

Children's rights in Wales

August 2020



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About the Committee

The Committee was established on 28 June 2016. Its remit can be found at: www.senedd.wales/SeneddCYPE

Committee Chair:



Lynne Neagle MS
Welsh Labour

Current Committee membership:



Dawn Bowden MS
Welsh Labour



Hefin David MS
Welsh Labour



Suzy Davies MS
Welsh Conservatives



Siân Gwenllïan MS
Plaid Cymru



Laura Anne Jones MS
Welsh Conservatives

The following Member was also a member of the Committee during this inquiry:



Janet Finch-Saunders MS
Welsh Conservatives

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Chair's foreword

The United Nations Convention on the Rights of the Child (UNCRC) is the most widely ratified of all UN treaties. We know how important children's rights are, and their significance when translated into reality. They affect all aspects of a child or young person's life, from their mental health, to whether they are being protected and kept safe, to having their voices heard by the people who make decisions on their behalf. That is why, since this Committee was established, we have worked hard to ensure that children's rights are central to all our work: in our scrutiny of government policy, legislation and spending.

In June 2019, almost a decade since its introduction, we felt it was the right time to examine whether the Rights of the Child and Young Persons (Wales) Measure 2011 is influencing the Welsh Government's thinking and how it allocates its funding. We wanted to know if the "due regard" duty and the duty to promote understanding of the UNCRC contained in the Measure—viewed as ground-breaking at the time of its passing—are leading to improved outcomes for children and young people across Wales.

In April 2020, in light of the unprecedented circumstances surrounding the coronavirus pandemic, we took the difficult – but necessary – decision to postpone the publication of this report on children's rights in Wales. This was to ensure that all necessary public resources could be focused on the immediate public health emergency.

This report was drafted and agreed before the lockdown regulations and restrictions. Throughout this crisis, our Committee has closely monitored the pandemic's impact on children and young people. There is little doubt that coronavirus and the measures taken to manage it have impacted the lives of children and young people significantly. This is clearly highlighted by the disruption to children's right to education and the right to play, restricted contact with friends and family in particular for care experienced children, and the restrictions on access to clubs and activities. What is less clear is whether there has been systematic consideration of children's rights within government when developing its response to the pandemic. We are determined to monitor the First Minister's recent commitment to consider how best to present assessments of

“the potential impacts of maintaining or easing restrictions on equalities and the rights of children and meeting other statutory duties”.¹

Our recent scrutiny of the impact of coronavirus on children and young people leads us to conclude that—now more than ever—delivering children and young people’s rights must be the priority for the Welsh Government. It must be central to its decision making and evidence of this must be much more transparent.

Our inquiry on children’s rights has led us to conclude that there is still progress to be made. We heard clear frustrations from stakeholders about the pace at which the Measure has influenced policy and spending. There is a lack of reference to children’s rights in key strategic documents, and insufficient evidence that the duties in the Measure are being considered and exercised across the whole of the Welsh Government. Some of the tools put in place to support the implementation of this legislation, such as Child Rights Impact Assessments, are produced far too late in the policy development process. This demonstrates to us that children’s rights are not driving the Welsh Government’s decision-making as the legislation intended.

The Measure placed a duty on the Welsh Government to make sure adults and children know about the UNCRC. However, when we heard from children and young people it is clear that there is no systematic approach to telling them about their rights. Similarly evidence revealed a gap in the knowledge and understanding of children’s rights amongst the public. Children and young people cannot claim their rights if they do not know what they are. We concluded that this should be addressed with a national awareness-raising strategy. We also say that the Welsh Government should set out to children how they can complain if things are not working so well – in a way that is easy to understand.

While public bodies play a pivotal role in delivering services to children and young people and receive significant amounts of public money, the Measure does not impose duties on them. The Welsh Government is not always able to ensure that children’s rights have a direct influence on the services children and young people receive and the decisions public bodies make. We are therefore persuaded that extending the duties in the Measure to bodies such as local authorities and health boards will help achieve improvements in this regard.

There is much more to be done to get this existing legislation working effectively. There must be a renewed emphasis on getting the implementation of this

¹ Written Question - [WQ80487 \(e\)](#)

Measure right. We believe that a designated lead within the Cabinet and training for Welsh Ministers on the duties within the Measure would go some way towards ensuring this. We have made practical recommendations in this report that we believe, if taken forward, will help on the journey to make rights a reality for all children and young people in Wales.

**Lynne Neagle MS,
Chair of the Children, Young People and Education Committee**

Recommendations

Recommendation 1. That the Welsh Government restate a demonstrable commitment to give due regard to children’s rights in all decisions it makes, informed by a robust Child Rights Impact Assessment unless there is a clear reason for not undertaking one..... Page 37

Recommendation 2. That at the next opportunity a Ministerial role is created with clear and defined responsibilities for children and young people and which has a stated role of holding the Cabinet to account to deliver the provisions of the Rights of Children and Young Persons (Wales) Measure 2011.....Page 38

Recommendation 3. That the Welsh Government insert provision in its revised Children’s Rights Scheme for all Welsh Ministers to undertake initial and follow up training on the Rights of Children and Young Persons (Wales) Measure 2011’s “due regard” duty.....Page 39

Recommendation 4. That the Welsh Government include within the complaints mechanism in its revised Children’s Rights Scheme the right to challenge a decision not to undertake a Child Rights Impact Assessment on any area of policy development.....Page 58

Recommendation 5. That the Welsh Government publish all completed Child Rights Impact Assessments, including on non-legislative policy decisions, as a matter of course..... Page 60

Recommendation 6. That the Welsh Government restate its commitment to ensuring that the legislative requirements in relation to children’s rights are fully and effectively reflected in its financial decisions across all portfolios by swiftly amending its Budget Improvement Plan to make clear the specific steps the Welsh Government is taking to ensure it is complying with the “due regard” duty in the Rights of Children and Young Persons (Wales) Measure 2011.....Page 69

Recommendation 7. That the Welsh Government return to publishing an individual Child Rights Impact Assessment on its Draft Budget to evidence compliance with the Rights of Children and Young Persons (Wales) Measure 2011, until this Committee can be reassured that the Strategic Integrated Impact Assessment accompanying a Draft Budget demonstrates the duty of “due regard” to the United Nations Convention on the Rights of the Child has been exercised.Page 70

Recommendation 8. That the Welsh Government develop and publish a national awareness-raising strategy with measurable outcomes to promote knowledge and understanding amongst the public, including children and young people, of the United Nations Convention on the Rights of the Child and its Optional Protocols.....Page 85

Recommendation 9. That the Welsh Government ensure human rights education, including children's rights with reference to the United Nations Convention on the Rights of the Child, is taught under the new Curriculum for Wales.....Page 85

Recommendation 10. That the Welsh Government include a strengthened and child friendly complaints mechanism in its revised Children's Rights Scheme to empower children and young people to seek redress when necessary and to uphold their rights.....Page 89

Recommendation 11. That the Welsh Government call on the UK Government to ratify the 2014 United Nations Convention on the Rights of the Child Optional Protocol to give individual children the right to make representations directly to the United Nations..... Page 90

Recommendation 12. That the Welsh Government set out in its revised Children's Rights Scheme a clear strategy to ensure the participation of children and young people in discussions on Welsh Government decisions which affect them.....Page 98

Recommendation 13. That the Welsh Government publish a detailed strategic response to the United Nation's Committee on the Rights of the Child 2016 Concluding Observations within the next six months. This should include details of progress made against all the recommendations and what actions are being taken to address areas of concern..... Page 106

Recommendation 14. That the Welsh Government publish an annual update of progress made against the United Nation's Committee on the Rights of the Child Concluding Observations, to be laid before the Senedd and scrutinised annually by the relevant committee..... Page 106

Recommendation 15. That all devolved public bodies (such as local authorities and local health boards) should be placed under a specific duty to have due regard to the United Nations Convention on the Rights of the Child. The Welsh Government must provide guidance to all devolved public bodies as to what this means in terms of their day to day functions and how compliance will be monitored..... Page 112

Recommendation 16. That the Welsh Government, at the earliest legislative opportunity, transfer responsibility for the appointment, accountability, and funding of the Children’s Commissioner for Wales to the Senedd. Page 121

1. Background

1. In June 2019, we agreed to undertake a short inquiry into children's rights in Wales to review the impact of the Rights of Children and Young Persons (Wales) Measure 2011² (Measure).
2. The Measure places a duty on Welsh Ministers to have "due regard" to the United Nations Convention on the Rights of the Child³ (UNCRC) in all decisions and actions taken by the Welsh Ministers.

The duty to have "due regard"

3. The concept of "due regard" or to "have regard" is commonplace in legislation. For example, the Equality Act 2010⁴ placed a duty on public authorities to have due regard to the need to achieve the objectives set out under Section 149 of that Act.⁵
4. "Due regard" is not defined in the Measure. However, its Explanatory Notes explain:

"The due regard duty requires the Welsh Ministers to give the weight that is appropriate in all the circumstances of the case to Part I of the [United Nations] Convention and the Protocols, balancing them against all the other factors that are relevant to the decision in question."⁶

5. The Equality and Human Rights Commission (EHRC) has summarised the duty as:

"Having due regard means a decisionmaker must attend to the substance of a decision properly informed and aware of what must be considered before and at the time of making the decision, paying attention to any relevant objective. The decision-maker must take

² [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

³ [United Nations Convention on the Rights of the Child](#).

⁴ [Equality Act 2010](#).

⁵ The Equality Act 2010 "due regard" duty is to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

⁶ [Explanatory Notes](#).

account of relevant evidence and exercise the due regard duty with rigour, and an open mind. The duty should be integrated into the discharge of the public functions.”⁷

6. Our inquiry sought to examine what difference this law has made and its impact on outcomes for children and young people.

7. We agreed to look at:

- the extent to which the Measure has influenced the Welsh Government’s decision making, including its financial allocations and whether it has fulfilled the UNCRC’s “general measures” of implementation;
- evidence of whether the Measure has led to improved outcomes for children and young people;
- whether the duties within the Measure have been embedded effectively across Welsh Government cabinet portfolios and policy;
- the extent to which the Welsh Government has sought to ensure that its duties within the Measure are translated into the work of the public bodies it provides funding to, including local authorities and NHS bodies;
- the extent to which the Welsh Government has implemented its duty to promote knowledge and understanding of the UNCRC amongst the public, including children and young people;
- how the duty to have “due regard” to the UNCRC is being implemented in practice and whether Child Rights Impact Assessments are being used as a meaningful tool;
- the effectiveness of the Children’s Right’s Scheme and the most recent Welsh Government Compliance Report, and the extent to which they evidence sufficient action on the part of the Welsh Government to ensure full implementation of the Measure; and

⁷ [Equality and Human Rights Commission Report](#), The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

- how effectively the Welsh Government responds on a strategic basis to the Concluding Observations⁸ of the UN Committee on the Rights of the Child.

8. We collected written evidence and oral evidence between July and November 2019, full lists of which are provided in Annex A and Annex B to this report. We provided a 'Meeting in a Box'⁹ resource for teachers, youth workers, and youth activity leaders to use to facilitate a workshop session about children's rights in order to gather the views of children and young people. We also worked in partnership with Lleisiau Bach/Little Voices¹⁰ to engage with children from Awel y Môr Primary School, Port Talbot and Ysgol Pant y Rhedyn, Llanfairfechan to hear directly from young people about how children's rights are helping them and what more could be done.

9. On 6 May 2020, the National Assembly for Wales became the Welsh Parliament, commonly known as the Senedd. As a result, references in this report reflect the change of name wherever possible.

10. We would like to thank everyone who contributed to our inquiry.

⁸ The UN Committee's recommendations are referred to as "Concluding Observations". The UN Committee published its findings from its most recent examination of the UK and devolved governments in 2016.

⁹ **Meeting in a Box resource**

¹⁰ Lleisiau Bach/Little Voices is the approach used by the Wales Observatory on Human Rights of Children and Young People to empower children as researchers and as advocates, to help embed human rights in children's everyday places and to enable age-inclusive co-production of change.

2. Children's rights

The 1989 UNCRC is the most widely ratified of all United Nations treaties, being ratified by 196 of the 197 UN Member States. It sets out a wide-range of rights for all children under 18 and states what governments, public authorities and adults must do to ensure all children can enjoy all their rights.

What does the UNCRC do?

11. The UNCRC has 54 articles. The rights in the Convention are intended to be seen as a whole, with no right more important than another. Central to the UNCRC is the principle that every child has basic fundamental rights, including the right to:

- life, survival and development;
- not to be discriminated against;
- protection from violence, abuse or neglect;
- an education that enables children to fulfil their potential; and
- express their opinions and be listened to.¹¹

12. In 2002, two Optional Protocols¹² were added to the UNCRC. One asks governments to ensure children under the age of 18 are not forcibly recruited into their armed forces. The second calls on Member States to prohibit child prostitution, child pornography and the sale of children into slavery.

13. A State Party is a country that has ratified the UNCRC, and is therefore legally bound by it. The UK ratified the UNCRC in 1991. Some articles of the Convention underpin UK legislation relating to children, including the Children Act 1989.¹³

¹¹ [United Nations Convention on the Rights of the Child](#).

¹² Optional Protocols are additional parts to a treaty that can either further address something in the original treaty, or address something the original treaty does not mention, such as an issue that did not exist when it was first adopted.

¹³ [Children Act 1989](#).

14. In 2014, a third Optional Protocol was introduced: the Optional Protocol on a communication procedure.¹⁴ When ratified by a State Party, it gives individual children the right to petition to make representations directly to the UN. This Optional Protocol has not been ratified by the UK. We discuss making a complaint directly to the UN in chapter six.

How the UNCRC is reflected in Welsh law

15. Although not a State Party in respect of the UNCRC, the Welsh Government legislated to give further effect to the UNCRC in domestic law in Wales via the Rights of the Child and Young Persons (Wales) Measure 2011.¹⁵ The Measure places a duty on Welsh Ministers to have “due regard” to the UNCRC and the majority of its two Optional Protocols.

16. Since 2014 when the Measure came into full effect, it has required the duty to have “due regard” to the UNCRC to apply when the Welsh Ministers exercise any of their functions.

17. The Measure also places a duty on Welsh Ministers to take appropriate steps to promote knowledge and understanding amongst the public, including children, of the UNCRC and Protocols.¹⁶

Children’s rights in Wales: context

The early spotlight on children and young people

18. Children and young people’s interests featured prominently in the Senedd’s formative years. Their welfare and protection was placed firmly on the political agenda when the findings of the Waterhouse Inquiry¹⁷ were published in 2000. Its findings confirmed that decades of widespread sexual and physical abuse of children had taken place in north Wales care homes.¹⁸

¹⁴ United Nations Human Rights, [Optional Protocol to the Convention on the Rights of the Child on a communications procedure](#).

¹⁵ [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

¹⁶ [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

¹⁷ UK Government Department of Health, [Lost in Care Report of the Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974](#).

¹⁸ Article by Senedd Research, [Prioritising children and young people](#), 17 May 2016.

19. The Senedd's early spotlight on children and young people was also partly due to the early devolution settlement.¹⁹ Unlike some other policy areas, the Senedd had many of the powers needed in health, education and social services to allow the Government of the day to take forward a distinct approach to children and young people's policy.²⁰

20. There are many examples where Wales was seen to lead the way for children and young people. These include:

- Wales becoming the first country in the UK to establish a Children's Commissioner in 2001;
- the prominence given to children and young people's issues in early Welsh Government cabinet structures (including having a Minister whose portfolio and title centred on children and young people and a cabinet sub-committee to decide on policies affecting children and young people specifically);
- the passing of the Rights of Children and Young Person's (Wales) Measure – the first legislation of its kind in the UK, embedding the UNCRC into domestic law – in 2011; and
- the previous Welsh Government's funding of Funky Dragon.²¹

A changing landscape for children and young people

21. Since the Senedd passed the Measure in 2011, changes to the policy landscape for children and young people in Wales have emerged.

22. There is no longer a ministerial portfolio centred on children, and there has been a shift by the Welsh Government towards more "all-age" rather than "child-

¹⁹ Welsh Parliament webpages, Role of the Senedd and how it works, [The History of Welsh Devolution](#).

²⁰ Article by Senedd Research, [Prioritising children and young people](#), 17 May 2016.

²¹ Funky Dragon was the Children and Young People's Assembly for Wales. It was a peer-led organisation that provided opportunities for young people up to the age of 25 to have their voices heard on issues that affected them. It worked closely with the Welsh Government of the day and youth forums run by unitary authorities, enabling it to influence decision making at different political levels.

specific” planning, policy and legislation.²² In 2014, the Welsh Government also stopped its funding for Funky Dragon.

23. The then Children’s Commissioner for Wales, Keith Towler, stated at that time that the Welsh Government appeared “too comfortable with its status as an international children’s rights trailblazer” and said that “vital services aimed at protecting vulnerable children and young people are in danger of being lost, due to the lack of vision and leadership from the Welsh Government”.²³

24. The Explanatory Memorandum which accompanied the Measure’s introduction in June 2010 described the Welsh Government’s intention to move towards a “more progressive rights-based approach to policy for children and young people”.²⁴ It stated that the Measure was “the central plank of its [Welsh Government] on-going commitment to progressive realisation of the UNCRC and its rights-based approach to policy development in respect of children and young people”.²⁵

25. A decade on, our inquiry has sought to examine what impact the Measure has had on the Welsh Government’s decision making, including its financial allocations, and the effectiveness of the tools it has to support the implementation of the Measure. We have also considered the impact of the Welsh Government’s actions to increase understanding of the UNCRC, along with the effect of its work to increase participation of children and young people in decision-making. Finally we have examined the legal position on children’s rights in Wales, and the responsibility of appointing the Children’s Commissioner against this backdrop.

²² Welsh Government, [Healthy weight strategy: Prosperity for All: the national strategy: Together for Mental Health: A Strategy for Mental Health and Wellbeing in Wales](#).

²³ Children’s Commissioner for Wales, [Annual Report 2013-14](#).

²⁴ [Explanatory Memorandum](#).

²⁵ [Explanatory Memorandum](#).

3. The Measure's influence on the Welsh Government's decision making

We were told that that the Measure has had some positive influence on the Welsh Government's decision making in relation to children. However, there are concerns that the "due regard" duty is not fully embedded across Government. Evidence highlighted a lack of reference to the UNCRC in key policy documents, and the absence of any formal training for the Welsh Ministers on how to exercise the duties in the Measure.

The visibility of children's rights

26. The Measure requires the Welsh Government to ensure that when they are making a decision about a new policy (or review of an existing one) or are deciding upon any provision to be included in legislation, they have due regard to the UNCRC and the two Optional Protocols. There are a range of ways—including legal and non-legal measures—of achieving this. These include collecting the right level of statistical information to understand outcomes for children and making sure that the rights under the UNCRC are widely known and understood by children, adults and public bodies.

27. In written evidence, the Children's Commissioner for Wales highlighted that:

"[...] it is important to recognise that children in Wales already had all of these rights, by virtue of their age. Their rights are directly derived from the UNCRC and so the Measure does not grant those rights, it simply draws them down into Welsh law. By doing so, the Measure is all about how the Welsh Government gives effect to these rights in Wales."²⁶

28. A study on *The impact of legal integration of the UN Convention on the Rights of the Child in Wales*²⁷ was undertaken in 2018 by Dr Simon Hoffman and

²⁶ Written evidence, CRW 11 - Children's Commissioner for Wales.

²⁷ [Equality and Human Rights Commission Report](#), The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

Sean O'Neill on behalf of the Equality and Human Rights Commission. Both are members of the Wales UNCRC Monitoring Group²⁸ and provided oral and written evidence as part of this inquiry. The Group stated that it is "very supportive of the Measure".²⁹ Hoffman and O'Neill also said in relation to their study:

"[...] we were delighted to take on this work because this was the first opportunity we'd had to drill down and see what the effects have been over the last five years since the Measure's been in full force [...]"³⁰

29. The EHRC report stated:

"We have no reservations in concluding that the Measure has achieved its objective of embedding the Convention in policy-making in Wales. The due regard duty has established a new framework for policy development, which in turn has resulted in greater attention to, and visibility for, children's rights in policy processes undertaken by Ministers and their officials."³¹

30. Some witnesses provided examples of where they felt the focus given to the UNCRC through the Measure is having a positive impact on policy. Play Wales cited a small-scale study which suggests that, overall, children are satisfied with their opportunities to fulfil their right to play, adding that they agreed with the EHRC report's conclusion that the Measure has resulted in greater visibility for children's rights in policy processes.³² Estyn told us that it:

"[...] welcomed the explicit and strong emphasis given to furthering the United Nations Convention on the Rights of the Child (UNCRC) through the Additional Learning Needs and Education Tribunal (Wales) Act and Draft ALN Code. The guidance issued by the Welsh Government around person-centred practice is starting to have an impact within schools."³³

31. The Wales UNCRC Monitoring Group also highlighted opportunities provided by the Measure for external stakeholders to use rights-based language more

²⁸ The Wales UNCRC Monitoring Group is a national alliance of non-governmental and academic agencies, tasked with monitoring and promoting the UNCRC in Wales.

²⁹ CYPE Committee, RoP [para 5], 16 October 2019.

³⁰ CYPE Committee, RoP [para 6], 16 October 2019.

³¹ [Equality and Human Rights Commission Report](#), The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

³² Written evidence, CRW 10 - Play Wales.

³³ Written evidence, CRW 09 - Estyn.

confidently when engaging with Welsh Government's decision-making process. This was described as a "positive development".³⁴

32. The Children's Commissioner for Wales told us that a more fundamental change is required to ensure that the Measure "becomes a reality for children's rights across Government". The Commissioner argued:

"The fundamental thing that we still need to do is win hearts and minds, I think, in understanding why it's important. It still feels to me like some of the things that Government has to do in relation to the Measure, people do them because they feel they have to do them, which means that they sometimes feel quite half-hearted, quite late and not very in-depth."³⁵

33. The Commissioner added:

"I am proud of much of Wales' record on children rights and am well aware that to date the Measure has been the strongest legal measure implementing children's rights in the United Kingdom. However, I do not feel that measuring ourselves against the rest of the UK is an ambitious enough target and I would like to see Wales reaching the very best international standards."³⁶

34. The Commissioner suggested that the revision of the Welsh Government's Children's Rights Scheme, which sets out the practical arrangements to support the implementation of the Measure, was an opportunity to be more ambitious:

"We really saw it as a revision to move practice on and be ambitious, and unlike many other aspects where Government might be quite tied in to primary legislation, or whatever, and there's a limit to how far they can take things, there's actually lots of scope for them under the Measure to really be ambitious with the delivery of the Measure through this scheme."³⁷

³⁴ CYPE Committee, RoP [para 8], 16 October 2019.

³⁵ CYPE Committee, RoP [para 377-378], 16 October 2019.

³⁶ Written evidence, CRW 11 - Children's Commissioner for Wales.

³⁷ CYPE Committee, RoP [para 389], 16 October 2019.

35. The Wales UNCRC Monitoring Group's evidence highlighted conclusions in the EHRC report that Wales had "gone a lot further" in its incorporation of the UNCRC into domestic law than other parts of the UK. However, the Group said:

"[...] I think we felt what emerged from that piece of research is that we're still on a journey, and if it's having the desired impact, as intended, and it's to be fully embedded across the whole of Government, there are areas and procedures that will require strengthening."³⁸

36. However, evidence from Clybiau Plant Cymru Kids' Clubs said that while the Measure has influenced the Welsh Government's decision making, "it has been a slow process".³⁹ Hafal also reported concerns that insufficient progress has been made in ensuring full compliance with the Measure, stating that it has had difficulty seeing "significant change" in areas such as mental health.⁴⁰

CASE STUDY: The impact of the Measure on policy development

The list below sets out some examples provided to us in written evidence of where the Measure was perceived to influence Welsh Government policy development, and also policy areas where the impact of the Measure was not seen as visible:

Influenced by the Measure

Youth Justice: prevention, pre-court diversion and community work

Prison Education

Child Poverty Action Plan

Additional Learning Needs Act

Well-being of Future Generations Act

Flying Start

Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

³⁸ CYPE Committee, RoP [para 9], 16 October 2019.

³⁹ Written evidence, CRW 12 - Clybiau Plant Cymru Kids' Clubs.

⁴⁰ Written evidence, CRW 18 - Hafal.

Compulsory relationship and sex education

Participation in schools

Promotion of UNCRC in schools and in new curriculum

Youth Work Strategy

Play and the “sufficiency” duty

Impact of the Measure not visible

Racist incidents in schools and exclusions as a result of racist incidents. Lack of reporting and collation of statistics

Exclusion from school and the use of isolation booths

Age of criminal responsibility

Social Services and Education: Cited as key casework issues by Public Services Ombudsman for Wales

Compulsory attendance at collective worship in schools

NHS Spend on Christian Chaplaincy

Lack of Learning Disability Epilepsy specialist support

Mental health services

Youth services

Availability of Care Placements: foster and secure

Availability of Sexual Assault Referral Centre services

Air pollution because of traffic and insufficient planning regulations

Early mental health intervention in schools

Eligibility criteria for the Childcare Offer

Children’s access to adequate housing

Child Poverty

37. In its evidence, the Welsh Government said that it is satisfied that the Measure and the supporting arrangements are influencing and impacting policy making and decision making at the right level and provide a robust and appropriate framework for embedding children's rights.⁴¹

What children and young people told us

38. The children and young people who participated in our 'Meeting in a Box'⁴² consultation told us their views about policy areas where their rights were not being fulfilled:

“Right to be safe online.”

“Diogelwch economaidd - economic security.”

“Do not bully: Article 23.”

“To be happy we need to try to stop bullies.”

“The right to a clean environment.”

“Your right to use your own language and celebrate your own culture and religion.”

“Access to post-16 education.”

“Transport is a big issue.”

“Improve the whole curriculum so it's more like the curriculum they have in Sweden and Norway.”

“Article 40 - your right to legal help if have been accused of a crime.”

“LGBT - Article 2 relating to not being treated differently because of who they are.”

“The right to practice my own religion.”

“Seeing family if they do not live with you.”

⁴¹ Welsh Government evidence paper.

⁴² Meeting in a Box - Engagement summary.

“Improving transport because some children are missing school and appointments.”

“Better policing.”

“We need the right to vote (Article 12).”

“School trips - I can't afford to go to trips and I am missing out.”

“I think you shouldn't be charged to go on a school trip since you have the right to have a break from working in school.”

“Police stations have closed, so police not there unless there is a problem. Drugs openly being sold - dealers don't bother to hide it - more people carrying knives to feel protected - more police presence needed.”

39. Comments made by some of the group facilitators who took part in our 'Meeting in a Box'⁴³ consultation included:

“A number of the group highlighted the issue of being protected from exposure to drugs. They felt that not enough was being done. One young person mentioned about a local shop knowingly selling Vapes to underage children. Also more work need to be done to educate adults on children's rights.”

“Improve the right to be safe because feeling safe is important.”

“Many pupils talked about how poverty affected them and they felt that money shouldn't be a barrier to learning. They suggested all school trips be free.”

“Young people felt that bullying was a major issue in and out of school.”

“They didn't feel safe and would like more children and youth provisions in place to report to.”

“Young people thought that not being able to speak to each other in class or use the toilet can be against their rights. Disabled children are not supported due to cuts, they felt this was unfair.”

⁴³ Meeting in a Box - Engagement summary.

“Young people have many concerns, biggest growing drugs problem and groups of youth.”

Improved outcomes for children and young people

40. In addition to looking at whether the Measure has impacted on the decisions made by the Welsh Government, we also wanted to consider whether there were any measurable outcomes for children and young people.

41. The Children’s Commissioner for Wales told us:

“The existence of the Measure and its effect on policies and guidance is being seen slowly, and I acknowledge that it takes time to change approaches and mindsets, but I would argue that the Measure has already done this to some degree at the policy setting stage. Where I’m less sure or haven’t yet seen as much change is in relation to outcomes for children and this may in part be attributed to the lack of focus on the achievement of outcomes in either the Measure or the Scheme as it presently stands.”⁴⁴

42. The Observatory on Human Rights of Children said:

“Importantly, the Measure is not intended to prescribe policy outcomes, but is a device to influence the culture of policy-making within Welsh Government with the aim of securing better policy output, and in the long term, influencing better outcomes for children.”⁴⁵

43. Clybiau Plant Cymru Kids’ Clubs told us that “the Measure has led to improved outcomes for children and young people and with the Welsh Government’s Taking Wales Forward those outcomes can only keep improving”.⁴⁶

44. The EHRC, who described the Measure as being “still relatively new”, argued:

“There is a lack of evidence that the Measure has directly improved outcomes for children and young people in Wales. There is also a lack of clarity on what outcomes Welsh Government want to improve for children and young people as a result of the Measure.

⁴⁴ Written evidence, CRW 11 - Children’s Commissioner for Wales.

⁴⁵ Written evidence, CRW 04 - The Observatory on Human Rights of Children.

⁴⁶ Written evidence, CRW 12 - Clybiau Plant Cymru Kids’ Clubs.

[...] Welsh Government could specify strategic outcomes for children and young people that are based on evidence from robust and relevant sources. These outcomes should inform policy decisions made by Welsh Government Ministers. This could then be monitored to provide evidence of progress on improving outcomes for children and young people.”⁴⁷

45. Evidence from Aneurin Bevan University Health Board also suggested that the link between the Measure and improved outcomes for children and young people would “benefit from further definition and this will assist with further understanding”. It indicated that there is likely to be a range of positive examples of outcomes within health and social care services at a local level that “collectively could demonstrate and correlate impact”.⁴⁸

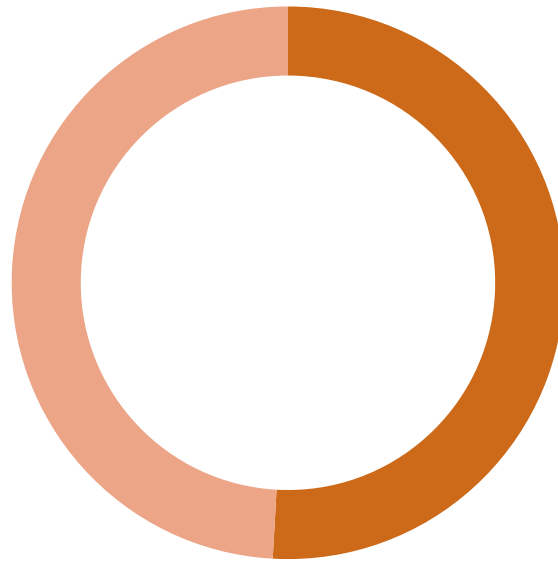
46. As part of this inquiry, we wanted to hear from children and young people across Wales. Our ‘Meeting in a Box’ resource was designed to be used in the participant’s setting and included activities for all levels of understanding of children’s rights, the Committee’s work and the Senedd. 45 sessions were held involving 866 participants from all five Senedd electoral regions.⁴⁹

47. The respondents who gave evidence were asked if they thought their rights had improved or not, and which areas they felt were worse or better. Comments were coded as negative or positive:

⁴⁷ Written evidence, CRW 26 - Equality and Human Rights Commission.

⁴⁸ Written evidence, CRW 21 - Aneurin Bevan University Health Board.

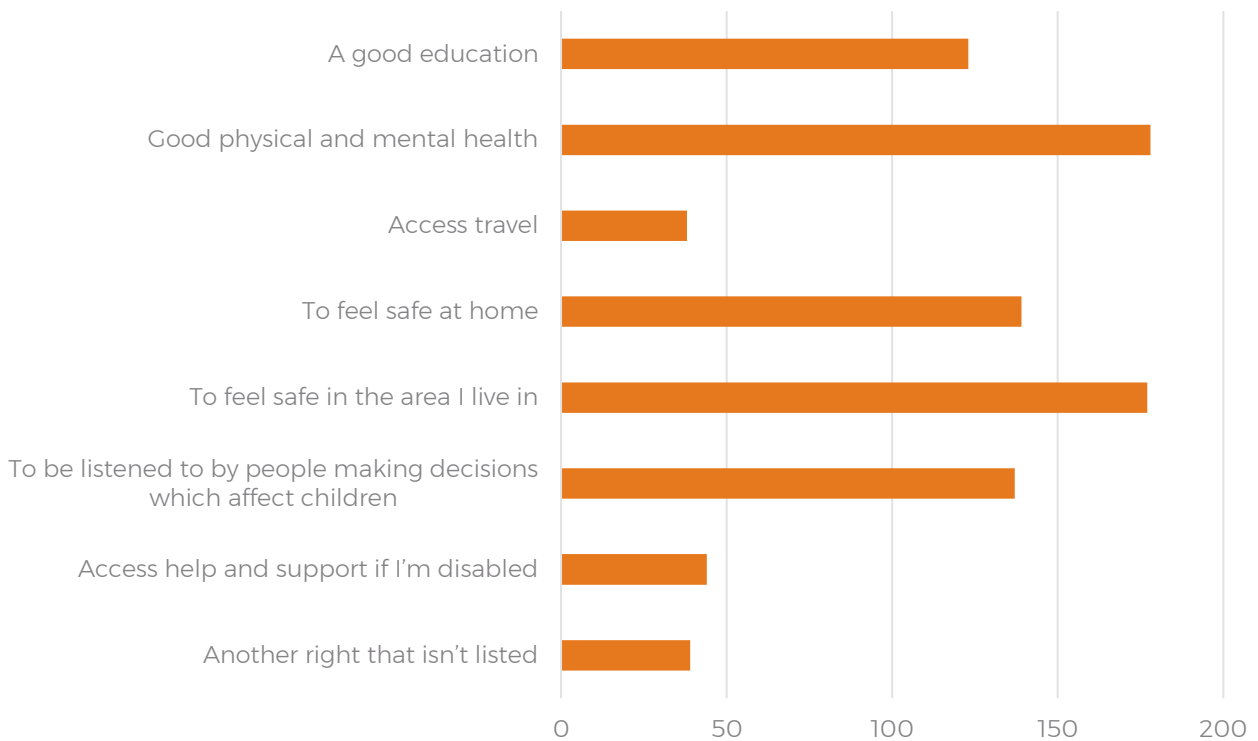
⁴⁹ [Meeting in a Box - Engagement summary](#).



■ 29 positive comments were feedback ■ 28 negative comments were feedback

Source: Meeting in a Box engagement summary.⁵⁰

48. Participants were also asked to vote for which right they thought the Welsh Government should “do more about”. The results were as below:



⁵⁰ Meeting in a Box – Engagement summary.

Their right to **Good physical and mental health** gained the most votes (179) with **To feel safe in the area I live in** narrowly second (178). They were closely followed by their right **To feel safe at home** (139), **To be listened to by people making decisions which affect children** (137) and **A good education** (123).

The numbers of young people choosing **Access help and support if I'm disabled** (44) and **Access to travel** (38) were similar to **Another right that isn't listed** (39).

Source: Meeting in a Box engagement summary.⁵¹

49. The Welsh Government stated in its evidence that:

- the Measure is not intended to prescribe policy outcomes;
- the application of due regard to the UNCRC has been set at a national level deliberately and provides a robust framework for all decisions – including policy and legislation;
- the Measure is “radical and far-reaching in its scope and nature”;
- the Measure should “not be seen in isolation” as it is “a key part of a wider, and comprehensive offer of support and challenge to ensure that children’s rights are embedded in Welsh policy and practice”.⁵²

50. The Welsh Government pointed to the conclusions reached in the EHRC report that the Measure has successfully embedded the UNCRC in policy-making in Wales. It also stated that its approach as an executive to children’s rights is clearly “bearing fruit”, and pointed to recent examples which it believes demonstrate progress, such as: the introduction of the Children (Abolition of the Defence of Reasonable Punishment) (Wales) Bill; the Curriculum for Wales 2022 framework; and the Welsh Government’s commitment to extend the voting franchise to 16 and 17-year-olds.⁵³

Compliance and accountability

51. Section 4 of the Measure requires the Welsh Government to lay a report before the Senedd every five years on how it has complied with the duty to consider children’s rights in the decisions it takes.⁵⁴ The 2014 Children’s Rights

⁵¹ [Meeting in a Box – Engagement summary.](#)

⁵² [Welsh Government evidence paper.](#)

⁵³ [Welsh Government evidence paper.](#)

⁵⁴ [Rights of Children and Young Persons \(Wales\) Measure 2011.](#)

Scheme set out a commitment to produce mid-term reports, with the effect of producing a compliance report every two and a half years.⁵⁵ The Welsh Government's third and most recent Compliance Report was published in 2018.⁵⁶

52. The Children's Rights Scheme states:

"This commitment to transparency and constructive engagement, along with the agreement regarding the CRIA publication process, allows stakeholders and other interested parties an ongoing opportunity to hold the Ministers to account on their application of the Measure, and to express their observations on the progress being made.

Ministers will secure a plenary debate on the content of the next compliance report. Ministers may also be called to give evidence to NAFW committees to explain what they have done and can also be asked to respond to questions from Assembly Members."⁵⁷

53. The Wales UNCRC Monitoring Group stated in its evidence that the latest report, published in 2018, was not subject to any scrutiny procedures by the Senedd at the time.⁵⁸

54. The Observatory on Human Rights of Children's evidence highlighted the Measure's enhanced accountability through the statutory requirement imposed on Ministers to publish a compliance report. It suggested that the report provides opportunity for public debate and scrutiny, and to hold Ministers to account. However, it also referenced conclusions in the EHRC report which said "that with some exceptions the opportunity to hold Ministers to account for compliance with the UNCRC has not been fully exploited by the National Assembly".⁵⁹ It noted that the EHRC report:

⁵⁵ Following the completion of this report, in a [Written Statement](#) on 17 July 2020, the Deputy Minister announced that the Welsh Government would be reverting to the five-year reporting cycle, "in light of the coronavirus pandemic, and the need to focus resources towards the response". It stated that compliance against the "due regard" duty covering the period February 2018 to December 2022 would now be reported in January 2023.

⁵⁶ [Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons \(Wales\) Measure 2011](#) - June 2015 - January 2018.

⁵⁷ [Children's Rights Scheme 2014](#).

⁵⁸ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

⁵⁹ Written evidence, CRW 04 - The Observatory on Human Rights of Children.

“[...] draws attention to the use of the due regard duty to influence policy and scrutinise Ministers by the CYPE Committee, e.g. scrutiny of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALNETA), as an example of effective use of the Measure. However, it also noted that Assembly Members, other committees and on occasion the CYPE Committee, have not made the most effective use of the due regard duty during debates and scrutiny processes.”⁶⁰

55. Save the Children recommended:

“[...] that the National Assembly should introduce a children’s rights training programme for all Assembly Members and Committee staff in order for them to be able to properly scrutinise and hold Welsh Government to account on its application of the due regard duty and its commitments to children in Wales.”⁶¹

Key strategic documents

56. The Welsh Government’s key strategic documents - *Taking Wales Forward*⁶² and *Prosperity for All*⁶³ - do not refer explicitly to children’s rights nor the “due regard” duty in the Measure.

57. The Children’s Commissioner for Wales stated that “despite calls to do so, the Government has missed an opportunity to portray its absolute commitment to children’s rights through its omission from Prosperity for All”.⁶⁴ The Commissioner added:

“When policies or consultations are brought forward, this strategy is then referred to as the originating reason or background for bringing forward particular pieces of work. Unfortunately, in the absence of clear links to children’s rights throughout this strategy, the subsequent

⁶⁰ Written evidence, CRW 04 - The Observatory on Human Rights of Children.

⁶¹ Written evidence, CRW 22 - Save the Children.

⁶² Welsh Government, *Taking Wales Forward 2016-2021*, 20 September 2016. Taking Wales Forward sets out how the current Government will deliver more and better jobs through a stronger, fairer economy, improve and reform our public services, and build a united, connected and sustainable Wales.

⁶³ Welsh Government, *Prosperity for All: the national strategy*, 17 September 2017. Prosperity for All takes the key commitments of Taking Wales Forward, places them in a long-term context, and sets out how they fit with the work of the wider Welsh public service to lay the foundations for achieving prosperity for all.

⁶⁴ Written evidence, CRW 11 - Children’s Commissioner for Wales.

policies are therefore not being framed within a children's rights approach."⁶⁵

58. This view was echoed by Save the Children, who said that the absence of a reference to children's rights in *Prosperity for All* is evidence that "other departments have not prioritised children's rights to the same extent" as departments that are perceived as having a direct impact on outcomes for children.⁶⁶

59. In oral evidence, the Deputy Minister told us:

"The UNCRC and children's rights are implicit in 'Taking Wales Forward' and 'Prosperity for All', and children's rights are at the heart of the Government priorities."⁶⁷

60. Concerns about the Welsh Government's move to all-age strategies and planning structures and away from child-specific approaches is a theme that has been consistently raised with this Committee across the range of our scrutiny work. One example is the move away from local authority Children and Young People Plans. In its written evidence, the Welsh Local Government Association stated that key policy documents, such as *Prosperity for All*, "are age-inclusive and do not give a bespoke strategic focus" to the UN's Concluding Observations.⁶⁸

61. The Children's Commissioner for Wales also said that The Well-being of Future Generations (Wales) Act 2015,⁶⁹ which features prominently in many strategies including *Prosperity for All*, takes an all age approach and does not protect the inherent rights of children in the same way as a distinct children's rights approach.⁷⁰

Responsibility to ensure "due regard" across the Welsh Government

62. One of the main principles of the Measure is that children's rights is "everyone's responsibility".⁷¹ As such, the Measure applies across Government, in acknowledgement of the fact that the most important influences on children's

⁶⁵ Written evidence, CRW 11 - Children's Commissioner for Wales.

⁶⁶ Written evidence, CRW 22 - Save the Children.

⁶⁷ CYPE Committee, RoP [para 5], 6 November 2019.

⁶⁸ Written evidence, CRW 25 - Welsh Local Government Association.

⁶⁹ [Well-being of Future Generations \(Wales\) Act 2015](#).

⁷⁰ Written evidence, CRW 11 - Children's Commissioner for Wales.

⁷¹ CYPE Committee, RoP [para 13], 6 November 2019.

rights are across Cabinet: economic development, transport, environment and planning. The intention was to ensure that delivering children's rights was not the exclusive domain of policy areas like education, social services and health.

63. The current portfolio of the Minister for Health and Social Services includes children and young people's rights and entitlements, including the UNCRC.⁷² The stated role of the Deputy Minister is to support the work of the Minister.⁷³ Previously there has arguably been more prominence given to children and young people's issues in early Welsh Government cabinet structures, by having a Minister whose portfolio and title centred on children and young people. There was also a cabinet sub-committee specifically to decide on policies affecting children and young people.⁷⁴

64. Evidence from Wales Humanists highlighted concerns that duties arising from the Measure have not been fully embedded across the activities of the Welsh Government.⁷⁵ The Children's Commissioner for Wales also expressed frustration at the perceived lack of join-up across Government on children's issues. The Commissioner's evidence stated that "the Measure does not appear to be fully embedded across Government".⁷⁶ The Commissioner told us:

"[...] very often, policies are developed very much in one corner of Government or another. Some of that's very understandable for practical reasons—people have their portfolios and they work in them—but I think, again, that doing that analysis early on would alert people to where, actually, the issue in question crosses lots of areas of children's lives. So, some examples I would give would be home education, mental health in schools—they're two examples where we've really seen, over the last couple of years, things have got off to a false start really, or to a slow start, sometimes because it's been dealt with in one corner of Government and people haven't seen the importance of other portfolios being part of that. And I do think that early analysis and understanding, and thinking about the breadth of children's rights, would have really helped that."⁷⁷

⁷² Welsh Government, [Ministerial responsibilities of the Minister for Health and Social Services](#).

⁷³ Welsh Government, [Responsibilities of the Deputy Minister for Health and Social Services](#).

⁷⁴ Article by Senedd Research, [Prioritising children and young people](#), 17 May 2016.

⁷⁵ Written evidence, CRW 08 - Wales Humanists.

⁷⁶ Written evidence, CRW 11 - Children's Commissioner for Wales.

⁷⁷ CYPE Committee, RoP [para 380], 16 October 2019.

65. The Observatory on Human Rights of Children said that there:

“[...] appeared to be an assumption that the due regard duty fell primarily on the Minister with responsibility for children. This assumption undermines the intended pervasive effect of the Measure.”⁷⁸

66. Save the Children also told us that they believed the embedding of the “due regard” duty across Welsh Government cabinet portfolios had been variable, adding:

“That embedding has been the most evident in departments that are perceived as having a direct influence over children’s lives.”⁷⁹

67. Hywel Dda University Health Board said that evidence of the Measure being incorporated across Government exists in policies and guidance. More specifically, its evidence pointed to “portfolios within the Chief Nursing Officer’s office that incorporate the duties identified within the Measure”.⁸⁰

68. The Office of Police and Crime Commissioner Gwent suggested that there is a clear commitment to the Measure across cabinet portfolios and policy, but reported that it is unclear how this commitment is implemented in practice.⁸¹

69. Play Wales identified some positive developments across portfolios to help children access their right to play, including the anticipated national speed limit of 20mph. It acknowledged, however, that it is difficult to assess whether these decisions were influenced by the Measure.⁸²

70. Clybiau Plant Cymru Kids’ Clubs told us that there are times where it is not clear how the duties within the Measure have been embedded across Government effectively, “so the Welsh Government should ensure transparency to clearly show that the Measure has been embedded within its duties”.⁸³

⁷⁸ Written evidence, CRW 04 - The Observatory on Human Rights of Children.

⁷⁹ Written evidence, CRW 22 - Save the Children.

⁸⁰ Written evidence, CRW 06 - Hywel Dda University Health Board.

⁸¹ Written evidence, CRW 16 - Office of Police and Crime Commissioner Gwent.

⁸² Written evidence, CRW 10 - Play Wales.

⁸³ Written evidence, CRW 12 - Clybiau Plant Cymru Kids’ Clubs.

71. When asked to clarify whether her role as Deputy Minister includes responsibility for ensuring the “due regard” duty is implemented across all Welsh Government cabinet portfolios, the Deputy Minister stated:

“Well, the important thing about the Measure is that it means that children’s rights are everybody’s responsibility—the responsibility of all the Ministers. But, obviously, as the Deputy Minister, I hold the ring for children and young people’s rights and entitlements, including the UNCRC, and I’m responsible for the Welsh Government’s relationship with the children’s commissioner.

The First Minister also has functions relating to the appointment of the children’s commissioner and formally responding to recommendations made by the children’s commissioner in the commissioner’s annual report. So, the First Minister also has a specific role, as well as me. The First Minister expects Welsh Government officials and ministerial colleagues to exercise the due regard duty with rigour and with an open mind, and make evidence-based and informed decisions. And there’s not really any difference in any requirement for any of the Ministers. The basic requirement is that children’s rights are the responsibility of everybody in the Government [...]”⁸⁴

Mechanisms to ensure responsibility for “due regard” across the Cabinet

72. In terms of ensuring the responsibility of “due regard” is shared across the Welsh Government, the Observatory on Human Rights of Children told us that the practical tools in place to support the implementation of the Measure, such as Child Rights Impact Assessments, should provide a procedure “whereby all Welsh Government departments engage directly with children’s rights in policy development”.⁸⁵ However, an evaluation of the Welsh Government’s Child Rights Impact Assessment procedure, commissioned by the Welsh Government, found the application of this impact assessment to be inconsistent.⁸⁶ The EHRC’s 2018

⁸⁴ CYPE Committee, RoP [para 13-14], 6 November 2019.

⁸⁵ Written evidence, CRW 04 - The Observatory on Human Rights of Children.

⁸⁶ [Evaluation of the Welsh Government’s Child Rights Impact Assessment procedure under the Children’s Rights Scheme pursuant to the Rights of Children and Young Persons \(Wales\) Measure 2011](#), 2015.

study on the impact of the Measure came to a similar conclusion.⁸⁷ We discuss this issue in more detail in chapter four.

73. The Children's Commissioner for Wales suggested that a mechanism, or range of mechanisms, could ensure that shared responsibility occurs "routinely and effectively".⁸⁸ The Commissioner said:

"I'd be very keen to see a sub-committee of the Cabinet meeting, as we had early on in Assembly days, to talk about children. I did raise it with the First Minister at my first meeting with him, and he did take it away to think about. We haven't seen any progress on that, but he did say that they would be doing some more themed scrutiny, sometimes involving outside speakers, in Cabinet meetings, and that children's rights or child poverty could be part of that, but I'm afraid I don't have any information about whether that's been taken forward."⁸⁹

74. In response, the Deputy Minister told us:

"[...] as a Government, we are focused on delivering practical actions that make it better for children and young people. Establishing a Cabinet committee, of itself, would not achieve anything. I think possibly there are more effective ways of ensuring cross-Government action. For example, in the future, the Cabinet will be meeting to discuss a whole-Government approach to family poverty, particularly in responding to citizens who are in debt, and looking at family poverty as a whole. And that involves everybody, the whole of the Cabinet, and so that's the way that the cross-cutting themes are being addressed by the Cabinet."⁹⁰

Training and awareness amongst the Cabinet

75. Following on from the principle that the Measure must be implemented across Cabinet, we also took evidence on what support is available to ensure Ministers are able to fulfil their duties. Training for officials on the Child Rights Impact Assessment process is discussed in chapter four.

⁸⁷ **Equality and Human Rights Commission Report**, The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

⁸⁸ Written evidence, CRW 11 - Children's Commissioner for Wales.

⁸⁹ CYPE Committee, RoP [para 396], 16 October 2019.

⁹⁰ CYPE Committee, RoP [para 17], 6 November 2019.

76. The Children's Commissioner for Wales reported in written evidence that there is no training for Ministers on how to exercise "due regard" to children's rights through their role. The Commissioner stated that without compulsory training, "I would remain concerned that this may not translate into improved policy development across Government".⁹¹

77. Save the Children told us:

"[...] without a strong body of knowledge about children's rights amongst all officials and Ministers, it will be difficult to ensure that the due regard duty will be effective across Welsh Government cabinet portfolios and policy. We are particularly concerned that training for Ministers and civil servants is not compulsory. Our belief is that such training should be a requirement at both induction and at a change of role."⁹²

78. Play Wales said that Welsh Ministers should routinely undertake training.⁹³ This view was supported by the Wales UNCRC Monitoring Group.⁹⁴

79. When asked how many of the 14 members of the Welsh Government's Cabinet have received specific training to help them deliver their legal responsibility to give "due regard" to children's rights when making decisions within their portfolios since taking up the ministerial positions, the Deputy Minister replied:

"Obviously, some of us have had training on children's rights, but this mandatory training is not in place [...]"⁹⁵

80. Further to this, the Deputy Minister wrote to us on 25 November 2019 and stated:

"Welsh Government Ministers and officials are able to access a wide range of training, information and resources to help embed children's rights in the development of policy and the delivery of services. Ministers also receive comprehensive advice from their officials on the implications for children's rights of the policy advice they are

⁹¹ Written evidence, CRW 11 - Children's Commissioner for Wales.

⁹² Written evidence, CRW 22 - Save the Children.

⁹³ Written evidence, CRW 10 - Play Wales.

⁹⁴ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

⁹⁵ CYPE Committee, RoP [para 20], 6 November 2019.

considering. This advice represents considerable support for Ministers in this area – even if it does not constitute formal training.

[...] We do not currently have a formal training programme in place for Ministers on children's rights but I would be happy to consider what might be appropriate with Ministerial colleagues."⁹⁶

Our view

81. We welcome the views of some witnesses that they consider that the Measure has had a positive impact on the visibility of children's rights in Wales. However, there is much more to be done and children and young people's rights must be central to Welsh Government thinking and spending. This is clearly not always the case. There must be a renewed emphasis on getting the implementation of this Measure right.

82. We acknowledge that the Measure was never intended to prescribe specific outcomes for children and young people. However, in the longer term, demonstrating improved outcomes as a result of the Measure would be a helpful way of evidencing the success of this legislation.

83. To this end, collecting and publishing robust statistical information is an important part of meeting the "general measures" of implementing the UNCRC.

84. We recognise the concerns raised by stakeholders about the pace of the influence of the Measure on the Welsh Government's decision making in relation to children and young people. Ten years since its introduction, we do not accept that the Measure is "relatively new", and believe there is still much progress to be made. While the Measure has provided a good foundation to enable stakeholders to lobby the Welsh Government on matters relating to children's rights, we support the calls to be more rigorous. We agree that the revision of the Children's Rights Scheme provides an opportunity for more clarity on how better outcomes will be delivered in practice.

Recommendation 1. That the Welsh Government restate a demonstrable commitment to give due regard to children's rights in all decisions it makes, informed by a robust Child Rights Impact Assessment unless there is a clear reason for not undertaking one.

⁹⁶ [Letter from the Deputy Minister for Health and Social Services](#) - 25 November 2019.

85. We note the comments made by stakeholders at the lack of specific scrutiny by the Senedd of the Measure's "due regard" duty and of the Welsh Government's 2018 Compliance Report. When that report was published this Committee had already agreed to undertake a wider review of the Measure's effectiveness that would include scrutiny of the Compliance Report. This was in order to make best use of the time available to us. This Committee has also given a significant amount of focus to Child Rights Impact Assessments, especially during Draft Budget scrutiny and our three way inquiry on impact assessments in 2019. Our views on the general principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill were clearly framed in a children's rights context. We will reflect on the points raised in evidence and give full consideration to the UNCRC in all our inquiries.

86. We are concerned at the lack of reference to the UNCRC in the Welsh Government's key strategic documents and what this might tell us about how central the Measure is to Welsh Government thinking. Its absence appears to undermine the ethos of the Measure to embed the "due regard" duty across the whole of Government. We note the Deputy Minister's statement that children's rights are "implicit" in these documents. However, we do not consider this to be sufficient in terms of effort to raise awareness and understanding of children's rights in Wales.

87. We heard that there is insufficient evidence of the "due regard" duty being visible across all Welsh Government departments. We note the concerns that there is a perception that the duty in the Measure falls solely to the Welsh Minister with responsibility for children. There were also many examples shared with us where it is unclear if the Measure had an influence on a particular decision or policy area. We note the Deputy Minister's comments that it is "everybody's responsibility".

88. In addition to the "due regard" duty being a responsibility across Cabinet, it would be a strong statement of commitment to children and young people for there to be a Ministerial portfolio centred on children and a stated role to hold Cabinet members to account in relation to the "due regard" duty. We believe this would be a significant step towards ensuring that all decisions made by the Welsh Government give "due regard" to children's rights.

Recommendation 2. That at the next opportunity a Ministerial role is created with clear and defined responsibilities for children and young people and which has a stated role of holding the Cabinet to account to deliver the provisions of the Rights of Children and Young Persons (Wales) Measure 2011.

89. We heard concerns of a lack of systematic training of the Welsh Ministers about their responsibilities under the Measure. We also note the Welsh Government's evidence which stated that "Ministers are aware of their duty to give balanced consideration to children's rights and the UNCRC" and that guidance on advising Ministers is available to officials, "including on their obligations related to giving due regard to the UNCRC as part of the policymaking process".⁹⁷ We welcome the Deputy Minister's openness to giving consideration to what might be appropriate and believe it is vital that any current or future Cabinet member undertake formal training in this regard.

Recommendation 3. That the Welsh Government insert provision in its revised Children's Rights Scheme for all Welsh Ministers to undertake initial and follow up training on the Rights of Children and Young Persons (Wales) Measure 2011's "due regard" duty.

⁹⁷ [Welsh Government evidence paper](#).

4. Tools to support the implementation of the Measure

The Rights of Children and Young Persons Measure embeds consideration of the UNCRC into Welsh law. The practical arrangements the Welsh Government has put in place to ensure children's rights are considered in the work it undertakes are outlined in its Children's Rights Scheme.⁹⁸ This Scheme sets out that the Child Rights Impact Assessment (CRIA) process is a key mechanism for delivering Ministerial duties on children's rights. However, our inquiry revealed a lack of confidence in the CRIA process and in the capacity of the Welsh Government to apply it effectively.

The Children's Rights Scheme

90. Section 2 of the Rights of Children and Young Persons (Wales) Measure 2011 requires the Welsh Government to make a Children's Rights Scheme.⁹⁹ The current version of the Scheme, which is its second iteration, was approved by the Senedd in 2014.¹⁰⁰

91. The Scheme sets out the arrangements in respect of:

- ensuring appropriate awareness raising and training is in place and actively promoted and taken up;
- putting a Children's Rights Impact Assessment process in place;
- setting out accountability and compliance mechanisms;
- providing information and guidance on how Welsh Ministers may be held to account for compliance with the "due regard" duty;

⁹⁸ [Children's Rights Scheme 2014](#).

⁹⁹ [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

¹⁰⁰ [Children's Rights Scheme 2014](#).

- ensuring that the Scheme is revised when necessary; and
- ensuring a clear understanding of roles and responsibility in relation to all of these elements.

Delay in the revised Children's Rights Scheme

92. Section 2 of the Measure allows Welsh Ministers to revise or remake the scheme at any time.

93. In this 2018 Compliance Report, the Welsh Government said that it was going to “consider and consult on revisions to the Children's Rights Scheme, and propose a revised Scheme for the Assembly's approval”.¹⁰¹ This was expected to be published by the end of 2018, but had not been released at the time we considered this report.

94. In August 2019, we were told by the Deputy Minister that the revised Children's Rights Scheme is likely to be published in spring 2020:

“My officials are currently working with the children's sector, including our expert stakeholder group, the Children's Rights Advisory Group (CRAG), on a refreshed document. We will discuss the latest draft of the Children's Rights Scheme at our next meeting with the CRAG on 11 September 2019. Following this meeting, we will move forward with a consultation process, including with children and young people with the aim of seeking agreement of the new Scheme in spring 2020.”¹⁰²

95. Referring to the delay in publication, the Children's Commissioner for Wales said:

“My team and I raised this at regular intervals with [Welsh Government] officials since then [2018], as unfortunately this work was not forthcoming.”¹⁰³

Developing the revised Scheme

96. The Welsh Government's evidence paper stated that it recognises the value of expert external advice and welcomes challenge from the sector. It cited its

¹⁰¹ [Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons \(Wales\) Measure 2011](#) - June 2015 – January 2018.

¹⁰² [Letter from the Deputy Minister for Health and Social Services](#), 23 August 2019.

¹⁰³ Written evidence, CRW 11 - Children's Commissioner for Wales.

Children's Rights Advisory Group (CRAG) as one of the mechanisms to help drive forward children's rights and indicated it is working closely with the CRAG to develop a revised version of the Scheme. The paper also stated that the Welsh Government is committed to taking a collaborative approach to ensure the new Scheme is as effective as possible.¹⁰⁴

97. The Children's Commissioner raised concerns about the process adopted for developing the revised Scheme. She highlighted that the revised draft was only shared days before the May 2019 CRAG meeting in which it was due to be considered:

"My office is a statutory consultee for any revisions to the Scheme; we were concerned to be given such short notice in which to respond before the scheme was planned to go out to public consultation. We were very disappointed to see that very few changes had been made in the revised draft, despite clear commitments within the 2018 Compliance Report."¹⁰⁵

98. In its evidence, the Wales UNCRC Monitoring Group emphasised the importance of the Children's Rights Scheme which it described as "the manual for operation of "due regard" duty across Government" but stated that it was in need of a refresh.¹⁰⁶ Referring to the delay in publication, the Group felt, on balance, that it was important for the consultation on the revised Scheme to be meaningful:

"[...] it was important that they [Welsh Government] got it [the revised Scheme] right in the first place before it was published, because I think the last thing we want to do is then providing comments on something that isn't fit for purpose. So, I think it's important that it is fit for purpose, and we wanted then to reflect that back to Welsh Government and say, 'Well, you've missed the target; let's get it right before it goes out there'."¹⁰⁷

99. This view was echoed by the EHRC¹⁰⁸ and the Children's Commissioner for Wales' evidence indicated that it was also the view of the CRAG. The Commissioner added that, as the current Scheme remains operational, she

¹⁰⁴ [Welsh Government evidence paper](#).

¹⁰⁵ Written evidence, CRW 11 - Children's Commissioner for Wales.

¹⁰⁶ CYPE Committee, RoP [para 82], 16 October 2019.

¹⁰⁷ CYPE Committee, RoP [para 82], 16 October 2019.

¹⁰⁸ CYPE Committee, RoP [para 290], 16 October 2019.

“would rather some delay in the revised scheme if that means the final result will be better for children’s rights work in Government”.¹⁰⁹

100. In respect of the delay, the Deputy Minister said:

“[...] on the children’s rights scheme, obviously, this is a very important document, and we are working very closely with the children’s rights advisory group to develop a new version of the children’s rights scheme. Obviously, it does take time to work collaboratively, but it is slower than we’d hoped; I’d have to acknowledge that.”¹¹⁰

Revisions to the Scheme in light of the United Nation’s recommendations

101. Section 2(4) of the Measure states:

“Welsh Ministers must, within six months of the Committee [United Nations Committee on the Rights of the Child] 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.”¹¹¹

102. The UN Committee last published its verdict on what progress has been made to deliver on children’s rights across the UK in 2016.¹¹²

103. The Children’s Commissioner for Wales’ evidence highlighted the statutory requirement in the Measure to “at least consider whether the Scheme requires revision” in light of the Concluding Observations.¹¹³ The Commissioner said:

“I am not aware of this ever having been done [...]”¹¹⁴

Our view

104. We are acutely aware of the importance of the practical tools to support the implementation of the Rights of Children and Young Persons (Wales) Measure

¹⁰⁹ Written evidence, CRW 11 - Children’s Commissioner for Wales.

¹¹⁰ CYPE Committee, RoP [para 104], 6 November 2019.

¹¹¹ Rights of Children and Young Persons (Wales) Measure 2011.

¹¹² United Nations Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 2016.

¹¹³ Written evidence, CRW 11 - Children’s Commissioner for Wales.

¹¹⁴ Written evidence, CRW 11 - Children’s Commissioner for Wales.

2011 to ensure that the Welsh Ministers comply with their duty to have “due regard” to the UNCRC.

105. As part of our inquiry there has been a clear message from stakeholders the Children’s Rights Scheme is in need of revision. This is on the grounds that external opinion on the effectiveness of the Scheme needs to be taken on board, and that commitments made by the Welsh Government in its last Compliance Report need to be delivered.

106. We were pleased to learn that the Welsh Government is now working closely with the CRAG on developing the revised Scheme. We also note stakeholders’ views on striking the right balance between getting the revised Scheme right, and the ongoing delay to its publication.

107. However, we are mindful that the work on developing a revised Scheme has been ongoing for almost two years. While we acknowledge there are arrangements in place with the continuation of the current Scheme, we believe the Welsh Government should publish a revised Scheme for consultation and agreement by the Senedd as a matter of priority. We note the anticipated timescales for publication in spring 2020. This work must be delivered at pace with no further delays, and must consider the UN Committee on the Rights of the Child’s 2016 Concluding Observations.

Child Rights Impact Assessments

108. A wide range of Welsh Government decisions will have some impact on children. Child Rights Impact Assessments (CRIAs) are used internationally to provide a systematic way of assessing how decisions can give effect to the UNCRC. The UN Committee has said:

“Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs

to be built into government at all levels and as early as possible in the development of policy.”¹¹⁵

109. The CRIA process is set out in the Children’s Rights Scheme as a tool to assist Welsh Ministers and officials in having “due regard” to the UNCRC. However, there is not a statutory duty to undertake a CRIA.

110. The Welsh Government’s CRIA process includes six key steps that are to be followed when considering the potential relevance and impact any decision may have on children and young people:



Source: Children’s Rights Scheme 2014.¹¹⁶

111. The Children’s Rights Scheme sets out the publication process for CRIAs:

- “All CRIAs undertaken on legislation will be published (including subordinate legislation which includes, for example, regulations made under primary legislation).
- For non-legislative decisions, all completed CRIAs will be listed on the Welsh Government’s website and will be made available upon request via a dedicated mailbox. However, individual Ministers may also choose to publish specific CRIAs.
- Ministers will consider how effective engagement with stakeholders can enhance the CRIA process. They will be encouraged to publish CRIAs along with any public consultation in order to seek feedback on the content and conclusions of the CRIA.”¹¹⁷

¹¹⁵ United Nations Committee on the Rights of the Child, [General Comment No.5 \(2003\)](#).

¹¹⁶ [Children’s Rights Scheme 2014](#).

¹¹⁷ [Children’s Rights Scheme 2014](#).

112. The Scheme describes the CRIA process as ranging from thinking about the impact of decisions on children in the course of day-to-day activity, through to the formal application of a structured impact assessment template accompanied by a record of the outcome and decisions. It goes on to say that if officials determine that a decision is relevant to and impacts on children and young people, they will apply the CRIA template.¹¹⁸

113. The Scheme says that within the CRIA template there are prompts to support officials in their analysis, to evidence that children's rights have been considered and that every opportunity has been taken to identify ways of realising the relevant rights before Ministers take decisions. The Scheme also states that the CRIA template is linked to all stages of Ministerial decision making and is applied across all departments.¹¹⁹

114. Issues which emerged in the evidence to this inquiry have confirmed concerns that this Committee itself has expressed during the Fifth Assembly, in particular during scrutiny of successive Welsh Government Draft Budgets. Issues of whether CRIsAs have been undertaken, their timing, their quality and ultimately what difference they have made are all things we have expressed concerns about previously.

The timing of Child Rights Impact Assessments

115. Concerns about when in the decision making process a CRIA is undertaken was an issue raised with us during this inquiry. This is also linked to the issue of CRIsAs being published and when. The lack of systematic publication means its less clear when in the process the CRIA was applied.

116. A 2017 UNICEF briefing, *Strengthening Child's Rights Impact Assessment in Wales*, stated:

“Practice has varied quite extensively to date – while we found many good examples of CRIA, we also found CRIA that were drafted too late in the policy development process, becoming one-off products drafted to record and communicate decisions rather than to inform them.”¹²⁰

¹¹⁸ [Children's Rights Scheme 2014](#).

¹¹⁹ [Children's Rights Scheme 2014](#).

¹²⁰ [UNICEF briefing](#) - Strengthening Child Rights Impact Assessment in Wales, 2017.

117. Barnardo's Cymru told us that whilst CRIAs have improved, the majority are largely a measure of regard to, and compliance with, articles of the UNCRC to support a decision rather than analysis of the effect of decision options.¹²¹

118. The EHRC told us:

"I think we need to shift away from this tick-box process exercise of impact assessments in and of themselves to more changing the culture of policy making, which some of the principles of the Well-being of Future Generations (Wales) Act 2015 do encourage in terms of integration with other legislation, involvement and long-term thinking. So, it's about that shift to different ways of policy making in and of itself, so it's not just about that bit of paper that you tick through. So, it's starting at the beginning and having a full engagement process all the way through."¹²²

119. The Children's Commissioner for Wales explained:

"[...] the practice of completing Child Rights Impact Assessments towards the end of the development phase, to reflect decisions already taken, is not uncommon and means that in reality rights are being fitted around the decisions rather than being used to drive policy development and intent."¹²³

120. The Children's Commissioner also told us that her office had responded to around 17 Welsh Government consultations in 2018-19:

"We ask every time for the CRIA. They're very often not being done, and, of course, we're only responding to the ones that have got a child element in them, or they're coming to us late [...] So, they're not there early enough, and sometimes we feel that they've been put together on request."¹²⁴

¹²¹ Written evidence, CRW 19 - Barnardo's Cymru.

¹²² CYPE Committee, RoP [para 301], 16 October 2019.

¹²³ Written evidence, CRW 11 - Children's Commissioner for Wales.

¹²⁴ CYPE Committee, RoP [para 403], 16 October 2019.

121. The Wales UNCRC Monitoring Group echoed these concerns, warning that “one of the issues is that not all CRIAs are done at the right time, not as early as possible, when they should be done”.¹²⁵

122. In oral evidence, the Deputy Minister was asked whether this was a picture she recognised and whether CRIAs are being used as a tool to justify decisions that have already been made. The Deputy Minister said:

“I can see that the paperwork might be the end of a process, whereas the discussions will have taken part during the process. Because I think it’s really important that we look on children’s rights and the CRIAs as being something that isn’t limited to one bit of paper at one stage, but it’s an ongoing process—something that goes on the whole time.”¹²⁶

The frequency of applying a Child Rights Impact Assessment

123. How often CRIAs are undertaken and to which decisions they should be applied was another issue raised with us.

124. In 2018, the EHRC report on the impact of the Measure found that:

“In the course of commenting on CRIA as an aspect of policy development, a number of stakeholders noted the failure to prescribe CRIA as a statutory requirement for all policy as a weakness of the Measure.”¹²⁷

125. The EHRC’s 2018 report stated that while the “introduction of CRIA has helped raise the profile of children’s rights in policy development in Wales”, the application of CRIAs in practice is “patchy and inconsistent”, sometimes “undermining the substantive application of the “due regard” duty”.¹²⁸

126. The Welsh Local Government Association also argued that while there is some evidence the “due regard” duty in the Measure has improved the visibility of

¹²⁵ CYPE Committee, RoP [para 61], 16 October 2019.

¹²⁶ CYPE Committee, RoP [para 76], 6 November 2019.

¹²⁷ **Equality and Human Rights Commission Report**, The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

¹²⁸ **Equality and Human Rights Commission Report**, The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

children and young people, “it is difficult to determine the extent to which the Measure has improved outcomes without the mandated publication of CRIAs”.¹²⁹

127. In written evidence, Hafal told us:

“[...] due regard is simply the starting point but too often this is treated as a tick box exercise and not part of a longer term more complex commitment in ensuring the rights of the child. In addition, due regard is inadequate and the impact upon children (especially the most vulnerable) found when the Measure is applied, is deemed lower in priority than economic benefits (amongst others - trade and industry being the biggest).”¹³⁰

128. We received evidence that highlighted the variability in the application of the CRIA process. For example the lack of a CRIA for budget-setting and some policy consultations was raised by the Welsh Local Government Association.¹³¹

129. The Children’s Commissioner for Wales’ Annual Report 2017-18 also stated that the Commissioner’s office requested CRIAs on the following budgetary decisions but these were not available: The School Uniform Grant; The Minority Ethnic Achievement Grant; and the All Wales Schools Liaison Programme.¹³²

130. Play Wales recommended in its evidence that CRIAs be consistently undertaken on all proposed policies, budgetary decisions and legislation likely to impact on children and young people.¹³³

CASE STUDY: Concerns about CRIAs not being applied to budgetary decisions

In October 2019, **Noah’s Ark Children’s Hospital for Wales** told us that the Rights of Children and Young Persons (Wales) Measure 2011 has not been used “to influence the culture of health research funding and delivery” and suggested that despite requesting a Child Rights Impact Assessment on a decision to

¹²⁹ Written evidence, CRW 24 - Welsh Local Government Association.

¹³⁰ Written evidence, CRW 18 - Hafal.

¹³¹ Written evidence, CRW 24 - Welsh Local Government Association.

¹³² Children’s Commissioner for Wales, **Annual Report and Accounts 2017-18**.

¹³³ Written evidence, CRW 10 - Play Wales.

change the funding model for health research, they have not been provided with one to date.¹³⁴

In oral evidence, representatives told us that “after several attempts over a period of a year, we have asked Welsh Government to apply a CRIA to review the activity-based funding mode. Perhaps because civil servants know we are giving evidence today, we recently received an e-mail to say that they will now apply CRIA to this process [...] We are waiting to see the evidence-”¹³⁵

In correspondence received in November 2019, Noah’s Ark Children’s Hospital for Wales confirmed they had not yet seen the CRIA for this policy change and expressed “serious concerns” that the changes to the funding model “will not lift paediatric clinical research Wales out of its poverty cycle” and “feel that it is vital that Welsh Government are able to “show us their workings”.”¹³⁶

Further correspondence received in January 2020 stated that “there is no evidence on the Welsh Government website to indicate that a CRIA has been undertaken into the review of the Activity Based Funding Model, or as part of the decision making regarding the significant amount of public funds that will be spent on the health and social care research infrastructure by the Welsh Government 2020-2025”.¹³⁷

131. Responding to the Committee’s questions about the CRIA process, a Welsh Government official told us:

“[...] in the same way with other impact assessments [...] we have to first of all look at and consider whether a full children’s rights impact assessment needs to be completed. And it could be that, in some cases, a decision has been taken that a full children’s rights impact [...] may not be needed in some cases. And therefore it’s not that the CRIA hasn’t been made available or that there is a lack of potential transparency; it could well be that, as part of that initial process, there is a clear decision that a children’s rights impact assessment may not be needed.”¹³⁸

¹³⁴ CYPE Committee, RoP [para 157], 16 October 2019.

¹³⁵ CYPE Committee, RoP [para 158], 16 October 2019.

¹³⁶ [Letter from Noah’s Ark Children’s Hospital for Wales](#) - 20 November 2019.

¹³⁷ [Letter from Noah’s Ark Children’s Hospital for Wales](#) – 8 January 2020.

¹³⁸ CYPE Committee, RoP [para 93], 6 November 2019.

Quality of the Impact Assessment process

132. The quality of CRIAs and to what extent they have therefore meaningfully influenced Welsh Government decisions is an issue that was raised in evidence.

133. The Children's Commissioner for Wales raised concerns about the depth of analysis undertaken in CRIAs.¹³⁹ The Commissioner said in written evidence that the lack of analysis of the options and mitigation of any negative consequences in the process makes for a flawed assessment:

“What I would prefer to see is acknowledgment of any negatives or deficiencies of a particular policy or decision at that point, but with clear mitigating actions and intentions to keep this situation under review [...]

It would be unlikely that any policy would solely have positive or neutral implications for the whole population, so by only mentioning positives it makes the assessment incomplete and potentially misleading in my view.”¹⁴⁰

134. The Children's Commissioner noted that Ministers are currently reliant on the conclusion of a CRIA as the primary way in which they exercise “due regard” and “should be concerned that the advice being provided to them may not be based on a full consideration of all the relevant issues as part of that broader analysis”.¹⁴¹

135. The Wales UNCRC Monitoring Group suggested that there should be an opportunity to revisit a CRIA in a year's time once the legislation or policy has been introduced:

“It [CRIA] should be a working document setting out, ‘This is what our intention is and this is what expectation is, in terms of policy and legislation.’ But, as we know, it doesn't always follow through in that way. So, there's an opportunity then to reflect on that and revisit the CRIA.”¹⁴²

¹³⁹ CYPE Committee, RoP [para 404], 16 October 2019.

¹⁴⁰ Written evidence, CRW 11 - Children's Commissioner for Wales.

¹⁴¹ Written evidence, CRW 11 - Children's Commissioner for Wales.

¹⁴² CYPE Committee, RoP [para 60], 16 October 2019.

136. The Welsh Government's evidence said:

"The CRIA clearly sets out the process which officials should follow to ensure compliance with the CRIA process of due regard and how to provide advice, which allows Ministers to give balanced consideration of issues, including how the articles of the UNCRC have been considered."¹⁴³

137. It went on to say that the CRIA process is relatively new and therefore it welcomed feedback on the CRIAs undertaken to date, adding:

"Our aim is to implement a proportionate approach that supports high quality CRIAs."¹⁴⁴

Engagement with stakeholders during the CRIA process

138. One avenue available to the Welsh Government to improve the quality of its CRIAs is to engage with relevant stakeholders and get their feedback. The Children's Rights Scheme states that:

"Within procedural guidance relating to the CRIA process, officials are encouraged to utilise the CRIA template as part of a consultative practice to engage with stakeholders."¹⁴⁵

139. The Children's Commissioner for Wales welcomed the fact that more recently the CRAG had been consulted by the Welsh Government in the developmental stages of some CRIA during the last year.¹⁴⁶

140. The Wales UNCRC Monitoring Group also said:

"[...] a number of us [members of the CRAG] have had an opportunity to engage with officials who are developing CRIAs at an early process, prior to their being published. So, I think two recent positive examples have been the CRIA on the abolition of reasonable punishment [...] That went into a great deal of detail in terms of international research evidence. You could tell that the person who had written it had engaged with the process, had engaged more widely and had really

¹⁴³ [Welsh Government evidence paper](#).

¹⁴⁴ [Welsh Government evidence paper](#).

¹⁴⁵ [Children's Rights Scheme 2014](#).

¹⁴⁶ Written evidence, CRW 11 - Children's Commissioner for Wales.

considered the whole CRIA process [...] More recently there is a consultation out on home education as well.”¹⁴⁷

141. However, Save the Children stated in evidence “that the CRIA process fails to directly engage with children and young people”.¹⁴⁸

142. The Observatory on Human Rights of Children referred to this in its evidence, where it cited the EHRC’s 2018 report which concluded that the CRIA process does not sufficiently engage with children. It noted that “this is both a failure in CRIA good practice, but also a breach of children’s rights under the UNCRC (Article 12¹⁴⁹)”.¹⁵⁰

CASE STUDY: CRIA best practice

The CRIA for the **Children (Abolition of the Defence of Reasonable Punishment) (Wales) Bill** was referred to in evidence more than once as a **good practice example**.

“The CRIA [...] was thoroughly undertaken and cross referenced to relevant research, and contained options to mitigate any potential negative impact identified.”¹⁵¹

“A positive example of a CRIA that has provided inclusion of analysis is that of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill [...]”¹⁵²

“That [CRIA] went into a great deal of detail in terms of international research evidence. You could tell that the person who had written it had engaged with the process, had engaged more widely and had really considered the whole CRIA process.”¹⁵³

¹⁴⁷ CYPE Committee, RoP [para 59-60], 16 October 2019.

¹⁴⁸ Written evidence, CRW 22 - Save the Children.

¹⁴⁹ Article 12 states that children have the right to say what they think should happen when adults are making decisions that affect them, and to have that opinions taken into account.

¹⁵⁰ Written evidence, CRW 04 - Observatory on Human Rights of Children.

¹⁵¹ Written evidence, CRW 11 - Children’s Commissioner for Wales.

¹⁵² Written evidence, CRW 19 - Barnardo’s Cymru.

¹⁵³ CYPE Committee, RoP [para 59-60], 16 October 2019.

A move to integrated impact assessments

143. The Observatory on Human Rights of Children noted in evidence that the Welsh Government intends to move to an integrated impact assessment (IIA) model. It indicated that along with other members of the CRAG, it has raised with the Welsh Government the need to maintain focus on CRIAs as part of IIAs. It welcomed CRIAs being retained as an aspect of IIAs, but reported concerns that the focus on children's rights will be diluted as part of the move.¹⁵⁴

144. The Children's Commissioner for Wales welcomed the new template that feeds into the IIA model as it asks the writer to set out both positive and negative impacts. However, the Commissioner suggested that "even with a new format, the CRIA that I have seen have not consistently followed it, so some have just asked broader questions about impact generally, rather than expressly considering positive and negative impact". The Commissioner added, "I feel a concluding section is still lacking however resulting in an incomplete assessment and advice to the Minister".¹⁵⁵

145. The Wales UNCRC Monitoring Group highlighted that the issues raised with regard to the application of CRIAs on all proposed policies, budgetary decisions and legislation likely to impact on children and young people also apply equally to the IIA model as it is being implemented.¹⁵⁶

146. We cover Strategic Integrated Impact Assessments in more detail in chapter five.

Publication of completed Children's Right's Impact Assessments

147. Linked to the timing of CRIAs within the decision making process, referred to earlier in this report, is the issue of if and when CRIAs are published.

148. In contrast to the statement in the Children's Rights Scheme that all CRIAs will either be published or available upon request (see para 111 above), the Wales UNCRC Monitoring Group confirmed in evidence that CRIAs are "not all being

¹⁵⁴ Written evidence, CRW 04 - Observatory on Human Rights of Children.

¹⁵⁵ Written evidence, CRW 11 - Children's Commissioner for Wales.

¹⁵⁶ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

routinely made available publicly".¹⁵⁷ The Group added that "there isn't a consistent process across the whole of Government" for publishing CRIAs.¹⁵⁸

149. While the Children's Commissioner for Wales recognised that the Welsh Government is compliant with the current Children's Rights Scheme, she referred to concerns that not publishing CRIAs on non-legislative policy decisions "is not driving the early completion" of CRIAs.¹⁵⁹

150. Gwent Community Psychology, Child and Family Psychology and Therapies Service at Aneurin Bevan University Health Board said:

"To be able to effectively hold the Welsh Government to account, and in the spirit of transparency, Child Rights Impact Assessments should be published as a matter of course, rather than be 'available upon request'".¹⁶⁰

151. The Wales UNCRC Monitoring Group recommended in its written evidence that CRIAs should be routinely made available to external stakeholders and for scrutiny by children and young people, as this would:

"[...] not only enhance accountability, by enabling external players, including children and young people to be better able to hold Ministers to account but also enable them to gain an enhanced understanding of why and how certain decisions had been made and how due regard had been fully taken into account."¹⁶¹

152. These views were echoed by Play Wales.¹⁶²

153. In November 2019, we wrote to the Welsh Government requesting a full list of current CRIAs as they were not listed on the website at that time.¹⁶³ The Deputy Minister replied in December 2019 with a link to a list of CRIAs published by the Welsh Government and said:

¹⁵⁷ CYPE Committee, RoP [para 61], 16 October 2019.

¹⁵⁸ CYPE Committee, RoP [para 66], 16 October 2019.

¹⁵⁹ CYPE Committee, RoP [para 406], 16 October 2019.

¹⁶⁰ Written evidence, CRW 25 - Gwent Community Psychology, Child and Family Psychology and Therapies Service, Aneurin Bevan University Health Board.

¹⁶¹ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

¹⁶² Written evidence, CRW 10 - Play Wales.

¹⁶³ [Letter to the Deputy Minister for Health and Social Services](#), 13 November 2019.

“[...] the Children’s Rights website has just been re-launched and I wanted to make sure that the relevant links to CRIAs were up and running before responding.”¹⁶⁴

Staffing capacity on children’s rights within the Welsh Government

154. Further to our views on support for Ministers to deliver their duties under the Measure, the issue of staff capacity within Welsh Government is also something that was raised with us. When the Measure was first in force a Measure Implementation Team (MIT) was created to reflect the need for specialist support across all portfolios.

155. The Children’s Rights Scheme states that officials can approach the MIT to assist in initial assessments.¹⁶⁵

156. Hoffman and Morse’s 2015 evaluation of the Welsh Government’s Child Rights Impact Assessment identified the MIT as a valuable resource to mitigate a general lack of awareness and appropriate knowledge of children’s rights amongst Welsh Government officials.¹⁶⁶

157. However, the Observatory on Human Rights of Children told us:

“We note changes in personnel engaged in the MIT since the 2015 study, with dissipation of expertise. We also note that the MIT appears to have lost its identity, and is no longer held out as a referral body for those working on CRIA within the Welsh Government. To some extent this is mitigated by the work of the Children’s Branch within Welsh Government, and the opportunity provided by the Children’s Rights Advisory Group (CRAG) to gain external insight into child rights issues that arise in relation to policy proposals.”¹⁶⁷

158. When asked whether there is sufficient capacity within the Welsh Government to support the implementation of the Measure, the Deputy Minister responded:

¹⁶⁴ [Letter from the Deputy Minister for Health and Social Services](#), 10 December 2019.

¹⁶⁵ [Children’s Rights Scheme 2014](#).

¹⁶⁶ [Evaluation of the Welsh Government’s Child Rights Impact Assessment procedure under the Children’s Rights Scheme pursuant to the Rights of Children and Young Persons \(Wales\) Measure 2011](#), 2015.

¹⁶⁷ Written evidence, CRW 04 - Observatory on Human Rights of Children.

“[...] I think it’s certainly true to say that there’s been a significant change in members of the team. That is, actually from the time that this started, there’s been a huge change in members. But I’m sure you’ll be pleased to hear that, this year, we have taken steps to increase the number of staff in the children’s rights team, to support the important work in this area.”¹⁶⁸

Training for officials on the Child Rights Impact Assessment process

159. Evidence highlighted that the 2018 Welsh Government Compliance Report identified “commissioning, coordinating and supporting training” as one function to support sufficient understanding of the UNCRC and the “due regard” requirements prescribed by the Measure. The Compliance Report stated that 648 officials across four departments have completed the online training during the period covered, a significantly lower number than in the previous period. Play Wales stated that training for officials is crucial, particularly those leading on the development of CRIA.¹⁶⁹

160. The Deputy Minister told us:

“We have done a significant level of training on developing the CRIsAs. Certainly we did that when the Measure was first introduced, and that has been supplemented regularly ever since.”¹⁷⁰

CASE STUDY: Concerns around officials’ capacity and its impact on the effectiveness of CRIsAs

While **Save the Children** acknowledged that the Welsh Government undertakes CRIsAs across a wide range of its policy areas, it has some concerns that due to a lack of training and expertise by officials, CRIsAs are not as effective as they could be. It stated that this view is supported by the Welsh Government’s 2015 Compliance Report which said that “limited knowledge and awareness of children’s rights amongst officials undertaking CRIA [is] a weakness in CRIA processes”.

¹⁶⁸ CYPE Committee, RoP [para 102], 6 November 2019.

¹⁶⁹ Written evidence, CRW 10 - Play Wales.

¹⁷⁰ CYPE Committee, RoP [para 77], 6 November 2019.

Save the Children said:

“We believe that this had led to some CRIAs not being adequate. For example, the CRIA drawn up for the Childcare Funding (Wales) Act was deeply flawed as it did not consider the effects of the policy on those children who were not eligible for the scheme; and therefore, did not meet the Welsh Government’s obligations under the UNCRC.”¹⁷¹

Our view

161. We are concerned about the many issues raised with us about the Child Rights Impact Assessment process and whether it is effective in making a reality of the aims behind the Measure.

162. We have heard strong evidence that CRIAs are not being applied consistently to policy, legislation and budgetary decisions. We also note the concerns raised that CRIAs have become a tick box exercise in some cases, to justify or communicate a decision already made. We are clear in our view that the CRIA process must be embedded in the development of any Welsh Government policy from the start, and not applied retrospectively.

163. We agree with the view that CRIAs are drafted far too late in the policy development process. In our view, this demonstrates clearly that children’s rights are not driving the Welsh Government’s decision-making as they should.

164. We acknowledge that the production of a CRIA is not statutory. However, we heard some evidence that CRIAs were not available on request, despite the requirement in the Children’s Rights Scheme for them to be available if they exist. Furthermore, we believe that there should be a right to challenge a decision not to undertake a CRIA.

Recommendation 4. That the Welsh Government include within the complaints mechanism in its revised Children’s Rights Scheme the right to challenge a decision not to undertake a Child Rights Impact Assessment on any area of policy development.

165. We welcome the positive engagement with stakeholders in the development of some more recent CRIAs. This approach is clearly leading to

¹⁷¹ Written evidence, CRW 22 - Save the Children.

better and more effective impact assessments, such as the CRIA for the Children (Abolition of the Defence of Reasonable Punishment) (Wales) Bill.

166. However, we would like to see more evidence of the Welsh Government engaging children and young people in the CRIA process, as the UNCRC is clear that the right of children to be heard and to influence decisions that affect them is paramount. We believe that the Welsh Government is not fulfilling its duty of “due regard” without this engagement.

167. We encourage the Welsh Government to use the CRIA process to ensure that all aspects of policy impact are carefully considered. We are persuaded by the evidence that consideration of negative consequences and associated mitigation is key to this process. It is not satisfactory that some CRIAs only summarise certain discussions that were successful and provide no indication of ideas that were not successful. We also see merit in revisiting CRIAs a year on from the introduction of the policy or legislation for reflection, as suggested by the Wales UNCRC Monitoring Group.

168. We have heard evidence that not all CRIAs are made available publicly and in a timely manner. The publication of all completed CRIAs is important for both accountability and transparency. We are aware that there have been some initial difficulties accessing CRIAs on the Welsh Government’s website, but welcome the recent efforts made to rectify this as part of a refresh of the Welsh Government’s children’s rights webpages. However, there still appears to be a lack of clarity around the numbers of CRIAs that have been completed and the impact assessments published to the website based upon the figures provided in evidence.¹⁷²

169. While CRIAs are a tool for policy development, they are also a tool for us and others to scrutinise the decisions made by the Welsh Government in respect of its “due regard” duty. We therefore consider that the Welsh Government needs to take immediate steps to improve the availability of CRIAs in order to provide confidence in the process. We believe that all CRIAs should be published as a matter of course, regardless of whether they are legislative or non-legislative decisions.

170. We also recognise the importance of the availability of CRIAs for children and young people. As highlighted by the Wales UNCRC Monitoring Group in evidence, the publication of CRIAs could help to support their understanding of outcomes

¹⁷² Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

and the decisions taken on matters that may affect them. This, in our view, strengthens the need for greater transparency around the process as a whole.

171. We are concerned about the reduction of staffing capacity and potential loss of expertise in the Welsh Government in relation to the application of children's rights, and the CRIA process in particular. We believe that some of the challenges surrounding the publication of CRIsAs illustrate these capacity issues. It is disappointing to note the decrease in the numbers of officials undertaking training on the development of CRIsAs over recent years, and the apparent impact this has had on some CRIsAs as a result.

172. We welcome the steps the Welsh Government has taken to increase staffing numbers and the knowledge levels of Government officials. This must be monitored in order to maintain these levels in future.

Recommendation 5. That the Welsh Government publish all completed Child Rights Impact Assessments, including on non-legislative policy decisions, as a matter of course.

5. The influence of children's rights on Government spending

Whilst the UNCRC is clear that governments must work to the limits of their available resources to ensure that children's rights are embedded in all decisions, there are clear concerns that the rights of children are not featuring meaningfully in the Welsh Government's spending plans.

173. The Rights of Children and Young Persons (Wales) Measure 2011 means that the Welsh Government should make sure the legislation, policies and decisions it makes which impact on children – including financial decisions – comply with their human rights in line with the UNCRC.

174. Article 4 of the UNCRC says:

“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 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.”¹⁷³

175. Whilst there were many examples where children's rights had not been perceived to influence the Welsh Government's spending decisions, Hywel Dda University Health Board said that the Welsh Government, in keeping with the aims of Article 4 of the UNCRC, has invested in early years services through the Flying Start programme to seek to mitigate the impact of poverty in areas of deprivation.¹⁷⁴ Overall we heard that significant questions exist about the extent to which resources are being allocated in a way that delivers on the requirements of Article 4 in a systematic way. At the very least we heard this is not done in a transparent way.

176. A specific concern was the lack of CRIsAs being published in respect of successive Welsh Government Draft Budgets. In recent years there has been a

¹⁷³ [United Nations Convention on the Rights of the Child](#).

¹⁷⁴ Written evidence, CRW 06 - Hywel Dda University Health Board.

move towards publishing integrated impact assessments. Whether these integrated assessments adequately evidence compliance with the Measure is a concern raised with us during this inquiry.

CASE STUDY: Lack of spend on chaplaincy services for children of other faiths and beliefs

Article 14 of the UNCRC says that States Parties shall respect the right of the child to freedom of thought, conscience and religion. It also states that freedom to manifest 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.¹⁷⁵

Within this context, disappointment that the Welsh NHS does not recognise the need for wider spiritual care for children with beliefs that fall outside of those covered by traditional chaplaincy teams was expressed by **Humanists Wales**.

The evidence stated that “an annual spend of £1.2m across NHS Wales on Christian chaplaincy [...] does not cater effectively for those of other faiths or beliefs”.¹⁷⁶

The Welsh Government’s budget setting processes

177. Evidence from the Children’s Commissioner for Wales outlined her concerns at the lack of consideration for children’s rights as a matter of course in the budget setting process. The Commissioner said this has resulted in:

“[...] decisions to cut certain budget lines without a real understanding of what that budget provided and its benefit to children, or consideration about whether any budget lines crossover or leave gaps where one department assumes that another will be dealing with that provision.”¹⁷⁷

178. Referring to the findings of the EHRC’s 2018 report, the omission of a specific CRIA on the Welsh Government Draft Budget 2017-18 was highlighted in the Wales UNCRC Monitoring Group’s written submission.¹⁷⁸ In oral evidence, the

¹⁷⁵ [United Nations Convention on the Rights of the Child.](#)

¹⁷⁶ Written evidence, CRW 08 - Wales Humanists.

¹⁷⁷ Written evidence, CRW 11 - Children’s Commissioner for Wales.

¹⁷⁸ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

Group stated that “there needs to be a full impact assessment done against the budget”.¹⁷⁹ It also said:

“The UN committee has been very vocal on this, and provided general comment 19 on public budgeting to help states be more transparent in their budgets, because, whilst we’re seeing CRIAs against particular policy development, we haven’t got that holistic flavour of what’s being spent on children and what the impact is, where are potential cuts being made, or where there’s money moved from one pot to the other. It’s very difficult for us outside of Government to get a full flavour of what the impact of this is going to be on children’s expenditure.”¹⁸⁰

179. The omission of a specific CRIA on the budget process was also noted by the EHRC, who understood that instead, a Strategic Integrated Impact Assessment (SIIA) was prepared which includes reference to a number of objectives, including children’s rights. It said:

“In its General Comment on the General Measures of Implementation, the UN Committee has clearly stated that governments cannot tell whether they are fulfilling children’s economic, social and cultural rights, which are included in the Convention, to the maximum extent of available resources, as Article 4 of the Convention requires, unless they can ‘identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly’.”¹⁸¹

180. Save the Children told us:

“[...] our belief is that the full potential of the Measure is yet to be realised as children’s rights are not embedded across all areas of Government activity for example the failure to apply a CRIA to the Welsh Government budget meant that the Welsh Government failed to comply with its own Child Rights Scheme.”¹⁸²

¹⁷⁹ CYPE Committee, RoP [para 41], 16 October 2019.

¹⁸⁰ CYPE Committee, RoP [para 41], 16 October 2019.

¹⁸¹ Written evidence, CRW 25 - Equality and Human Rights Commission.

¹⁸² Written evidence, CRW 22 - Save the Children.

CASE STUDY: Lack of “due regard” for budgetary decisions

The Children’s Commissioner for Wales raised concerns about the lack of consideration of children’s rights in a number of Welsh Government budget decisions.

“Examples of this include school uniform grants and funding for disadvantaged learners, and money for the All Wales School Liaison Core Programme (SchoolBeat) provided in conjunction with the Police. Whilst I am pleased that those decisions were able to be overturned through the influence of my office and this Committee, as well as others, a detailed CRIA would have been able to identify these crossover areas before the budget decisions had been published.”¹⁸³

181. In March 2019, along with the Equality, Local Government and Communities Committee and the Finance Committee, we published a joint Report into *Assessing the impact of budget decisions*.¹⁸⁴ In it we recommended that the Welsh Government should prioritise working with the Children’s Commissioner for Wales and the EHRC to ensure that the legislative requirements in relation to equality and children’s rights are fully and effectively reflected in the assessment process that surrounds the budget. The Welsh Government accepted the recommendation and “recognised that there is further work to be done”.¹⁸⁵

CASE STUDY: Analysis of child poverty as part of the budget setting process

The Children’s Commissioner for Wales highlighted in evidence the New Zealand Government’s 2019 Child Poverty Report - The Wellbeing Budget.¹⁸⁶

It was suggested that this analysis of how the budget may affect child poverty is an example of best practice.

¹⁸³ Written evidence, CRW 11 - Children’s Commissioner for Wales.

¹⁸⁴ Children, Young People and Education Committee; Equality, Local Government and Communities Committee; and the Finance Committee [Report on Assessing the impact of budget decisions](#), March 2019.

¹⁸⁵ [Welsh Government response](#).

¹⁸⁶ New Zealand Government [Child Poverty Report - The Wellbeing Budget](#), May 2019.

The Children's Commissioner said:

"They have actually done the kind of analysis we'd be looking for from the budget, which is really looking at all aspects of the budget and any impact that may have on children's poverty."¹⁸⁷

Spending on children's rights in health

182. Some of the 26 written submissions we received as part of this inquiry pointed to the Measure's impact on specific policy areas, the most prominent being children's health.¹⁸⁸

183. The UNCRC includes a range of articles relevant to children's health. For example, Article 6 says that States Parties "must recognize that every child has the inherent right to life" and "shall ensure to the maximum extent possible the survival and development of the child".¹⁸⁹

184. Article 24 of the UNCRC is the most detailed in respect of health. It says:

"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."¹⁹⁰

CASE STUDY: Transparency of spending on children's health

Noah's Ark Children's Hospital for Wales told us that under Article 4 of the UNCRC, the Welsh Government has a clear obligation to demonstrate whether it is fulfilling children's rights to health to the maximum extent of available resources. It stated that transparent evidence on spending on children in relation to health research is an essential tool in both meeting this obligation

¹⁸⁷ CYPE Committee, RoP [para 383], 16 October 2019.

¹⁸⁸ Written evidence, CRW 05 - Public Services Ombudsman for Wales, CRW 06 - Hywel Dda University Health Board, CRW 15 - Epilepsy Action, CRW 17 - Noah's Ark Children's Hospital for Wales, CRW 18 - Hafal, CRW 20 - Llandaff Church Schools: The Bishop of Llandaff High School, Llandaff City Church in Wales Primary School and the Cathedral School, Llandaff, CRW 21 - Aneurin Bevan University Health Board.

¹⁸⁹ [United Nations Convention on the Rights of the Child.](#)

¹⁹⁰ [United Nations Convention on the Rights of the Child.](#)

and evidencing how planned spending and cuts are impacting on the outcomes for children and young people in the enjoyment of their rights.¹⁹¹

Representatives told us “we don’t have an early cancer medicines unit” for children in South Wales.¹⁹² Whilst conversely we do have three such centres for adults: Velindre, Cardiff and Swansea.¹⁹³

Noah’s Ark representatives also expressed concerns about a lack of transparent spending on children’s health and said that although requested, “the figure for what is currently spent by Welsh Government on paediatric research is not forthcoming, so the lack of transparency in public expenditure on paediatric research means that it’s currently not possible to tell, without more detailed analysis, whether the Welsh Government is using sufficient levels of expenditure to fulfil children’s rights to the highest attainable standard of health”.¹⁹⁴

In response, the **Deputy Minister for Health and Social Services** said:

“Health and Care Research Wales will be making increased investments in children’s research in its 2020-25 infrastructure funding through research centres [...] And I understand that a new set of recommendations are expected to be submitted to Welsh Government in November that propose bringing in a more responsive and agile approach to distributing research delivery funding, particularly for children.”¹⁹⁵

In later correspondence, **Noah’s Ark Children’s Hospital for Wales** suggested that while it acknowledges the funding for these research centres, it does not address the infrastructure gaps in clinical paediatric research. Noah’s Ark called for sight of the CRIA that was completed as part of the infrastructure change process.¹⁹⁶

Further correspondence received in January 2020 stated “we still have not been able to access evidence on the Welsh Government’s overall spending on clinical paediatric research support and delivery”.¹⁹⁷

¹⁹¹ Written evidence, CRW 17 - Noah’s Ark Children’s Hospital for Wales..

¹⁹² CYPE Committee, RoP [para 202], 16 October 2019.

¹⁹³ CYPE Committee, RoP [para 210], 16 October 2019.

¹⁹⁴ CYPE Committee, RoP [para 215], 16 October 2019.

¹⁹⁵ CYPE Committee, RoP [para 60], 6 November 2019.

¹⁹⁶ [Letter from Noah’s Ark Children’s Hospital for Wales](#) - 20 November 2019.

¹⁹⁷ [Letter from Noah’s Ark Children’s Hospital for Wales](#) - 8 January 2020.

Welsh Government Draft Budget 2020-21

185. Looking ahead to the scrutiny of the Welsh Government's Draft Budget 2020-21, the Welsh Government told us:

"This year's Budget preparations have been shaped by our eight cross-cutting priority areas of early years, social care, housing, skills and employability, better mental health, decarbonisation, poverty and biodiversity.

Each of these areas has been led by a Minister – who has no direct portfolio responsibility for the immediate priority area – to work across government to ensure that we are maximising all the work that we do across different departments, with the resources we will have available to us in the 2020-21 Budget."¹⁹⁸

186. The Children's Commissioner for Wales described this approach as a "step forward".¹⁹⁹ However, the Commissioner raised uncertainties around whether any particular Minister "is specifically championing children's rights across the budget".²⁰⁰

187. In oral evidence, we asked the Deputy Minister how "due regard" to children's rights was forming part of the Cabinet discussions about allocations in the Draft Budget 2020-21, including any consequential funding that may be available from UK budget decisions. The Deputy Minister responded:

"An integrated assessment enables us to understand the impact of decisions on different groups of people and how they affect different issues. So, we have to look at how these decisions affect children[...]

Individual policy teams, in preparing for the budget and in coming forward with proposals, look at whether we need an impact assessment. It's part of a process, and it helps to inform decision making. So, that is already happening right throughout the Welsh Government, before we reach the stage where the decisions are made about how the budget allocations are made."²⁰¹

¹⁹⁸ [Welsh Government evidence paper](#).

¹⁹⁹ CYPE Committee, RoP [para 382], 16 October 2019.

²⁰⁰ CYPE Committee, RoP [para 385], 16 October 2019.

²⁰¹ CYPE Committee, RoP [para 31-32], 6 November 2019.

188. In terms of consequential funding, the Deputy Minister told us:

“If the consequentials come, as you know, they’re not designated to any particular area—it’s up to us here in Wales how that money is spent. And then we are in the process, which I think people have already described, where children’s rights are embedded.”²⁰²

Our view

189. We note the range of evidence received with regard to the influence of children’s rights on the Welsh Government’s spending and its impact on children in Wales.

190. Within this context we also note detailed cases provided to highlight issues around the lack of transparent spending on children’s health and research and the significance of its impact on the life chances of some of the most seriously ill children in Wales.

191. The evidence we have heard reinforces our belief that the CRIA process needs to be more transparent and accountable so it can act as both a scrutiny mechanism and as a support tool for the Welsh Ministers to exercise their “due regard” duty.

192. We remain concerned that the Measure is not fully embedded across Government, evidenced by the apparent lack of a strategic overview of how the Government’s budget is advancing children’s rights. It is our view that there is an insufficient focus on children’s rights in the Welsh Government’s budget setting processes, a view we have expressed repeatedly in our annual scrutiny of the Welsh Government Draft Budgets.

193. We note the approach being taken by the Welsh Ministers with regard to the Welsh Government’s Budget for 2020-21. However, we agree with concerns raised by the Children’s Commissioner that there is uncertainty around which Minister will advocate children’s rights as part of this approach. This uncertainty reinforces our earlier concerns around a need for a stated role within the Cabinet to ensure that children’s rights are a collective responsibility.

²⁰² CYPE Committee, RoP [para 54], 6 November 2019.

194. Although the Welsh Government accepted the recommendation made in our joint Report on *Assessing the impact of budget decisions*²⁰³ to ensure the legislative requirements in relation to equality and children's rights are fully reflected in the SIIA process, it also said that taking "an integrated approach allows us to consider strategic spending decisions through a number of lenses to understand their impact".²⁰⁴ We have concerns that children's rights are at risk of being diluted within this process. We note that the Welsh Government committed to continue to reflect on its approach to the SIIA in future budget rounds. We urge the Welsh Government to undertake this work and encourage the Welsh Ministers to work with stakeholders to further develop this approach.²⁰⁵

195. The way governments allocate funding is one of the most powerful tools they have and some of the most significant decisions they make. This Committee has consistently questioned whether the requirements of the Measure are being delivered in relation to Welsh Government spending across its portfolios. These concerns remain.

196. It is disappointing that the Welsh Government's recently published Budget Improvement Plan,²⁰⁶ which outlines its "vision, including short-term and medium-term ambitions over the next 5 years", does not refer to the requirements of the Measure, to children and young people, or to the UNCRC. We note that it does reference the Well-being of Future Generations (Wales) Act but not the Measure. That this is the case after the recommendations of the joint Report we published last year is particularly frustrating and unsatisfactory.

Recommendation 6. That the Welsh Government restate its commitment to ensuring that the legislative requirements in relation to children's rights are fully and effectively reflected in its financial decisions across all portfolios by swiftly amending its Budget Improvement Plan to make clear the specific steps the Welsh Government is taking to ensure it is complying with the "due regard" duty in the Rights of Children and Young Persons (Wales) Measure 2011.

²⁰³ Children, Young People and Education Committee; Equality, Local Government and Communities Committee; and the Finance Committee [Report on Assessing the impact of budget decisions](#), March 2019.

²⁰⁴ [Welsh Government response](#).

²⁰⁵ [Welsh Government response](#).

²⁰⁶ Welsh Government, [Budget Improvement Plan](#), December 2019.

197. As stated in our January 2020 Report on *Scrutiny of the Welsh Government Draft Budget 2020-2021*,²⁰⁷ whilst we have heard the Government's explanation about the move to publishing integrated impact assessments we are not convinced that as currently drafted these evidence compliance with the Measure. Whilst it may be a presentational issue, they do not give us confidence that Draft Budgets are being developed in a way which has explicitly considered "due regard".

198. On this basis we recommended that, until we can be reassured that the Welsh Government's duty of "due regard" to the UNCRC has been clearly taken into account as part of the SIIA, it should return to publishing an individual CRIA on its Draft Budget to evidence compliance with the Measure. We are disappointed that the Welsh Government has rejected this recommendation in its response²⁰⁸ to our Report on *Scrutiny of the Welsh Government Draft Budget 2020-2021*. This Committee, along with our predecessor, has continually stated our concern that there is an insufficient focus on children's rights within the budget setting process. This remains our view.

Recommendation 7. That the Welsh Government return to publishing an individual Child Rights Impact Assessment on its Draft Budget to evidence compliance with the Rights of Children and Young Persons (Wales) Measure 2011, until this Committee can be reassured that the Strategic Integrated Impact Assessment accompanying a Draft Budget demonstrates the duty of "due regard" to the United Nations Convention on the Rights of the Child has been exercised.

²⁰⁷ Children, Young People and Education Committee, [Scrutiny of the Welsh Government Draft Budget 2020-2021](#), January 2020.

²⁰⁸ Welsh Government, [Response to the recommendations from the Children, Young People and Education Committee Report: Scrutiny of the Welsh Government's Draft Budget 2020-21](#), February 2020.

6. Knowledge of children's rights

In light of the thirtieth anniversary of the UNCRC being open for signatories, the Welsh Government is updating its children's rights resources.²⁰⁹ Article 42 of the UNCRC states that governments should “undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike”.²¹⁰ This duty is reflected in section 5 of the Measure. However, we have heard that gaps remain in children's and adults' knowledge of children's rights.

199. Section 5 of the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Ministers to take appropriate steps to promote knowledge and understanding amongst the public (including children) of the Convention and its Optional Protocols.²¹¹

200. The Welsh Government's Children's Rights Scheme says:

“Welsh Government believes that promoting knowledge and understanding of the UNCRC is critically important in enabling the public, and in particular children and young people and the professionals who work with them, to understand when an issue which affects them relates to the application of the due regard duty.

It is also important to raise awareness of the mechanisms available to children and young people which can support them in understanding the purpose of the Measure and challenging or questioning the application of the due regard duty.

Ministers will seek to ensure that professionals who work with children and young people are aware of the Measure so that they will be able to

²⁰⁹ [Welsh Government evidence paper](#).

²¹⁰ [The United Nations Convention on the Rights of the Child](#).

²¹¹ [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

appropriately advise children and young people and support them if required.”²¹²

Informing children and young people

201. Children and young people cannot claim their rights if they do not know what they are. Similarly adults cannot deliver the obligations of the Measure without an understanding of the duties within it.

202. The Wales UNCRC Monitoring Group spoke of the importance of section 5 of the Measure:

“[...] if we are going to embed UNCRC as part of our culture in Wales, people need to know about it and people need to understand the convention. So, I think it’s really important that we increase knowledge of the convention, but that’s only part of the process. We need to be able to increase understanding and then move towards where we’re empowering young people to advocate on their own behalf or with others to defend their rights.”²¹³

203. The Group suggested that the extent to which activities to date have directly achieved their intended aim of increasing knowledge of the UNCRC is difficult to gauge, given that no comprehensive survey of the whole population has been carried out.²¹⁴

204. In contrast, the Children’s Commissioner for Wales’ evidence pointed to the 2017-18 National Survey for Wales which asked participants whether they had heard of and what they understood about the UNCRC:

- “13% said they had heard of it and that they had a fair idea of the rights it involves;
- 21% had heard of it but were not sure what rights it involves; and
- 65% had not heard of it.”²¹⁵

²¹² Children’s Rights Scheme 2014.

²¹³ CYPE Committee, RoP [para 112-113], 16 October 2019.

²¹⁴ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

²¹⁵ Written evidence, CRW 11 - Children’s Commissioner for Wales.

205. Through our own consultation, two thirds of the 866 young people who submitted their views to our 'Meeting in a Box' survey had heard of "children's rights". However, only a third had heard of the UNCRC.²¹⁶

206. Feedback from one group facilitator said:

"8 young people said the session was the first time they had heard of their rights."²¹⁷

207. Another facilitator referred to the young people saying:

"This was their first time learning about their rights so they had no concept of improvement."²¹⁸

208. One of the young people told us:

"I didn't understand rights when I was in year one but when I went up to juniors we talked more about them. Being older helps you understand the rights more."²¹⁹

209. The Wales UNCRC Monitoring Group told us the EHRC's 2018 report indicated, in respect of children, that accessing knowledge about the UNCRC is largely dependent on whether or not they are involved in any formal engagement structures and mechanisms.²²⁰ This view was supported in evidence from Clybiau Plant Cymru Kids' Clubs.²²¹

210. Hafal told us:

"We know there are some excellent examples of such work with the Youth Parliament, the Wales Observatory, and engagement with Children in Wales but this is not uniform to all Children and Young

²¹⁶ Meeting in a Box - Engagement summary.

²¹⁷ Meeting in a Box - Engagement summary.

²¹⁸ Meeting in a Box - Engagement summary.

²¹⁹ Meeting in a Box - Engagement summary.

²²⁰ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

²²¹ Written evidence, CRW 12 - Clybiau Plant Cymru Kids' Clubs.

People and relies on specialist organisations rather than being seen as driven by Welsh Government. This also tends to be represented by CYP who are already positioned to act in this way and there needs much greater work for those CYP who are so disadvantaged that they would not be currently able to participate.”²²²

CASE STUDY: Lleisiau Bach/Little Voices working to increase the application of children’s rights in their work

As part of this inquiry, we worked in partnership with Lleisiau Bach/Little Voices to talk with primary school aged children. We wanted to hear directly from them how children’s rights are helping their lives and what more could be done.

The National Lottery Community-funded projects at Swansea and Bangor Universities uses the UNCRC to underpin their work with empowering “children as researchers”.

In successive projects over ten years the Lleisiau Bach/Little Voices team have been supporting children as researchers in communities throughout Wales.

The team has developed ways of enabling children to explore and choose their own issues and engage, on a basis of mutuality as citizens, with adult decision-makers to bring about change.²²³

211. Barnardo’s Cymru reported the results of a small internal survey undertaken with its staff that showed just over 80 per cent were unaware of opportunities for children and families to learn about the UNCRC. Its participants recognised that some schools, advocacy services and the Children’s Commissioner were resources that could help raise awareness/understanding of children’s rights. It recognised “that the government has made considerable effort in providing resources to progress this”. However, it said that education and awareness “should continue and increase in reach”.²²⁴

212. In written evidence, the Children’s Commissioner for Wales said:

²²² Written evidence, CRW 18 - Hafal.

²²³ Lleisiau Bach/Little Voices – Children’s Voices Being Heard.

²²⁴ Written evidence, CRW 19 - Barnardo’s Cymru.

“The Government are required to make the UNCRC accessible and well known across Wales. This is something I also do as a matter of course throughout my work, but it remains a duty of Ministers to do so too.

[...] There used to be a small advisory group alongside the Children’s Rights Advisory Group (CRAG) which specifically covered the Article 42 work; this is no longer meeting. My office has suggested that it should be reconvened at various times to support the development of a comprehensive communications strategy, but this suggestion has not been taken up.”²²⁵

213. The Office of Police and Crime Commissioner Gwent suggested that there is room to promote the Measure and its benefits for children and young people more widely to the public:

“One of the most effective initiatives for embedding the principles of UNCRC, which currently exists in many schools across Gwent is the Right’s Respecting School programme delivered through UNICEF. This initiative uses a whole school approach to embedding [sic] the principles of UNCRC. Through observations and feedback, this is one of the examples of an effective UNCRC approach across the region.”²²⁶

214. The EHRC reported that as part of its research, the young people who participated in its workshops believed that there is a need for greater awareness raising of children’s rights through mainstream information, not just through school councils or youth forums.²²⁷

215. The Wales UNCRC Monitoring Group told us that the Welsh Ministers should “consider developing a national strategy for promoting knowledge and understanding of the Convention”.²²⁸ This was echoed by Save the Children.²²⁹

216. The Children’s Commissioner noted the recent investment by the Welsh Government into a new communications plan to support the thirtieth anniversary of the UNCRC being open for signatories. The Commissioner said:

²²⁵ Written evidence, CRW 11 - Children’s Commissioner for Wales.

²²⁶ Written evidence, CRW 16 - Office of Police and Crime Commissioner Gwent..

²²⁷ Written evidence, CRW 26 - Equality and Human Rights Commission.

²²⁸ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

²²⁹ Written evidence, CRW 22 - Save the Children.

“This work has seen Government draw key partners to support the work, including my office. I have been pleased with this approach and the investment and will be encouraging the Government to continue with this way of working to ensure momentum is not lost.”²³⁰

217. The Deputy Minister told us:

“We are doing what we can to promote children’s rights, and, as this is the thirtieth anniversary of the United Nations Convention on the Rights of the Child, we are making a particular effort to promote a knowledge and awareness of children’s rights this year.”²³¹

218. When asked about the possibility of a national awareness-raising strategy, the Deputy Minister said:

“[...] we are working in close partnership with experts in communication to try to look at what longer-term promotion we can do to reach children [...] But I think one of the keys to this is working with children to find out how we reach children generally, and, certainly, we are considering how we can do that.”²³²

The Convention and the curriculum

219. The Wales UNCRC Monitoring Group suggested that knowledge about the UNCRC is largely dependent on which school a pupil attends.²³³

220. A session leader who participated in our ‘Meeting in a Box’ survey said that schools are still not promoting children rights resulting in not as many young people knowing about them.²³⁴

221. Other comments included young people calling for the need to:

²³⁰ Written evidence, CRW 11 - Children’s Commissioner for Wales.

²³¹ CYPE Committee, RoP [para 125], 6 November 2019.

²³² CYPE Committee, RoP [para 139], 6 November 2019.

²³³ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

²³⁴ [Meeting in a Box – Engagement summary](#).

“Encourage rights in school.”²³⁵

“Rights should be a set subject in school.”²³⁶

222. The Welsh Government set out its plans for education reform which included publishing a new draft curriculum in April 2019. We heard from the Children’s Commissioner for Wales that unless every child throughout their schooling learns about their rights, then levels of awareness will fail to rise:

“An important next step Government could take to implement children’s rights is to make sure that, as we revise the new curriculum and put through the curriculum and assessment Bill, not only do we absolutely nail the fact that children will learn about their human rights and the rights of others—all human rights—but they will also learn in environments where their human rights are respected.”²³⁷

“Our pupils felt that the Welsh Government should make it compulsory for all schools to be rights respecting school [sic] and the teaching of rights should be in the curriculum.” - Comment from a ‘Meeting in a Box’ session leader.”²³⁸

223. Evidence from the EHRC supported this view. It suggested that the reform of the national curriculum in Wales offers an opportunity for the Welsh Government to fulfil its international and domestic obligations by fully implementing human rights education in schools.²³⁹

224. The published draft indicated that Wales’ curriculum would be structured around four core purposes and six Areas of Learning and Experience (AoLEs) rather than individual subjects. A number of submissions²⁴⁰ welcomed the inclusion of human rights education within the Draft Curriculum under the purpose which aims to develop children and young people as “ethical, informed citizens who are ready to be citizens of Wales and the world” and the Humanities

²³⁵ Meeting in a Box – Engagement summary.

²³⁶ Meeting in a Box – Engagement summary.

²³⁷ CYPE Committee, RoP [para 431], 16 October 2019.

²³⁸ Meeting in a Box – Engagement summary.

²³⁹ Written evidence, CRW 26 - Equality and Human Rights Commission.

²⁴⁰ Written evidence, CRW 08 - Wales Humanists, CRW 09 - Estyn.

AoLE. The Welsh Government subsequently published the final version of the *Curriculum for Wales 2022*²⁴¹ in January 2020, which confirmed the inclusion in the statutory guidance of opportunities to learn about human rights and the UNCRC.

225. Save the Children told us it:

“[...] believes that the Welsh Government must ensure that sufficient educational resources are available to schools to meet their requirements in the draft curriculum. We also believe that the Welsh Government should ensure that training is available for educators to ensure that the school’s workforce is adequately skilled to meet schools’ requirements under the new curriculum.”²⁴²

226. However, the Children’s Commissioner for Wales stated that including “a “due regard” duty in the curriculum legislation would be a highly effective mechanism to support the Welsh Government to raise awareness and understanding, and to meet its responsibility for requiring full compliance with the Convention”.²⁴³

Home educated children

227. During the course of this inquiry, how children who do not attend mainstream education will learn about their rights was raised.

228. In Wales, as in the rest of the UK, it is mandatory for a child to receive a suitable education, but this does not necessarily have to be in school.

229. In recent years the Children’s Commissioner for Wales has called on the Welsh Government to “ensure that children educated at home are not invisible and that they receive all of their human rights”²⁴⁴ and has expressed frustration at the pace of progress with this.²⁴⁵ However, the Commissioner stated that the recently published draft guidance demonstrated “a big shift” towards meeting her expectations in terms of children’s rights.²⁴⁶

²⁴¹ [Curriculum for Wales 2022](#).

²⁴² Written evidence, CRW 22 – Save the Children.

²⁴³ Written evidence, CRW 11 - Children’s Commissioner for Wales.

²⁴⁴ Children’s Commissioner for Wales, [Annual Report and Accounts 2018-19](#).

²⁴⁵ CYPE Committee, RoP [para 20], 22 November 2018.

²⁴⁶ CYPE Committee, RoP [para 203], 6 November 2019.

230. We asked the Wales UNCRC Monitoring Group how children who are educated at home should be made aware of their rights. The Group told us:

“There needs to be more public awareness—a public awareness campaign around what does a human rights approach look like. That educates professionals, educates grandparents, everybody—the whole population. So, regardless of who’s caring for children, and their circumstances, in terms of their education status, everyone has a broad understanding of the position and the priority given to human rights in Wales.”²⁴⁷

Applying rights in reality

231. We heard some evidence that suggested while many children are aware of children’s rights and have heard of the UNCRC, a lot of young people do not understand how their rights apply in reality.

“The group felt that generally there was a lack of information available to them about their rights in any tangible sense [...]” - Comment from a ‘Meeting in a Box’ session leader.²⁴⁸

232. ProMo-Cymru’s written evidence said:

“School age / attending Children and Young People (CYP) are relatively familiar and conversant with the UNCRC, the 42 articles. A significant gap emerges however, between this and their understanding of how the UNCRC impacts on their personal and individual reality.”²⁴⁹

233. EHRC representatives told us that there is “a disconnect from practical application for children”.²⁵⁰ Its evidence pointed to levels of understanding among young people who participated in its research workshops:

“Although the young people were able to talk about some of their experiences of accessing their rights [...] they did not link this with Welsh Government and the Children’s Rights Measure. However, at the end of the workshop, when they could see the connections, they felt

²⁴⁷ CYPE Committee, RoP [para 118], 16 October 2019.

²⁴⁸ [Meeting in a Box – Engagement summary](#).

²⁴⁹ Written evidence, CRW 23 -Pro-Mo Cymru.

²⁵⁰ CYPE Committee, RoP [para 318], 16 October 2019.

more empowered as they could understand that they had a right in Welsh law to access their rights, which was more impactful than only linking it back to the UNCRC, a big international agreement.”²⁵¹

Awareness amongst adults

234. The Children’s Rights Scheme states that the Welsh Government’s Measure Implementation Team leads on promotion of the UNCRC on behalf of Ministers. In addition, it indicates that other organisations are also committed to promoting knowledge and understanding of the Convention, such as the Children’s Commissioner for Wales and other external stakeholders and interested parties.²⁵²

235. In 2014, the Welsh Government commissioned an independent review of the role and functions of the Children’s Commissioner for Wales. The review recommended that:

“The Welsh Government should develop a new comprehensive awareness raising strategy for children’s rights. The terms of the UNCRC and the work of the Children’s Commissioner for Wales should form part of the training of teachers, social workers, health personnel and all other professionals working with children and young people, and should be a mandatory part of the new curriculum.”²⁵³

236. At that time, the Welsh Government neither accepted nor rejected the recommendation, instead restating the approach it was already taking.²⁵⁴

Awareness amongst professionals

237. Given the extent of Measure’s duties being applied across all portfolios, knowledge amongst relevant professionals is vital to delivering its successful implementation.

²⁵¹ Written evidence, CRW 26 - Equality and Human Rights Commission.

²⁵² [Children’s Rights Scheme 2014](#).

²⁵³ An Independent Review of the Role and Functions of the Children’s Commissioner for Wales, 10 December 2014 (not available online).

²⁵⁴ Welsh Government, Written Statement, [Response to the recommendations from the Independent Review of the Role and Functions of the Children’s Commissioner for Wales](#), 15 July 2015.

238. The Welsh Local Government Association cited the children's rights e-module under the Children's Rights Scheme as a resource one council had drawn upon to promote awareness amongst its staff.²⁵⁵

239. The Wales UNCRC Monitoring Group reported that the Welsh Government's latest Compliance Report lists a number of initiatives and resources providing sector-specific training for professionals, which it welcomed.²⁵⁶

240. The Welsh Government's evidence paper detailed the funding it provides to support professional organisations through expert training from the University of Wales, Trinity St David (UWTSD). It stated that the training is provided free-of-charge to organisations such as local authorities, health boards, police liaison officers and Sport Wales and that:

- 1,627 people from eight different workforces engaged in the training between October 2015 and October 2018;
- 91 per cent of participants judged the training to be of an excellent or very good standard, with participants' understanding and awareness of the UNCRC increasing, and attendees reporting that they felt able to implement and put that knowledge into practice as well as sharing their knowledge with their own colleagues and organisations;
- the contract with UWTSD to provide training has been extended to provide free training on the UNCRC and children's rights to public sector partners.²⁵⁷

241. One health board noted that varying training had been made available and that there had been specific training on topics such as Child Sexual Exploitation, which has raised awareness especially in less culturally diverse areas in Wales.²⁵⁸

242. The Children's Commissioner said in written evidence:

“In the absence of an up-to-date Welsh Government hub for resources on children's rights – I am aware that work is now underway to revise the site - I've also been developing a suite of free resources and content

²⁵⁵ Written evidence, CRW 24 - Welsh Local Government Association.

²⁵⁶ CYPE Committee, RoP [para 113], 16 October 2019.

²⁵⁷ [Welsh Government evidence paper](#).

²⁵⁸ Written evidence, CRW 06 - Hywel Dda University Health Board.

on my website, and most accessible via Hwb,²⁵⁹ that can be used by teachers, youth workers, participation workers and others [...]"²⁶⁰

243. Social Care Wales told us:

"We believe firmly that knowledge about the rights of children and young people for every professional who may offer care and support is vital [...] As an organisation we have found the Children's Commissioner's report *The Right Way: A Children's Rights Approach in Wales* (2017) and the framework therein, important in our work to embed children's rights in the various work streams of our business [...]"²⁶¹

Awareness amongst parents and carers

244. The lack of awareness of children's rights by parents, carers and other adults was raised in evidence. One session leader who took part in our 'Meeting in a Box' consultation called for more work to publicise the rights of young people, arguing that more work with parents is needed to encourage them to discuss matters like this with their children.²⁶²

245. The Children's Commissioner for Wales' evidence cited the 2017-18 National Survey for Wales results which indicated that 66 per cent of people in households with a child under the age of 16 had not heard of the UNCRC.²⁶³

246. When asked where they had heard about children's rights, one participant of 'Meeting in a Box' said:

"100% in school - my mother does not understand."²⁶⁴

247. One session leader told us that the members of Neath Port Talbot Children's Rights Unit, YoVo, said:

²⁵⁹ Welsh Government, [Learning and Teaching for Wales. The Curriculum for Wales and free educational tools and materials.](#)

²⁶⁰ Written evidence, CRW 11 - Children's Commissioner for Wales.

²⁶¹ Written evidence, CRW 07 - Social Care Wales.

²⁶² [Meeting in a Box - Engagement summary.](#)

²⁶³ Written evidence, CRW 11 - Children's Commissioner for Wales.

²⁶⁴ [Meeting in a Box - Engagement summary.](#)

“They would like more to be done for children in care especially when receiving information and having their views listened to and acted upon.”²⁶⁵

248. The Wales UNCRC Monitoring Group stated that it was not aware of any specific training activity aimed at raising awareness amongst the general population, but pointed to hard copy materials and e-resources produced by the Welsh Government to promote knowledge of children’s rights and the Convention.²⁶⁶

Our view

249. It is clear from the evidence received, and through our own consultation with young people, that there are gaps in the knowledge of children’s rights among both children and adults. This clearly impedes the Measure having full effect.

250. We welcome the good work undertaken by many organisations across Wales to try to engage young people in children’s rights. We saw this first hand when we spoke with children at workshops facilitated by Lleisiau Bach/Little Voices as part of our evidence gathering. We also saw this evidenced in the feedback from many of the groups of children and young people that took part in our ‘Meeting in a Box’ consultation.

251. However, many of the children and young people who are aware of the UNCRC are typically the well informed and more engaged, and regularly participate in formal engagement structures such as youth forums or school councils. We are concerned that efforts to promote awareness and understanding of children’s rights are not reaching all children, including those who may be disadvantaged or less engaged . Whilst we welcome the availability of children’s rights information in many school settings, significant improvements are needed to ensure that children who do not attend mainstream education learn about their rights. Harder to reach children and young people are arguably those who most need to know about their rights and it is essential the Welsh Government take steps to ensure this happens.

252. The Children’s Rights Scheme states that the Welsh Government “will continue to explore opportunities, where appropriate, to work with others to

²⁶⁵ [Meeting in a Box - Engagement summary.](#)

²⁶⁶ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

secure the greatest impact” in promoting knowledge and understanding of the UNCRC.²⁶⁷ However, we heard evidence of missed opportunities where established advisory groups are not being utilised to help develop this important work.

253. We are concerned at the lack of understanding by children and young people of children’s rights in a demonstrable sense. This was evident from our engagement with children, where it was apparent that many could name their rights but could not always clearly explain how they translated into their day-to-day lives. We believe more education around this aspect of children’s rights is crucial in any communications activity by the Welsh Government.

254. We welcome the evidence of the training and initiatives that have been put in place by the Welsh Government to increase the knowledge of children’s rights amongst professionals. This must continue on a systematic basis.

255. We are aware of the refresh being undertaken on the Welsh Government’s children’s rights webpages. This work should be completed as a matter of priority.

256. A lack of awareness of the UNCRC is apparent amongst adults. We heard directly from children and young people that there is a lack of widespread knowledge of children’s rights amongst parents in particular. We therefore agree with stakeholders that more needs to be done to increase education around children’s rights amongst the general public as a whole.

257. There are also concerns that professionals do not always understand their obligations under the Measure. Again this needs to be systematically addressed.

258. We note that some activity is underway with increased efforts being made by the Welsh Government to promote the UNCRC as part of its thirtieth anniversary. However, we believe that these efforts must be continuous and not tokenistic. It is our view that there is currently a lack of a strategic approach to promoting knowledge and understanding of children’s rights in Wales.

259. We consider there to be a clear need for a national awareness-raising strategy. This strategy must include sections targeted at children, adults and professionals separately, to help increase knowledge of the UNCRC. We strongly recommend that it includes information on how children’s rights translate into reality, and details about the complaints mechanism available to young people.

²⁶⁷ [Children’s Rights Scheme 2014](#).

Recommendation 8. That the Welsh Government develop and publish a national awareness-raising strategy with measurable outcomes to promote knowledge and understanding amongst the public, including children and young people, of the United Nations Convention on the Rights of the Child and its Optional Protocols.

260. The evidence suggests that there is an inconsistent approach within the current education system to learning about the UNCRC. We heard from stakeholders that education on children's rights can often depend on the school a pupil attends.

261. We recognise the potential risk for home educated children to miss out on formal learning about the UNCRC. The Welsh Government must ensure that any national awareness raising strategy reaches all children and young people, regardless of their educational status.

262. We recognise that the Welsh Government is currently in the process of curriculum reform. We are persuaded that this offers an opportunity to ensure that knowledge of children's rights is increased amongst children in Wales, but will reflect on the evidence we have received during the course of this inquiry when we undertake Stage 1 scrutiny of the forthcoming Welsh Government Curriculum Bill.

Recommendation 9. That the Welsh Government ensure human rights education, including children's rights with reference to the United Nations Convention on the Rights of the Child, is taught under the new Curriculum for Wales.

Ways to make a complaint

263. One of the issues raised in evidence was the options available to children and young people who feel that the Welsh Government has not complied with the requirements of the Measure.

264. The Children's Rights Scheme sets out that complaints can be made via direct representations to the Welsh Government; representations through the Children's Commissioner for Wales; via Members of the Senedd; or by applying for a judicial review through the courts.²⁶⁸

²⁶⁸ [Children's Rights Scheme 2014](#).

265. The EHRC's 2018 report states:

“The Welsh Government compliance reports in 2016 and 2018 do not provide information about the use of the complaints procedure. We asked the Welsh Government and were informally told that there had been no complaints in the period covered by the 2018 report (2015–18).

We also sought information from the CCfW who is empowered to support children to bring a complaint. The CCfW informed us that the current CCfW has not been asked to provide assistance but that through its investigations and advice service, and through its policy work, the CCfW had advised professionals working with children about the availability of a complaints mechanism.”²⁶⁹

266. In oral evidence, the Deputy Minister confirmed that there have been no complaints from children and young people to date about the duties under the Measure.²⁷⁰

267. To date, there has been no legal challenge on the basis of a failure to comply with the Measure. The EHRC's 2018 report suggested that the lack of legal challenge is due to the threshold of evidence required for a judicial review and the financial costs and timescales involved. It said that a successful judicial review requires strong evidence to establish any failure to have “due regard”, whether the failing is Ministerial or by social services authorities. This is seen as a deterrent to legal challenge as “policy needs to be shown to be so out of sync [with the Convention], so unreasonable, that it makes challenging it very difficult”.²⁷¹

268. The EHRC report stated that while the “due regard” duty has enhanced legal accountability through the addition of a new basis for action in public law, legal redress and judicial review have not emerged as significant accountability mechanisms for children's rights compliance in Wales.²⁷²

269. The Children's Commissioner for Wales' written evidence stated:

²⁶⁹ Equality and Human Rights Commission Report, The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

²⁷⁰ CYPE Committee, RoP [para 108], 6 November 2019.

²⁷¹ Equality and Human Rights Commission Report, The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

²⁷² Equality and Human Rights Commission Report, The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

“Whilst the Measure was an important step forward, it does not amount to full direct incorporation of the UNCRC. This means that it is not available to members of the public, including children, to make a direct challenge for a breach of their rights under the UNCRC. The closest example at a UK level is the Human Rights Act 1998 (HRA), where bodies have to act compatibly with the rights that it directly introduces into law. An individual/person can take a case against a body for breaching a particular right under that Act.”²⁷³

270. The EHRC report suggested that “when asked about possible mechanisms for enhancing the Welsh Government’s accountability for compliance with children’s rights, none of the stakeholders surveyed suggested a revised legal duty. Instead a number of stakeholders focussed on the need to improve and strengthen existing mechanisms introduced by the Measure”.²⁷⁴

271. Pro-Mo Cymru told us that children and young people’s understanding of how the UNCRC impacts on them is lacking in terms of knowledge and understanding of what entitlement to help they might have when things are not going well and what entitlement to redress they might have against decisions made that impact on them.²⁷⁵

272. The Wales UNCRC Monitoring Group said:

“[...] I can say with some confidence that, amongst the reasons that were given for a lack of uptake of the complaints procedure is that it’s an adults’ complaints procedure. It’s a complaints procedure that the Welsh Government has in place for adults to complain about decisions and actions of the Welsh Government, which has then been bolted on to the scheme, if you like. So, it’s not child-friendly, it’s not accessible, and it’s not the sort of mechanism that children necessarily would make use of.”²⁷⁶

273. The Group said:

“[...] the forthcoming refreshed Children’s Scheme now provides an opportunity to set out ways in which children could be better made

²⁷³ Written evidence, CRW 11 - Children’s Commissioner for Wales.

²⁷⁴ [Equality and Human Rights Commission Report](#), The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

²⁷⁵ Written evidence, CRW 23 -Pro-Mo Cymru.

²⁷⁶ CYPE Committee, RoP [para 100], 16 October 2019.

aware of the complaints mechanism, supported by child-friendly and web-based materials.”²⁷⁷

274. The Children’s Commissioner agreed and said that revisions to the Children’s Rights Scheme have highlighted this as an area that needs development to be more suitable and accessible for children:

“The language would need to be adapted and the options available give little information as to how a young person can be supported in this process. My suggestion would be for a separate complaints process/leaflet to be created to allow children and young people to raise any policy matters that they feel the Government aren’t taking seriously and to have their voices heard on issues of importance to them. This feedback hasn’t been acted upon so far.”²⁷⁸

275. When asked her view on why complaints have not been made, the Deputy Minister told us:

“I suppose it’s important to say that it is a relatively new scheme. It is—. I think we are the first country in the UK to have such a scheme, and so it is unique. I think it’s important to say that Wales has led the way in doing this. So, in terms of complaints, I’m sure we will get them, but we certainly haven’t had any so far, and I’m sure that’s not because there wasn’t anything to complain about, because there’s bound to have been something that there could have been complaints about. But we have produced a summary version of our corporate complaints procedure for children and young people and their representatives to use, so there is a summary version for people to see how they do it.”²⁷⁹

Our view

276. We note that there has been no use of the complaints mechanism by children and young people on the basis of failure by the Welsh Ministers to comply with the Rights of Children and Young Persons (Wales) Measure 2011. We agree with the Deputy Minister’s comments that this is unlikely to be because there is nothing to complain about.

²⁷⁷ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

²⁷⁸ Written evidence, CRW 11 - Children’s Commissioner for Wales.

²⁷⁹ CYPE Committee, RoP [para 108], 6 November 2019.

277. We accept the evidence presented that judicial review is not a realistic option for redress by children and young people due to the financial cost, timescales, and undoubtedly the complexity of the process. We also note that there was no consistent suggestion of a need to amend the Measure in this regard.

278. However, we recognise that the complaints mechanism, as outlined in the Children's Rights Scheme, is being underused and believe that the focus should be on improving this. We believe that more information is needed to explain to children that they have a right to make a complaint when they feel that the Welsh Ministers have not complied with the "due regard" duty when making decisions that affect their lives.

279. We also agree with stakeholders that the current complaints procedure is geared towards an adult audience, and is clearly neither accessible nor suitable for children. We therefore consider that the work currently being undertaken to refresh of the Children's Rights Scheme is an ideal opportunity to include a strengthened complaints mechanism that addresses all the concerns raised in evidence.

Recommendation 10. That the Welsh Government include a strengthened and child friendly complaints mechanism in its revised Children's Rights Scheme to empower children and young people to seek redress when necessary and to uphold their rights.

Complaints directly to the United Nations

280. A third UNCRC Optional Protocol came into force in 2014: the Optional Protocol on a communication procedure.²⁸⁰ When ratified by a State, it gives individual children the right to petition to make representations directly to the United Nations.

281. In 2016, the UN Committee recommended the UK ratify this Optional Protocol "in order to further strengthen the fulfilment of children's rights".²⁸¹ The UK Government, had previously stated in 2014 that it would "continue to keep this

²⁸⁰ United Nations Human Rights, [Optional Protocol to the Convention on the Rights of the Child on a communications procedure](#).

²⁸¹ United Nations Committee on the Rights of the Child, [Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), 2016.

issue under review”.²⁸² However, it has not indicated any further steps it intends to take to ratify it.

282. The EHRC clearly stated that the UK should ratify the optional protocol.²⁸³ The Wales UNCRC Monitoring Group added:

“[...] the optional protocol, if we had access to it, would be of great benefit, but, of course, we’re in the hands of the UK Government as far as that’s concerned. I think the principle that the optional protocol represents—that children should be able to make complaints and should have a redress mechanism, although it’s a rather weak redress mechanism at international level—is an important one. I think, for me, the focus would be not what the UK Government controls, but what we can control within Wales.”²⁸⁴

283. The Children’s Commissioner for Wales suggested that the ability to complain directly to the UN along with children having access to an effective complaints mechanism in Wales “would be a really strong statement to children about their right to seek redress when they feel that either their national rights, or internationally their rights, have been breached”.²⁸⁵

Our view

284. We acknowledge that a decision to ratify the UNCRC Optional Protocol that would provide individual children in the UK the right to make representations directly to the United Nations is in the hands of the UK Government. We believe that access to a strengthened and effective complaints mechanism in Wales, along with the Optional Protocol, would send a strong message to the children and young people of Wales that the Welsh Government is empowering them to defend their rights.

Recommendation 11. That the Welsh Government call on the UK Government to ratify the 2014 United Nations Convention on the Rights of the Child Optional Protocol to give individual children the right to make representations directly to the United Nations.

²⁸² [United Nations Universal Periodic Review Mid Term Report of the United Kingdom of Great Britain and Northern Ireland, and the British Overseas Territories, and Crown Dependencies](#), 2014.

²⁸³ CYPE Committee, RoP [para 371], 16 October 2019.

²⁸⁴ CYPE Committee, RoP [para 146], 16 October 2019.

²⁸⁵ CYPE Committee, RoP [para 457], 16 October 2019.

7. The right of children to participate in decisions that affect them

Article 12 of the UNCRC states that children have the right to be listened to, and their views taken into account, when decisions are made which affect them. We have heard that there is still progress to be made with the Welsh Government's approach to the participation of children and young people in its decision making.

285. Article 12 of the UNCRC says:

“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.”²⁸⁶

286. The UN Committee has further commented that “the right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention”.²⁸⁷ Article 12 has been identified by the UN Committee as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests.²⁸⁸ This highlights the fact that this Article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.

The participation of children and young people in decisions which affect them

287. The UN Committee's most recent examination of the UNCRC's implementation across the UK in 2016 concluded that “children's views are not

²⁸⁶ [The United Nations Convention on the Rights of the Child](#).

²⁸⁷ [Working methods for the participation of children in the reporting process of the Committee on the Rights of the Child](#).

²⁸⁸ [Working methods for the participation of children in the reporting process of the Committee on the Rights of the Child](#).

systematically heard in policymaking on issues that affect them”, also noting that at the time there was no youth parliament in Wales.²⁸⁹

288. In written evidence, Barnardo’s Cymru stated that Wales has made progress in this area and suggested that the Rights of Children and Young Persons (Wales) Measure 2011 has helped:

“Significant progress has been made in Wales with mechanisms and systems to facilitate improved opportunities for influence of decision makers by children and young people such as specialist forums, local democratic structures and national bodies like Young Wales and the Welsh Youth Parliament.

Such developments cannot happen without the right environment and commitment. If nothing else, the measure clearly demonstrated the government commitment and its implementation helped shape the environment.”²⁹⁰

289. One of the young people told us:

“The government should involve young people from low income backgrounds in decisions effecting them and their community. Provide more money for schools to provide a better education and to stop cutting the funding on youth centres.”²⁹¹

290. Another young person told us:

“Welsh Government should reach out to young people more. For decision makers to attend groups such as the T4CYP mental health forum to meet with and listen to young people’s views along with sharing their work in young person friendly language.”²⁹²

291. One more young person referred to the local authority and said:

²⁸⁹ United Nations Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 2016.

²⁹⁰ Written evidence, CRW 19 - Barnardo’s Cymru.

²⁹¹ Meeting in a Box – Engagement summary.

²⁹² Meeting in a Box – Engagement summary.

“No-one care’s about young people aged 16-17 ... only my YJS (Youth Justice Services) Officer listened to me, Children’s Services didn’t.”²⁹³

292. Referring to education, a group facilitator told us:

“Pupils felt that their rights were being met ok but more could be done. The main overall issue was the feeling that adults were not listening to them and respecting their views.”²⁹⁴

293. Another of the group facilitators said:

“We need more opportunities to respond to the Welsh Government. By far the Right our group wanted the Government to work more on was listening to young people.”²⁹⁵

294. Through our engagement with children and young people we learned about the positive opportunities for children in Wales to have their voices heard by the people who make decisions that affect them. Children who took part in our workshops, facilitated by Lleisiau Bach/Little Voices, told us that children’s rights have helped them to be heard both at school and in the wider community.²⁹⁶ One of the children we met described to us about why they enjoyed being involved in the Lleisiau Bach project saying:

“People listen to us and let us make an impact.”²⁹⁷

²⁹³ Meeting in a Box – Engagement summary.

²⁹⁴ Meeting in a Box – Engagement summary.

²⁹⁵ Meeting in a Box – Engagement summary.

²⁹⁶ Lleisiau Bach/Little Voices – Children’s Voices Being Heard.

²⁹⁷ Lleisiau Bach/Little Voices – Children’s Voices Being Heard.

Practical examples of children and young people's voices being heard

295. Estyn's written evidence highlighted its 2016 report, *Pupil Participation - a best practice guide*. The report identifies the contribution pupil participation can make to school improvement as well as the benefits to pupils themselves.²⁹⁸

296. The Children's Commissioner for Wales welcomed the establishment of a National Youth Stakeholder Group in the development of the whole-school approach to mental health and wellbeing. The Commissioner suggested that other policy areas would benefit similarly from such participation models.²⁹⁹

297. The Youth Justice Board indicated that it has worked closely with the Welsh Government, the Children's Commissioner for Wales and other relevant services to consult with children on matters that affect them. The Board suggested that approaches to preventing crime and addressing the needs and concerns of victims are more likely to be effective if they are informed by and co-designed with children.³⁰⁰

Opportunities to increase meaningful participation

298. We heard strong overall evidence that more could be done to increase the meaningful participation of children and young people in the decisions that affect them.

299. In its written evidence, Save the Children said:

“In relation to article 12 (respect for the views of the child) we believe that there is considerable scope for this to be further developed in order to ensure that children's participation in public services is consistent across the range of Welsh Government services.”³⁰¹

300. ProMo-Cymru told us that whilst an increase in references to the UNCRC and the use of rights-based language can be seen, most notably around the children and young people's mental health and emotional wellbeing agenda:

²⁹⁸ Written evidence, CRW 09 - Estyn.

²⁹⁹ Written evidence, CRW 11 - Children's Commissioner for Wales.

³⁰⁰ Written evidence, CRW 03 - Youth Justice Board.

³⁰¹ Written evidence, CRW 22 - Save the Children.

“[...] there is little evidence of CYP being active participants and engaged in the testing, design, implementation and accountability of proposed / actual changes.

While we welcome the involvement and engagement of CYP in consultations and the sharing and promotion of their individual journeys, much more needs to be done to ensure their engagement at the level of influencing strategic and operational change and decision-making.”³⁰²

301. The Children’s Commissioner for Wales highlighted in evidence her appeals to the Welsh Government for the participation of children and young people in the design of the new curriculum, pressing for this as recommendations in both the 2015/16 and 2017/18 Annual Reports. The Commissioner said that this 2015/6 recommendation was positively received by the Welsh Government and in 2016 a sub-group of the strategic stakeholder group was established to look specifically at participation. However, the Commissioner told us that this group was disbanded and despite significant efforts from her office, the opportunity for sustained co-construction with children and young people at a national level had passed. The Commissioner suggested that this then represented a model of participation in which young people are consulted and informed, rather than co-producing policy.³⁰³

302. The Children’s Commissioner also emphasised the importance of young people having the opportunity to respond directly to government consultations (as well as their views feeding into responses such as her own). She detailed a number of frustrations with some of the Welsh Government’s public consultations and said that she felt “at times unable to strongly promote consultations that are not suitably clear and accessible” for children and young people to engage with.³⁰⁴

303. Likewise, evidence from Noah’s Ark Children’s Hospital for Wales said that there are currently few mechanisms in Wales allowing children’s views to be heard in the production of research for conditions they are affected by. Citing the Health Wise Survey as an example of a mechanism that does not consult children who are under the age of 16, its written evidence pointed to the recommendation

³⁰² Written evidence, CRW 23 - ProMo-Cymru.

³⁰³ Written evidence, CRW 11 - Children’s Commissioner for Wales.

³⁰⁴ Written evidence, CRW 11 - Children’s Commissioner for Wales.

of the 2019 Parliamentary Review of Health and Social Care and the Prudent Health Care Principles. It went on to state:

“Children currently do not have equal involvement in health care decision making that affects them.”³⁰⁵

304. In written evidence, the Welsh Government stated its commitment to ensuring children and young people are “full and active citizens in Wales whose views are taken into account”. It describes Wales as being internationally recognised for its work on children’s participation under Article 12 of the UNCRC. The paper outlines improvements including progress towards lowering the voting age in Wales to 16, the establishment of a Youth Parliament and the formal consultation of children and young people about Brexit, noting that Wales is the only country in the UK so far to do this.³⁰⁶

305. The Welsh Government’s evidence paper outlined a number of initiatives to facilitate the participation of children and young people in decisions which affect them, including:

- **Funding to Children in Wales to develop Young Wales.** A national participation-platform for young people to engage with government about policies and decisions which affect them.
- **Statutory guidance to local authorities to promote and facilitate participation by children and young people in decisions which might affect them.** Since 2014, Welsh Government officials have regularly visited local authorities to gain an understanding of how this duty is being delivered locally.
- **National Children and Young People’s Participation Standards.** The standards identify the key issues that all workers should be aware of when working with children and young people in Wales and were refreshed in 2017 in consultation with young people.
- **The All Wales Participation Workers Network.** The network provides a pan-Wales forum to support the development and sharing of policy, research, expertise and best practice of children’s rights and participation across Wales.

³⁰⁵ Written evidence, CRW 17 - Noah’s Ark Children’s Hospital for Wales.

³⁰⁶ [Welsh Government evidence paper](#).

- **Thirtieth anniversary of the UNCRC.** The Welsh Government is working with the children's sector to listen to the views of children and young people by launching a campaign to celebrate the thirtieth anniversary of the UNCRC.³⁰⁷

306. We asked the Deputy Minister how often she meets with children to discuss children and young people influencing the work of the Welsh Government. The Deputy Minister told us:

"I meet with children a lot, but it's to discuss lots of aspects of work. I have met with children quite a bit recently about this particular issue [children's rights, in respect of the thirtieth anniversary of the UNCRC] [...] I've had a lot of meetings with young carers, a lot of meetings with children who are looked after, and I wouldn't necessarily be discussing, in a formal way, about how children's rights impacted on their lives. But, fundamentally, it's all set in the context of what their rights are."³⁰⁸

Our view

307. We recognise the importance of Article 12 of the UNCRC and the right for children to be heard and taken seriously. The significance of this right is highlighted by the UN Committee identifying the right to be heard as one of the four general principles of the Convention.

308. We are also clear that the participation of children and young people in decisions which affect them also results in improved services and better value for money. Policies and services can be shaped more effectively and can more effectively reach those they are targeted towards.

309. We note the UN Committee's 2016 recommendation that children and young people are not being listened to by policymakers on issues that affect them. We further note its reference to the lack of mechanisms available at that time to facilitate this influence, such as a youth parliament in Wales. We are proud that the Senedd has taken this forward and successfully established Wales' Youth Parliament in 2018. This Committee has already had the opportunity to see the young people's participation in action and is grateful to the Welsh Youth Parliament for its contribution to numerous of our inquiries since its establishment.

³⁰⁷ [Welsh Government evidence paper](#).

³⁰⁸ CYPE Committee, RoP [para 143], 6 November 2019.

310. We welcome the positive comments from stakeholders about the significant steps being taken to provide opportunities for children to have their voices heard by the people who make decisions that affect them. This is important as it is clear through our engagement with children and young people that this issue is a high priority for them.

311. However, we also note the children's sector's view that more can be done to increase the meaningful participation of children and young people in decision making. It is vital that children's voices are heard in the discussions that affect them. We note some of the frustrations expressed about the clarity and accessibility of mechanisms that enable them to do this, such as public government consultations. The Welsh Government must reflect on its current and future approach to listening to children and young people.

312. Most importantly, the clear message from the young people we spoke to is that there is much work to be done. Some young people had never heard of their rights whilst others clearly did not feel listened to. There is clearly more work to be done by other public bodies too in this regard.

313. Whilst we welcome the efforts already made by the Welsh Government to date, we believe that a clear participation strategy within the Welsh Government will put the duties of the Measure into practice whilst also improving services and better targeting resources. This should be set out in the revised Children's Rights Scheme to make it transparent and accountable.

Recommendation 12. That the Welsh Government set out in its revised Children's Rights Scheme a clear strategy to ensure the participation of children and young people in discussions on Welsh Government decisions which affect them.

8. The Welsh Government's response to the United Nations' recommendations

The UN Committee on the Rights of the Child gave its verdict in 2016 on what progress has been made to deliver on children's rights in Wales. Whilst it is clear that much progress has been made in respect of the UN Committee's recommendations, we heard concerns about whether the Welsh Government's response to the Concluding Observations is strategic and systematic.

314. The UN Committee on the Rights of the Child is an international panel of experts established in 1991 to scrutinise governments' records on complying with the rights that children have, as set out in the UNCRC.

315. In the UK its verdict is based on:

- written evidence from the UK and devolved governments;
- evidence from all four UK Children's Commissioners;
- national reports from Non-Governmental Organisations; and
- evidence provided by children and young people.

316. The UN Committee published its findings from its recent examination of the UK and devolved governments in 2016.³⁰⁹ The UN Committee's recommendations are referred to as "Concluding Observations". These Concluding Observations highlighted positive and negative views about the UNCRC's implementation across the UK, and culminated in over 150 recommendations.

³⁰⁹ United Nations Committee on the Rights of the Child, [Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), 2016.

The UN Committee's recommendations as applied to Wales

317. The 2016 report was the fifth time the UN Committee looked at progress made in delivering the rights of children and young people since the UK Government signed up to the UNCRC in 1989.

318. The UN Committee's 2016 recommendations refer to a wide range of issues that have featured prominently in both this and previous Assemblies. Its recommendations cover subjects such as Child and Adolescent Mental Health Services; the attainment gap in education; looked after children; children with special educational needs; children's play; and childhood obesity.

319. Referring specifically to Wales, the UN Committee was concerned in 2016 that:

- “The rate of child poverty remains high [...] and affecting children in Wales and Northern Ireland the most”.³¹⁰
- “Children's views are not systematically heard in policy-making on issues that affect them” and at that time a youth parliament had not been established.³¹¹
- The powers of the Children's Commissioner for Wales are still “limited”.³¹²

320. The 2016 reporting process was the first time the UN Committee had evaluated Wales' record post-implementation of the Rights of Children and Young Persons (Wales) Measure 2011.

321. In its Concluding Observations, the UN Committee welcomed the positive steps being taken by the Welsh Government towards fully incorporating the UNCRC into domestic law:

“The Committee welcomes [...] the progress achieved by the State party in various areas related to children's rights and the adoption of a

³¹⁰ United Nations Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 2016.

³¹¹ United Nations Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 2016.

³¹² United Nations Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 2016.

number of new laws and institutional and policy measures since its last review.”³¹³

Formally responding to the UN Committee’s recommendations

322. While the UN Committee cannot force the UK and Welsh Governments to change its laws, policies and practices, the expectation is that both Governments will take seriously the UN Committee’s findings and respond to them quickly and meaningfully. The evidence we gathered suggests that there are concerns about the extent to which the Welsh Government has responded formally to the UN Committee’s 2016 recommendations.

323. Prior to the 2016 recommendations, the UN Committee last gave its verdict on children’s rights in Wales in 2008. In response to its recommendations, the then Welsh Government published a five year action plan, *Getting it right 2009*.³¹⁴

324. The Wales UNCRC Monitoring Group highlighted that reference has been made to certain recommendations from the UN Committee by relevant Welsh Ministers since the 2016 Concluding Observations were released. However, a report setting out progress made to date in taking forward the actions and planned future activity to implement the recommendations as they relate to Wales’ devolved competencies has not been published, unlike on previous occasions.³¹⁵

325. The Wales UNCRC Monitoring Group said:

“A lot of work goes in, in the planning stages before the state party inquiry in Geneva. We as a monitoring group prepare a report and submit a report, and work with young people around reports, to inform the committee’s recommendation. It’s massive—there are 150 recommendations from the CRC, and it’s important that those concluding observations do take effect when they’re brought back to the UK, and then they’re brought back to Wales, around devolved competencies. At the moment, we don’t have a formal detailed response to those concluding observations for 2016, in terms of

³¹³ United Nations Committee on the Rights of the Child, [Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), 2016.

³¹⁴ [Getting it right 2009: United Nations convention on the Rights of the Child](#).

³¹⁵ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

identifying what are the specific actions of Welsh Government against those concluding observations within their competencies.”³¹⁶

326. The Gwent Police and Crime Commissioner said “we would have expected to see an action plan developed to address the concerns of the UN Committee”.³¹⁷

327. A lack of detailed response to the Concluding Observations was also noted by the Welsh Local Government Association. Its written evidence highlighted concerns that instead of establishing a specific programme for children and young people in response to the recommendations, actions have been listed in *Prosperity for All* and *Taking Wales Forward*. It is suggested that these policy documents do not give a bespoke strategic focus for the Concluding Observations by the UN Committee on the Rights of the Child.³¹⁸

328. The Children’s Commissioner for Wales told us that the UN Committee’s Concluding Observations are “a really useful guide for Government as to what they should be doing in terms of fulfilling a programme for children as a whole”.³¹⁹ Although, the Commissioner in written evidence suggested that “when speaking to officials from a range of government departments it does not appear that they are aware of the Concluding Observations relevant to their policy area”.³²⁰

329. The Children’s Commissioner indicated that she believed the lack of a detailed response to be a missed opportunity:

“I do think that the Government has missed an opportunity to properly analyse where we’re at in relation to them [the concluding observations], and to actually highlight some progress they’ve made—because the Government has made progress on some of the concluding observations, so, in a way, I’m surprised they haven’t taken the opportunity to make people aware of that—but, also, of course, to acknowledge where they haven’t made progress as well. It’s important for accountability to children in Wales that they see that very clearly.”³²¹

330. In its written evidence the Welsh Government referred to the UN Committee’s views on UK wide issues include a need to prohibit as a matter of

³¹⁶ CYPE Committee, RoP [para 124], 16 October 2019.

³¹⁷ Written evidence, CRW 16 - Gwent Police and Crime Commissioner.

³¹⁸ Written evidence, CRW 24 - Welsh Local Government Association.

³¹⁹ CYPE Committee, RoP [para 452], 16 October 2019.

³²⁰ Written evidence, CRW 11 - Children’s Commissioner for Wales.

³²¹ CYPE Committee, RoP [para 452], 16 October 2019.

priority all corporal punishment in the family, including the repeal of all legal defences, such as “reasonable chastisement”.³²²

331. It went on to say that in March 2019, “the Welsh Government introduced the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill to abolish the common law defence of reasonable punishment so it is no longer available in Wales to parents or those acting in loco parentis as a defence to assault or battery against a child”.³²³

332. When asked why the Welsh Government has not published a formal detailed response to the Concluding Observations, the Deputy Minister said:

“Well, all I can say is that we are responding to them all. We’re not not responding to any of them. I think that the UNCRC has always felt that, in Wales, we have been working on children’s rights, promoting rights, in a way that’s been held up to other countries. So, whether we have a strategy or not, we’ve certainly got a response to all of those proposals. Personally, I think that there has been huge progress. It has taken years to get here, but we are making progress now, particularly with these legislative measures that we’re taking at the moment.”³²⁴

National action plan

333. In its evidence, the Wales UNCRC Monitoring Group called for the Welsh Government to consider introducing a duty on Welsh Ministers to publish and monitor a national plan which sets out progress made in implementing the 2016 Concluding Observations.³²⁵

334. It stated that whilst the Measure stipulates that Welsh Ministers must have regard when preparing a Children’s Rights Scheme to “any other reports, suggestions, general recommendations or other documents issued by the UN Committee relating to the implementation of the Convention”, this is not akin to having a duty to publish a comprehensive national action plan on activities to implement the Concluding Observations.³²⁶

³²² [Welsh Government evidence paper.](#)

³²³ [Welsh Government evidence paper.](#)

³²⁴ CYPE Committee, RoP [para 182], 6 November 2019.

³²⁵ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

³²⁶ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

335. The Wales UNCRC Monitoring Group raised that the Scottish Government's latest report in response to the Concluding Observations sets out both progress made in taking forward the recommendations, and planned activity until 2021. The Group also emphasised the legal obligation placed on the Scottish Government to report on steps taken to give further effect to the UNCRC. Further to this, the Group highlighted the powers available under Part 6 of the Measure³²⁷ that could be used to place a similar duty on the Welsh Ministers.³²⁸

National mechanism for implementation, reporting and follow-up of UN recommendations

336. The EHRC highlighted that the UN Committee's 2016 Concluding Observations call on the UK to strengthen the coordination and evaluation of the Convention's implementation. It commented more generally that there is "no formal mechanism within the Welsh or UK Government to coordinate and monitor the implementation of UN recommendations" and that "a large number of the UN's recommendations are often not acted upon".³²⁹ As supplementary evidence, the EHRC highlighted examples of different models of national mechanisms for implementation, reporting and follow-up of UN recommendations.³³⁰

337. The EHRC called for:

- the Welsh Government to adopt a formal mechanism to coordinate and monitor the implementation of all UN recommendations, including those from the UN's Committee on the Rights of the Child, to provide Welsh Ministers with a means by which to track progress more holistically;
- mechanisms to be permanent and include a cross-section of relevant departments and representatives from other public bodies, parliaments and the judiciary, national human rights institutions and civil society.³³¹

³²⁷ Section 6 of the Measure provides a power to amend the legislation if a Welsh Government report on "compliance" "concludes it would be desirable for the purposes of giving further effect" to the rights in the Convention.

³²⁸ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

³²⁹ Written evidence, CRW 26 - Equality and Human Rights Commission.

³³⁰ **Supplementary written evidence** - Equality and Human Rights Commission, 18 October 2019.

³³¹ Written evidence, CRW 26 - Equality and Human Rights Commission.

338. The establishment of a formal mechanism to monitor the implementation of UN recommendations was supported by the Wales UNCRC Monitoring Group.³³² The Group suggested that any tracking mechanism which looks at the Concluding Observations could also help to influence the next State Party report (the written submission from the UK and devolved governments ahead of the review which is expected in 2022).³³³

Our view

339. We recognise the progress achieved by the Welsh Government since the last review undertaken by the UN Committee in 2008, as noted in its 2016 Concluding Observations. The Rights of Children and Young Persons (Wales) Measure rightfully received international recognition in 2011 when Wales became the only country in the UK to incorporate the UNCRC into domestic law.

340. However, we would welcome the publication of a detailed Welsh Government response to the 2016 Concluding Observations. Given the Welsh Government has responded to previous reports with the publication of a rolling action plan, setting out priority areas which responded to the UN Committee's recommendations, the current situation is arguably a step backwards.

341. It is clear the Welsh Government is addressing a number of the UN Committee's recommendations, such as the introduction of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill. However, we note the UN Committee's concerns around child poverty rates affecting children in Wales particularly; this is a clear area in which the Welsh Government could be more transparent in the approach it is taking to address the UN's Concluding Observations. For example, in the Welsh Government's *Child Poverty Progress Report 2019*³³⁴ children's rights are referenced but it is not specifically stated that the Government is addressing the UN Committee's recommendations.

342. We believe that a detailed strategic response to the 2016 Concluding Observations, which includes measurable outcomes, will demonstrate a clear and renewed commitment from the Welsh Government to the children's rights agenda in Wales.

343. We also consider that annual updates on the progress made against the UN Committee's Concluding Observations would ensure that the Welsh Government

³³² Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

³³³ CYPE Committee, RoP [para 130], 16 October 2019.

³³⁴ Welsh Government, [Child Poverty Progress Report 2019](#), December 2019.

is transparent in reporting its progress and accountable for its delivery in fulfilling a programme for children. Such an approach could also help inform the Welsh Government's submission to the UN Committee when its progress is next examined.

344. We encourage the Welsh Government to reflect on international practice and consider options for a formal monitoring mechanism.

Recommendation 13. That the Welsh Government publish a detailed strategic response to the United Nation's Committee on the Rights of the Child 2016 Concluding Observations within the next six months. This should include details of progress made against all the recommendations and what actions are being taken to address areas of concern.

Recommendation 14. That the Welsh Government publish an annual update of progress made against the United Nation's Committee on the Rights of the Child Concluding Observations, to be laid before the Senedd and scrutinised annually by the relevant committee.

9. Strengthening the legal position on children's rights

Evidence we received from key stakeholders suggested a need to review and potentially strengthen the legal position on children's rights in Wales. It was noted that while the legal position was deemed suitable at the time of the Measure's introduction in 2010, Wales' devolution settlement has since changed. A decade on, it is time to consider whether the legislation is still fit for purpose.

345. Representatives of the Wales UNCRC Monitoring Group told us:

"Wales had taken a particular approach to incorporation of the UNCRC in 2011, which was suitable at the time in relation to where we were in devolution, and devolution, I think, and Wales, in human rights terms, have come a long way since then."³³⁵

346. The Children's Commissioner for Wales' office also said:

"[...] the Measure is seen as sometimes a bit of a high watermark, and that children's rights in Wales are now embedded and implemented because of it, and that the foot then comes off the pedal a little bit.

[...] the Measure was what was achievable at the time in the context of devolution, but those barriers are not necessarily in place now. I think, particularly, with all of the equalities and human rights work, I wouldn't want anyone to see the Measure as the best possible thing that could be achieved in 2019, because I think there could be a lot more that could be done with the levers that are now open to the Assembly."³³⁶

347. Section 6 of the Measure provides a power to amend the legislation if the Welsh Government's report on compliance "concludes it would be desirable for the purposes of giving further or better effect" to the rights in the UNCRC.³³⁷ The

³³⁵ CYPE Committee, RoP [para 147], 16 October 2019.

³³⁶ CYPE Committee, RoP [para 444], 16 October 2019.

³³⁷ [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

Measure also allows the Welsh Ministers to amend other primary and secondary legislation, subject to the Senedd's approval.

Public bodies

348. The Measure imposes a “due regard” duty on the Welsh Ministers but does not directly impose any duties on public bodies, for example local authorities and local health boards (through which many ministerial functions are discharged). More recent pieces of legislation, including the Social Services and Well-Being (Wales) Act 2014³³⁸ and the Additional Learning Needs and Education Tribunal (Wales) Act 2018³³⁹ have required certain public bodies to have due regard to Part 1 of the UNCRC in specific circumstances.

349. We sought evidence on the extent to which the Welsh Government has worked to ensure that its duties within the Measure are translated into the general work of public bodies, in this context primarily the work of local authorities and health boards.

350. The Observatory on Human Rights of Children welcomed efforts made by the Welsh Government to impose a “due regard” duty on public bodies in Wales. It said that the Measure has influenced guidance and legislation which imposes duties on public bodies more consistent with children's rights.³⁴⁰ This was also noted by the Children's Commissioner for Wales.³⁴¹ However the Observatory said that the application of the “due regard” duty to public bodies is “piecemeal”.³⁴²

351. Hafal suggested that although awareness of the “due regard” duty is evident in Welsh Government consultations and speeches, it is “not convinced this ends up in solid evidenced implementation, particularly by the time this gets to local authorities and health boards”.³⁴³ Hafal said in respect of whether the Measure has fulfilled the UNCRC's “general measures” of implementation:

“This is difficult to assess as the Children's Commissioner does not have sufficient powers to ensure local authorities and health boards act on Welsh Government policy in this area. We believe the Welsh

³³⁸ [Social Services and Well-Being \(Wales\) Act 2014](#).

³³⁹ [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#).

³⁴⁰ Written evidence, CRW 04 - The Observatory on Human Rights of Children.

³⁴¹ Written evidence, CRW 11 - Children's Commissioner for Wales.

³⁴² Written evidence, CRW 04 - The Observatory on Human Rights of Children.

³⁴³ Written evidence, CRW 18 - Hafal.

Government has too much of a 'hands-off' approach with local service provision to ensure its effective implementation."³⁴⁴

352. Concerns that the duties in the Measure are not translated into the work of public bodies was illustrated in evidence from Show Racism the Red Card Wales, specifically in relation to a rise of exclusions for racism in schools in Wales:

"[...] the data provided regarding the number of racist incidents in schools raises serious questions about its robustness and whether or not local authorities are obtaining a clear picture of the incidence of racism in their schools.

Failure to keep an accurate record of the incidence of racism in schools could result in LAs and schools failing to respond appropriately, leaving victims unsupported and perpetrators uneducated in the consequences of their actions."³⁴⁵

353. The Public Services Ombudsman for Wales said that while he was not in a position to assess the general impact of the Measure on Welsh Government policy making, some general trends and themes highlighted in casework since 2011 related to instances where children and young people continue to be affected by maladministration and service failure by public bodies.³⁴⁶

354. Representatives of Noah's Ark Children's Hospital for Wales raised concerns about leadership in relation to children's rights. They told us:

"[...] three out of the seven health boards do not have a board-level lead or a champion for children's services, and this certainly reduces opportunities for children to have their voice heard and their human rights respected in organisational decision making."³⁴⁷

355. In contrast, Hywel Dda University Health Board reported that it is developing a Charter which will consider the Rights of the Child and that consideration will be given to evidencing outcomes.³⁴⁸

³⁴⁴ Written evidence, CRW 18 - Hafal.

³⁴⁵ Written evidence, CRW 02 - Show Racism the Red Card Wales.

³⁴⁶ Written evidence, CRW 05 - Public Services Ombudsman for Wales.

³⁴⁷ CYPE Committee, RoP [para 178], 16 October 2019.

³⁴⁸ Written evidence, CRW 06 - Hywel Dda University Health Board.

356. The WLGA cited examples from Swansea and Cardiff of local authorities evidencing a commitment to the UNCRC. It said that some local authorities have sought to “voluntarily exercise their commitment to children’s rights with renewed vigour”³⁴⁹ and stated:

“Under international law, all layers of government are deemed duty-bearers of children’s rights. They all have responsibilities to ensure that the obligations in the Convention are protected, respected and fulfilled. This is in accordance with Articles 4 of the UNCRC and the General Measures of the Implementation set out by the UN Committee on the Rights of the Child. Article 3 of the International Covenant of Economic, Social and Cultural Rights and Article 27 of the Vienna Convention on Law and Treaties also sets out the failure of any public authority, including local authorities, to uphold in human rights is a failure of the State.”³⁵⁰

357. Clybiau Plant Cymru Kids’ Clubs called on the Welsh Government to ensure the “due regard” duty in the Measure is put into good practice through training and awareness raising.³⁵¹ Aneurin Bevan University Health Board recommended the translation of the work on children’s rights to public bodies could be further strengthened by extending to all public service organisations the requirement for the completion of a CRIA for all new policy decisions.³⁵²

Extending the “due regard” duty to public bodies

358. A number of responses called for the Welsh Government to extend the “due regard” duty to public bodies, so that all would be statutorily required to have due regard to the UNCRC in the exercise of all of their functions, in line with the duty imposed on Ministers. Save the Children told us:

“We believe consideration should be given to amending the Measure to ensure that all public bodies are given a statutory requirement to have due regard to the UNCRC in the exercise of all their functions.”³⁵³

359. The Wales UNCRC Monitoring Group explained that the “role of public bodies is pivotal in delivering services which can enhance the promotion of children’s

³⁴⁹ Written evidence, CRW 24 - Welsh Local Government Association.

³⁵⁰ Written evidence, CRW 24 - Welsh Local Government Association.

³⁵¹ Written evidence, CRW 12 - Clybiau Plant Cymru Kids’ Clubs.

³⁵² Written evidence, CRW 21 - Aneurin Bevan University Health Board.

³⁵³ Written evidence, CRW 22 - Save the Children.

rights and help children achieve better outcomes”.³⁵⁴ The Group argued that the Welsh Ministers should “extend a general public sector duty of due regard to the Convention in Wales which applies to all public bodies and all bodies delivering public functions”³⁵⁵ adding that, for example, “any element of services for the Traveller community probably suffers for not having a duty of due regard on individuals and public bodies”.³⁵⁶ The Group warned that it did not believe the Welsh Government had the expertise and capacity to support the development of the necessary guidance or legislation to extend the duty to public bodies.³⁵⁷

360. Noah’s Ark Children’s Hospital for Wales also called for a public sector duty.³⁵⁸ Representatives highlighted a lack of consistency in the current arrangements, calling for corporate implementation strategies and “senior level buy-in”, but stressed that this would not happen without a legal requirement.³⁵⁹ It added:

“[...] what we need is capacity, resource and support and direction from Welsh Government on how to do this. You’ve already had experience over the last seven years of doing it—the Welsh Government doing it in terms of a model. It’s working to some degree. Let’s build on that.”³⁶⁰

361. The Children’s Commissioner for Wales told us that her “preference would be for further incorporation of the UNCRC through a duty on all public bodies to act compatibly with the UNCRC in carrying out their duties”.³⁶¹ The Commissioner also said:

“What I’m seeing in my engagement with public bodies is that they’re welcoming the chance to think about what a children’s rights approach looks like; I find that I’m pushing at open doors with public bodies. They’re actively coming to us and asking us how we can help them implement children’s rights. I think they’re ready to do it, and I think this would be a really progressive step for Wales.”³⁶²

³⁵⁴ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

³⁵⁵ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

³⁵⁶ CYPE Committee, RoP [para 94], 16 October 2019.

³⁵⁷ CYPE Committee, RoP [para 89], 16 October 2019.

³⁵⁸ Written evidence, CRW 17 - Noah’s Ark Children’s Hospital for Wales.

³⁵⁹ CYPE Committee, RoP [para 244], 16 October 2019.

³⁶⁰ CYPE Committee, RoP [para 248], 16 October 2019.

³⁶¹ Written evidence, CRW 11 - Children’s Commissioner for Wales.

³⁶² CYPE Committee, RoP [para 443], 16 October 2019.

362. When asked about imposing the duty on public bodies, the Deputy Minister stated:

“I’m open to consider further reform, but I’d have to take legal advice, I think, on that, about what could be done.”³⁶³

Our view

363. Despite the Measure not imposing duties on public bodies, they play a pivotal role in delivering services to children and young people and as such receive a significant amount of public money. We welcome efforts made by the Welsh Government, as described by key stakeholders, to translate the duties in the Measure to the work of local authorities and health boards in Wales through guidance and other legislation. However, children’s rights will not be delivered fully in Wales until those public bodies with key roles in delivering Welsh Government policy and legislation are required to have due regard to the UNCRC.

364. We note concerns in some evidence that the Welsh Government has too much of a “hands-off approach”³⁶⁴ to local service delivery to ensure that the Measure is having a direct influence on the work of the public bodies to which it provides funding.

365. We note the clear consensus in the evidence for extending the “due regard” duty in the Measure to public bodies. We therefore welcome the Children’s Commissioner for Wales’ view that there is a willingness amongst public bodies to help implement the duties in the Measure. This must be made a reality.

366. That the Deputy Minister’ is “open” to a change in legal position is also welcome.

367. We are persuaded that public bodies have a pivotal role in delivering better outcomes for children and young people across Wales, and we believe that extending the duty to public bodies will help achieve improvements in this regard.

Recommendation 15. That all devolved public bodies (such as local authorities and local health boards) should be placed under a specific duty to have due regard to the United Nations Convention on the Rights of the Child. The Welsh Government must provide guidance to all devolved public bodies as to what this

³⁶³ CYPE Committee, RoP [para 147], 6 November 2019.

³⁶⁴ Written evidence, CRW 18 - Hafal.

means in terms of their day to day functions and how compliance will be monitored.

368. This could be achieved through primary legislation. Section 6 of the Measure also gives the Welsh Ministers power to amend legislation, if, in a report which they have published under section 4 of the Measure, 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.

Further incorporation of the UNCRC into Welsh law

369. Although Wales is not a State Party in respect of the UNCRC, the Welsh Government legislated to “give further effect” to the UNCRC in domestic law via the Measure.³⁶⁵

370. The EHRC’s 2018 report outlined its view on the difference between the Measure in Wales and incorporation of the UNCRC into the national legal system. It concluded:

“The UN Committee recommends incorporation of the Convention in national legal systems. This means that the Convention should be capable of being directly invoked before national courts and will prevail when in conflict with domestic law, and that a remedy is provided for violation.

[...] The Measure has added a new basis for judicial review and the Convention may be relied on before a UK court to challenge a decision taken by a Welsh Minister. Arguably this meets the UN Committee’s first requirement for incorporation. However, incorporation as contemplated by the UN Committee also requires a remedy and suitable reparation where Convention rights are violated, including compensation. Remedies on judicial review do not usually include damages. In any event, the due regard formula falls short of incorporation as it does not give the Convention superior status over policy determined by the Welsh Government.

While the Welsh Government has gone further than the UK Government and any other devolved authority in the UK to integrate the Convention in domestic law, it cannot be said to have incorporated

³⁶⁵ [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

the Convention as anticipated by the UN Committee. Rather, the Measure is a legislative measure of implementation to integrate the Convention into Welsh law.”³⁶⁶

371. Describing the Measure as a “stepping stone” towards full incorporation, the EHRC told us that there is “a lack of legal teeth” in the Measure and that it “in no way counts as full incorporation in terms of legal enforceability of child rights in Wales”.³⁶⁷ The EHRC called for measures to protect children’s rights in Wales to be further strengthened by making these rights “legally enforceable”.³⁶⁸

372. In 2012, UNICEF UK commissioned Queen’s University Belfast to study countries where there has been full legal incorporation of the UNCRC. The study concluded that whilst incorporation meant that the UNCRC was fully part of the domestic legal system, its main value was thought to be in the strong message it conveyed about the status of children and children’s rights, and the knock-on effects for implementation of children’s rights principles into domestic law and policy.³⁶⁹

373. This view was echoed by Wales Humanists who said that the UNCRC should to be incorporated directly into Welsh law:

“This [incorporation] would send a clear message that Wales is committed to children’s rights and make the Convention directly enforceable rather than, as is currently the case under the 2011 Measure, something which retains an optional status as long as the Government pays it ‘due regard’ during the policy-making process.”³⁷⁰

374. When asked about fully incorporating the whole of the UNCRC into Welsh law, the Deputy Minister told us:

“Well, obviously, there’s more than one way of incorporating an international treaty in domestic law, and, in Wales, we’ve incorporated the UNCRC by using the Measure to place a duty on Welsh Ministers. So, we have to take regard of the UNCRC when we’re making new

³⁶⁶ [Equality and Human Rights Commission Report](#), The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales, August 2018.

³⁶⁷ CYPE Committee, RoP [para 267], 16 October 2019.

³⁶⁸ Written evidence, CRW 26 - Equality and Human Rights Commission.

³⁶⁹ UNICEF UK, [The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries](#).

³⁷⁰ Written evidence, CRW 08 - Wales Humanists.

legislation, new policies and a review or change to existing policies. And I do believe that this is having an impact on policy making in Wales, and I hope it will continue to have even more of an impact on policy making in Wales.”³⁷¹

375. The Children’s Commissioner for Wales referred to the Welsh Government’s announcement³⁷² on advancing equality and human rights in Wales:

“In 2018 I presented a paper to officials from the Children’s Branch (my link branch in Government) on further incorporation of the UNCRC into Welsh law, following discussions about it with the then Minister for Children and Social Care at our quarterly meetings. At this point, the then Leader of the House announced the intention to commission research on the range of treaties applicable to Wales and the levels of direct and indirect incorporation of these, with a view to exploring potential extensions, and my office is represented on a steering group for this work.”³⁷³

376. On this issue, the Deputy Minister said:

“I think it’s important to draw the committee’s attention to the fact that the leader of the house is also conducting a review into advancing equality and human rights in Wales, and obviously consideration of children’s rights is in there as well. So, she may be coming forward with some proposals as well. But I think there’s no doubt that other countries are looking to us about how we’re implementing the Measure.”³⁷⁴

Further incorporation of the UNCRC into domestic law elsewhere in the UK

377. The Children and Young People (Scotland) Act 2014³⁷⁵ requires Scottish Ministers to give due consideration to ways in which the UNCRC can be better implemented. Following a public consultation seeking views on full incorporation of the UNCRC into Scottish Law, the Scottish Government announced in

³⁷¹ CYPE Committee, RoP [para 157], 6 November 2019.

³⁷² Plenary, RoP [para 289 - 305], 11 June 2019.

³⁷³ Written evidence, CRW 11 - Children’s Commissioner for Wales.

³⁷⁴ CYPE Committee, RoP [para 165], 6 November 2019.

³⁷⁵ [Children and Young People \(Scotland\) Act 2014](#).

November 2019 that will incorporate the Convention into law to the maximum extent possible within the powers of the Scottish Parliament.³⁷⁶

378. The Children's Commissioner for Wales pointed to Jersey, where legislation is being pursued in two steps:

"[...] the first step is a Measure just like ours, but they have in place, then, full incorporation to come a couple of years later."³⁷⁷

379. Barnardo's Cymru stated that while the Measure "was and remains a positive element of the body of the Welsh law", it suggested that "the time is right for a thorough review" of the approach to protecting and promoting children's rights through the Measure.³⁷⁸ Barnardo's Cymru added:

"We would further argue that the limit of progress possible with current mechanisms and capacity might have been or might soon be reached. We therefore also suggest that a significant evolution of what is in place rather than wholesale change would be of benefit.

[...] The measure has been viewed favourably elsewhere with the Welsh approach featuring in the debate about Scottish rights legislation. We feel sure this will be watched closely by government, the NAfW and civil society to see what we can learn from them and how we might consider improving the measure particularly as we are at a different stage of devolution from the time of the measures introduction."³⁷⁹

380. The Wales UNCRC Monitoring Group argued that the Scottish approach of acting in compliance with a duty as part of incorporation of the UNCRC in law should now be considered in Wales.³⁸⁰

381. The Deputy Minister confirmed in evidence that she and her officials have had discussions with counterparts in Scotland to share learning from the implementation of the Measure in Wales.³⁸¹ Her official added:

"It's worth noting as well, I think, that they value our duty of due regard so much they're actually going to, I think, introduce a duty of due

³⁷⁶ Scottish Government news, [Strengthening children's rights](#), 20 November 2019.

³⁷⁷ CYPE Committee, RoP [para 440], 16 October 2019.

³⁷⁸ Written evidence, CRW 19 - Barnardo's Cymru.

³⁷⁹ Written evidence, CRW 19 - Barnardo's Cymru.

³⁸⁰ CYPE Committee, RoP [para 148], 16 October 2019.

³⁸¹ CYPE Committee, RoP [para 158], 6 November 2019.

regard, a children's rights scheme, along the lines of what we've done, because they can see the value of having that policy discussion and that requirement for officials and Ministers to consider, when they're making policy, the issues of children's rights and the UNCRC. So, they're taking a lot of things from Wales as they try to move forward in what they're doing."³⁸²

Our view

382. We have listened carefully to the evidence of the merits of further incorporation of the UNCRC. However, we are also mindful of other external factors such as the unknown impact of Brexit on equality and human rights for Wales. Full incorporation would need to be achieved through primary legislation. Therefore careful consideration would need to be given to issues of legislative competence, capacity and the legislative time available before taking forward significant legislative proposals to fully incorporate the UNCRC into Welsh law.

383. We are aware of the Deputy Minister's view that the Measure is having a positive impact on policy making in Wales. We also note the potential for a Welsh Bill of Rights, currently being considered by the Welsh Government.

384. It is our view that the current priority is to get the existing legislation working effectively. There is much more to be done in this regard and we have made many practical recommendations of the areas we would like to see progressed. On balance, we consider that it is not the right time to bring forward legislative changes to strengthen the legal position on children's rights in Wales to full incorporation of the UNCRC. Time and energy should be focussed on making rights a reality for children in Wales and not on additional legislation at this time. Of course, this may not always be the case.

The appointment of the Children's Commissioner for Wales

385. The appointment of the Children's Commissioner is made by the First Minister under Regulation 2 of The Children's Commissioner for Wales (Appointment) Regulations 2000.³⁸³ The post and wider office is also funded by the Welsh Government.

³⁸² CYPE Committee, RoP [para 159], 6 November 2019.

³⁸³ [The Children's Commissioner for Wales \(Appointment\) Regulations 2000](#).

386. The principal aim of the Children's Commissioner is to safeguard and promote the rights and welfare of children. This must be the Commissioner's overriding objective when undertaking her work.³⁸⁴

387. The UN Committee's 2016 Concluding Observations welcomed the increased independence of the Children's Commissioners in all four devolved administrations. However, the UN Committee called for further strengthening of the independence of established Children's Commissioners, in line with the Paris Principles. This refers to the principle that human rights bodies should be independent from government and therefore not appointed by them.³⁸⁵

388. The Wales UNCRC Monitoring Group commended the Welsh Government's position that the remit of the Children's Commissioner for Wales extend to any matter, devolved or non-devolved, affecting a child or children in Wales.³⁸⁶ Nevertheless, it also stated its regret that the recommendation of the independent review into the legislative framework, role and accountability of the Children's Commissioner for Wales (commissioned by the Welsh Government in 2014³⁸⁷) - that accountability and funding be transferred to the Senedd, consistent with the Paris Principles - was rejected by the then Minister for Communities and Tackling Poverty, Lesley Griffiths AM.³⁸⁸ The Group called for legislation to reform the Commissioner's statutory role and remit, including by making the Commissioner accountable to the legislature rather than the executive.³⁸⁹

389. In written evidence, Gwent Community Psychology, Child and Family Psychology and Therapies Service at Aneurin Bevan University Health Board said that "there should be consideration given to elevating the status of the Measure through primary legislation to further strengthen the role of the Children's

³⁸⁴ Children's Commissioner for Wales, [publication on the Commissioner's powers](#), October 2017.

³⁸⁵ The Paris Principles establish the minimum standards required for the independence and effective functioning of national human rights institutions (NHRIs). They detail the role that NHRIs are expected to perform (that is, monitoring and implementing human rights standards) and the way this role ought to be undertaken (that is, maintaining independence from government and civil society).

³⁸⁶ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

³⁸⁷ Welsh Government, Written Statement, [Review of the role and functions of the Children's Commissioner for Wales – Announcement of Reviewer](#), 18 June 2014.

³⁸⁸ Welsh Government, Written Statement, [Response to the recommendations from the Independent Review of the Role and Functions of the Children's Commissioner for Wales](#), 15 July 2015.

³⁸⁹ Written evidence, CRW 14 - Wales UNCRC Monitoring Group.

Commissioner for Wales in order to enable the officeholder to have the necessary levers to hold Ministers to account on their duty of paying due regard”.³⁹⁰

390. Save the Children also called for the responsibility for accountability and funding for the Children’s Commissioner to be transferred to the Senedd and that this “further independence would enhance scrutiny of the Measure and therefore support its implementation”.³⁹¹ This was echoed by Hafal who called for greater powers for the Children’s Commissioner “to intervene where the Measure is not being followed both in letter and spirit”.³⁹²

391. The Children’s Commissioner has previously said that “independence from the executive arm of government would greatly clarify my role” and that “the fundamental conflict of interest is not something that can be ignored”.³⁹³ In written evidence, the Commissioner acknowledged that “to date I have experienced no interference from Government in how I conduct my work”³⁹⁴ but added:

“[...] this national human rights institution should be treated as wholly-independent from Government and Welsh Ministers. If not, there’s a danger this post-holder could be restricted by the very public bodies they’ve been set up to oversee and challenge. I note the previous First Minister’s view, when we raised this issue with him previously, was that there had never been a problem with independence so he did not consider this to be a priority. Whilst I acknowledged that there hadn’t been an issue, there was nothing formal in place to protect the status of the Commissioner’s role should there be a change of approach by any future Government.”³⁹⁵

392. When asked if there had been any further consideration of this position, especially in light of the recruitment process for a new Children’s Commissioner commencing within the next two years, the Deputy Minister answered:

³⁹⁰ Written evidence, CRW 25 - Gwent Community Psychology, Child and Family Psychology and Therapies Service, Aneurin Bevan University Health Board.

³⁹¹ Written evidence, CRW 22 - Save the Children.

³⁹² Written evidence, CRW 18 - Hafal.

³⁹³ Children’s Commissioner for Wales, [paper on the Children’s Commissioner for Wales’ position on the recommendations from the Independent Review into the Role and Functions of the Children’s Commissioner for Wales](#), October 2015.

³⁹⁴ Written evidence, CRW 11 - Children’s Commissioner for Wales.

³⁹⁵ Written evidence, CRW 11 - Children’s Commissioner for Wales.

“[...] I don’t actually see any disadvantages. I can’t see any disadvantages of the arrangements remaining as they are. I think that the children’s commissioner does operate independently. I think, in fact, she’s said that she doesn’t feel in any way inhibited by the Government.”³⁹⁶

Our view

393. We recognise the crucial role of the Children’s Commissioner for Wales in upholding children’s rights.

394. However, we note the recommendation of the UN Committee that the independence of established Children’s Commissioners should be further strengthened, in line with the Paris Principles.

395. We note the regret expressed by the Wales UNCRC Monitoring Group at the Welsh Government’s rejection of a previous recommendation that the accountability and funding for the Commissioner’s post should be transferred to the Senedd.

396. The Children, Young People and Education Committee of the Fourth Assembly recommended in its legacy report that “any successor Committee should seek an assurance from the Welsh Government that it will review the decision not to transfer responsibility for the appointment and funding of the Commissioner to the National Assembly for Wales”.³⁹⁷

397. Whilst we acknowledge both the Children’s Commissioner and the Deputy Minister’s reassurances that there has been no interference in the independence of the Commissioner’s work to date, we note the Children’s Commissioner’s own view that further independence from Government would address the “fundamental conflict of interest”³⁹⁸ she believes exists under current arrangements.

398. We are persuaded that transferring responsibility for the appointment of the Children’s Commissioner to the Senedd would be a step forward, but we

³⁹⁶ CYPE Committee, RoP [para 167], 6 November 2019.

³⁹⁷ Children, Young People and Education Committee, [Fourth Assembly Legacy Report](#), March 2016.

³⁹⁸ Children’s Commissioner for Wales, [paper on the Children’s Commissioner for Wales’ position on the recommendations from the Independent Review into the Role and Functions of the Children’s Commissioner for Wales](#), October 2015.

recognise that primary legislation would be required to transfer the requisite funding and make the Children's Commissioner accountable to the Senedd.

Recommendation 16. That the Welsh Government, at the earliest legislative opportunity, transfer responsibility for the appointment, accountability, and funding of the Children's Commissioner for Wales to the Senedd.