compliance with the due regard duty fit in with other arrangements in the Welsh Government for developing policy and legislation

We will make sure that the process for having due regard to the UNCRC fits in with other arrangements in the Welsh Government for ensuring that our work is of good quality and delivers good results for the people of Wales.

At the moment, those other arrangements are called "The Enabling Government Framework". This sets out our priorities for improving our organisation over the next three to five years.

Under those arrangements, we follow five important principles in order to deliver results for the people of Wales:

- Our work should **Fit** with the Government's overall programme and priorities.
- We should understand the **Impact** of our work on the wellbeing of the people of Wales.
- We should understand and manage the **Cost** of our work.
- We should find the best **Mechanism** to achieve the result.
- We should **Manage** our work effectively.

NB This is subject to change and is still in discussion in relation to the final content and approach. It is included as a potential example representing how overall the Welsh Government looks to implement its statutory duties.

As part of the "5 Principles" process (Impact) the **UNCRC assessment tool and six steps to due regard** is included. This can be accessed via Section 4 slide 5 of:

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

Sometimes we may change our wider arrangements for ensuring our work is of good quality and delivers good results for the people of Wales. However, we would always make sure that our arrangements for having due regard to the UNCRC fit with any new wider arrangements.

Induction to the Welsh Government

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

Training

A range of training will be provided for Welsh Government staff to provide them with an introduction to the UNCRC and to help them to understand the process they need to follow to comply with the due regard duty. A pack of information has been provided to all Heads of Divisions across the Welsh Government. This includes the children's rights impact assessment tools, Frequently Asked Questions (FAQs) information sheets and a link to the online training.

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

Specialist training will be provided for the Welsh Government Legal Services.

Getting it Right Sessions

Getting it Right is a group of children and young people who work with adults to help them understand the UNCRC and how it relates to their area of work.

UNCRC 'Getting it Right (Formerly Turn on the Rights) awareness raising sessions were used to highlight the Measure and the due regard duty. A specific presentation occurred in the sessions.

Expert training for targeted staff

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

Online training for Welsh Government staff

Interactive online training has been developed. This involves an overview and history of the UNCRC and a detailed analysis of the process of compliance with the new due regard duty. This training can be accessed via:

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

The purpose of the training is to ensure that Welsh Government staff understand:

- How their work can directly or indirectly impact on children.
- How it relates to the UNCRC and can give greater effect to the rights and obligations within it.
- How to balance giving effect to the rights and obligations alongside other considerations.

Children Rights Impact assessment tool

This tool will help support compliance with the duties in the Measure. It relates mainly to the due regard duty, but will also help to promote knowledge and understanding of the UNCRC amongst Welsh Government staff. It includes a six step guide to having due regard to the UNCRC. It can be accessed via the web link below to the training:

<http://wales.gov.uk/docs/caecd/test/uncrc/UNCRCv20English/uncrcsection4v20/player.html?lang=en>.

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

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

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

A consultation process will begin in the Spring of 2012. It will involve workshops with young people and relevant stakeholders, as well as the issue of a document for full public consultation.

What can children or their representatives do if they think the Welsh Government has not had due regard to the UNCRC?

Children or their representatives may:

- Contact the Welsh Government. We have a Code of Practice on Complaints which is available via the following link:

http://wales.gov.uk/contact_us/complaints1/complaintspublications/codeofpractice/?jsessionid=RJmqT5LMsQkdBZvQ15vBp0MRhppCkPPwtPpT8pqZyCLwS5WVgJyB!823856201?lang=en.

- Contact the Children's Commissioner for Wales. The Care Standards Act 2000 gives the Children's Commissioner power to review how the Welsh Government's work has affected children in Wales. This would include looking at whether the Welsh Government has complied with the due regard duty, and the effect that has had on children in Wales. This is a link to the website of the Commissioner.

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

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

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

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

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

- Apply to court to ask the court to rule on whether the Welsh Government has complied with the due regard duty. However, we want to avoid children having to take such a serious and complicated step wherever possible. That is why we are trying to make sure that our arrangements for having due regard are effective.

Support for children who want to complain about or challenge the Welsh Government

We have established MEIC as the national advocacy and advice service in Wales for 0-25 year olds. This service will be able to advise and provide information to children wishing to challenge policy or legislation of the Welsh Government which does not seem to have had due regard to the UNCRC. This is a link to Meic's website:

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

At a local level, a number of advocacy providers currently exist that could provide support and advice to children and young people. In the main these tend to focus on providing information and advocacy for children and young people under the broad category of '*vulnerable*'. However, they could support children and young people within these categories to challenge Ministerial decisions.

There is nothing preventing a child or young person with the support of an advocate if required from either writing directly to the relevant Minister requesting an explanation of how due regard duty has been complied with or using the petitions process of the National Assembly for Wales. Similarly, the Welsh Government also operates a complaints process that potentially could be utilised.

The Children's Commissioner for Wales has power to provide advice, representation and assistance to children who may wish to challenge whether policy or legislation of the Welsh Ministers has had due regard to the UNCRC.

Glossary Of Terms

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

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

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

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

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

Due Regard – This means balanced consideration of the relevant factors when making a decision. In this case it requires consideration of the rights and obligations within the UNCRC and how greater or further effect can be given to them, in balance with other relevant factors in making the decision. This may include other legal duties and requirements, finance etc, and will vary in each case.

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

This is expressed in seven core aims that all children and young people:

1. have a flying start in life;
2. have a comprehensive range of education and learning opportunities;
3. enjoy the best possible health and are free from abuse, victimisation and exploitation;
4. have access to play, leisure, sporting and cultural activities;
5. are listened to, treated with respect, and have their race and cultural identity recognised;
6. have a safe home and a community which supports physical and emotional wellbeing; and
7. are not disadvantaged by poverty.

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

Optional Protocols – The first of these relates to the involvement of children in armed conflict, and the second relates to the sale of children, child prostitution and child pornography.

Turn on the Rights – A group of children and young people supported by Save the Children Wales who work with adults to promote knowledge and understanding of UNCRC.

Legislation – Laws.

The Childrens Commissioner – On 1 March 2001, the Assembly established an independent children's champion with a wide-ranging remit covering all children in Wales. The Children's Commissioner for Wales is an independent human rights institution.

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

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

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

Children in Wales – Is an umbrella for Children's organisations in Wales. By bringing the organisations together their aim is to:

- make the United Nations Convention on the Rights of the Child a reality in Wales;
- fight for sustainable quality services and fair shares for all children and young people;
- ensure special attention and treatment for children in need; and
- give children and young people a voice.

Children in Wales is a membership body which is open to individuals and organisations who are interested in improving the lives of children and young people of Wales.

Pupil Voice Wales – A Welsh Government Pupil Participation Project led web site developed for the children and young people in Wales to have their voice heard about decisions that affect their school life.

Barnados – Barnardo's is a British charity founded by [Thomas John Barnardo](#) in 1866, to care for vulnerable children and young people. As of 2010, it spends over £190 million each year on more than 400 local services aimed at helping these same groups. Barnardo's is based in [Barkingside](#) in the [London Borough of Redbridge](#) in east London.

UNICEF Unite for Children – UNICEF is the world's leading organisation focusing on children and [child rights](#), with a presence in more than 190 countries and territories. The organisation works with local communities, partners and governments to ensure every child's rights to survive and thrive are upheld.

Consultation Response Form

Your name:

Organisation: (if applicable)

Email/telephone number:

Your Address:

Q.1	Are the arrangements in place enough to make sure the Welsh Government has due regard to the UNCRC, when working on or developing proposed new legislation, proposed new policies and any review of, or change to, an existing policy?	Yes	No
Comment			

Q.2	Training – is it enough? Anything else we need to do?	Yes	No
Comment			

Q.3	Will the assessment tool help to ensure due regard is met via Section 4 slide 7 of: http://wales.gov.uk/topics/childrenyoungpeople/rights/uncrc/onlinecourse/?lang=en?	Yes	No
Comment			

Q.4	As part of the assessment tool, is there anything else that the 6 steps to due regard could include? NB see slide 5 added.	Yes	No
Comment			

Q.5	Are there other ways we could involve children and the public in our arrangements for ensuring the Welsh Government complies with the due regard duty?	Yes	No
<p>Comment</p>			

Q.6	Should we have mentioned any other existing things children and their representatives can do if they think the Welsh Government has not had due regard to the UNCRC?"	Yes	No
<p>Comment</p>			

Q.7	Do you think we should add anything to our proposals for consulting on whether and how the rights in the UNCRC and its optional protocols, and the provisions in the Measure, can be applied to young people aged 18-24?	Yes	No
<p>Comment</p>			

Q.8	Do you want to say anything else about this draft scheme?	Yes	No
<p>Comment</p>			