

**Pwyllgor Deddfwriaeth Rhif.5
Legislation Committee No.5**



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff CF99 1NA

28 June 2010

Dear Sir / Madam

**Consultation on Proposed Rights of Children and Young Persons
(Wales) Measure**

As part of its Stage 1 consideration, the National Assembly for Wales' Legislation Committee No.5 is calling for evidence on the general principles of the proposed Rights of Children and Young Persons (Wales) Measure.

What is a Measure?

A Measure is a piece of law made by the Assembly, which has a similar effect to an Act of Parliament. The Assembly is able to pass Measures on any 'matter' listed in [Schedule 5](#) to the Government of Wales Act 2006. The proposed Rights of Children and Young Persons (Wales) Measure relies on Matter 15.6 in Part 1 of Schedule 5 to the Government of Wales Act 2006 which relates to the co-operation and arrangements to safeguard and promote the well-being of children or young persons.

While a Measure is in progress through the Assembly, it is known as a 'proposed Measure'.

There is a four stage process for the consideration of a proposed Measure. Stage 1 involves consideration of the general principles of the proposed Measure by a committee (which includes the taking of written and oral evidence from interested parties and stakeholders), and the agreement of those general principles by the Assembly.

What does this proposed Measure seek to achieve?

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The Explanatory Memorandum that accompanies the proposed Measure states:

“The proposed Measure imposes a duty upon the Welsh Ministers and the First Minister to have due regard to the rights and obligations in the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols, when making decisions of a strategic nature about how to exercise functions which are exercisable by them. “Children” for the purposes of the UNCRC means those who are under 18.

The proposed Measure also makes related provision about:

- the preparation of a children’s scheme;
- reports about compliance with the duty to have due regard to the UNCRC and its Optional Protocols;
- promoting knowledge and understanding of the UNCRC and its Optional Protocols;
- amending legislation to give further or better effect to the UNCRC and its Optional Protocols; and
- consultation on the possible application of the proposed Measure to persons who have reached 18, but are not yet 25.”

What is the committee’s role?

The role of Legislation Committee No. 5 is to consider and report on the general principles of the proposed Measure. In doing so, the Committee has agreed to work within the following framework:

To consider:

- i) the need for a proposed Measure to deliver the stated objectives of:
‘imposing a duty upon the Welsh Ministers and the First Minister to have due regard to the rights and obligations in the United Nations Convention on the Right of the Child (UNCRC) and its Optional Protocols, when making decisions of a strategic nature about how to exercise functions which are exercisable by them’
- ii) whether the proposed Measure achieves its stated objectives;
- iii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its objectives;

- iv) potential barriers to the implementation of the key provisions and whether the proposed Measure takes account of them;
- v) the views of stakeholders who will have to work with the new arrangements.

How you can help – the consultation questions

Further details of the proposed Measure and the accompanying Explanatory Memorandum can be found on the National Assembly's website at:
<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-rightsofchildren.htm>

The Committee would like to invite you to submit written evidence to assist in its scrutiny of the proposed Measure. In particular, we would welcome your views on the questions listed in **Annex 1**.

If you wish to submit evidence, please send an electronic copy of your submission to legislationoffice@wales.gov.uk and entitle the e-mail *Consultation Proposed Rights of Children and Young Persons (Wales) Measure*.

Alternatively, you can write to:

Leanne Hatcher, Deputy Committee Clerk, Legislation Office, National Assembly for Wales, Cardiff Bay, CF99 1NA.

Submissions should arrive by Friday 27 August 2010. It may not be possible to take into account responses received after this date.

Further information on the **legislative process** can be found at:
<http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-measures.htm>

When preparing your submission, please keep the following in mind:

- your response should address the issues before the Committee. Please reference your response using the title applied above;
- the National Assembly normally makes responses to public consultation available for public scrutiny and they may also be seen and discussed by Assembly Members at Committee meetings. **If you do not want your response or name published, it is important that you clearly specify this in your submission;**
- please indicate whether you are responding on behalf of an organisation, or as an individual; and
- please indicate whether or not you would be prepared to give oral evidence to the Committee.

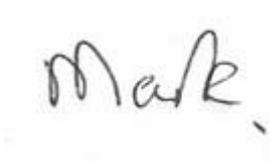
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The Committee welcomes contributions in English and Welsh and will consider responses to the written consultation during the autumn term.

If you have any queries, please contact Bethan Davies, Committee Clerk on 029 2089 8120 or Leanne Hatcher, Deputy Clerk on 029 2089 8147.

Yours faithfully

A handwritten signature in black ink that reads "Mark," with a small comma at the end.

**Mark Isherwood AM
Committee Chair**

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Consultation Questions

These are suggested questions, the Committee would welcome any views you have on the proposed Measure.

1. Is there a need for legislation (by means of an Assembly Measure) to impose a duty upon the Welsh Ministers and the First Minister to have due regard to the rights and obligations in the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols, when making decisions of a strategic nature about how to exercise any functions which are exercisable by them? If not, what alternatives, if any do you propose?
2. The Welsh Ministers must make a Children Scheme as required under section 2(1), which will set out criteria for determining which decisions are decisions of a strategic nature. What do you consider is meant by 'a decision of a strategic nature' as identified in section 1(2)? Is this sufficiently clear and or sufficiently wide?
3. Section 7 of the proposed Measure includes provision about consulting on the possible application of the proposed Measure to persons who have reached 18 years, but are not yet 25 years. Do you think this it is appropriate to apply a convention agreed for the benefit of children to adults between 18 and 25 years? What might be the issues to be addressed?
4. The proposed Measure includes a schedule, which is the Part I of the Convention and Optional Protocol 1-7 on the rights of children involved in armed conflict (except article 6(2)) and articles 1-10 on the rights of the child on the sale of children, child prostitution and child pornography.
Do you think that the text of these treaties needs to be included on the face of the Proposed Measure?
The Assembly does not have powers relating to armed conflict and has limited powers relevant to the second protocol. Do you think it is necessary for these protocols to be included in the Proposed Measure?
5. Are the sections of the proposed Measure appropriate in terms of meeting the stated objectives as detailed on page 10 of the Explanatory Memorandum. If not, how does the proposed Measure need to change?
6. How will the proposed Measure impact on improving and strengthening the rights of the child?

7. What are the potential barriers to implementing the provisions of the proposed Measure (if any) and does the proposed Measure take account of them?
8. Are there any other comments you wish to make about specific sections of the proposed Measure?
9. In responding to this consultation the Committee would be grateful if you could indicate how you have gathered views of children and young people in forming your response.

Financial provisions

10. What are the financial implications of the proposed Measure for your organisation, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the proposed Measure.

Subordinate Legislation

11. What are your views on powers in the proposed Measure for Welsh Ministers to make subordinate legislation? In particular do you consider it appropriate for Ministers to be able to amend the proposed Measure itself by subordinate legislation (by "Order" - sections 6 and 8)? Is it appropriate to use subordinate legislation to apply the Convention to adults between 18 and 25 years or should that be done by a further Assembly Measure (section 7)?
12. Section 8(5), allows Welsh Ministers to amend the Measure where there has been a change to the Convention or protocols or where an additional protocol has been signed or agreed (but not ratified) by the UK Government. Section 8(7) requires the Welsh Ministers to make similar amendments to the Measure where changes or additions to the Convention and protocols have been ratified by the UK Government.

Although these powers are to be exercised by Statutory Instrument (SI), neither the affirmative or negative resolution procedure will apply, Ministers will simply be required to lay the SI before the Assembly. Do you have any views on whether this is a reasonable way for Ministers to update the Measure or should there be more Assembly control over the process?"