

# Wales UNCRC Monitoring Group



**72<sup>nd</sup> Session of the Committee on the Rights of the Child**

**UK State Party Hearing Under the Convention on the Rights of the Child**

**23 and 24 May 2016**

**Supplementary Report to the Committee from the Wales UNCRC Monitoring Group**

**12 April 2016**

## **Introduction.**

1. The Wales UNCRC Monitoring Group submitted a full report to the Committee for the pre-sessional hearings in October 2015, and was represented at those hearings. A representative of the Monitoring Group will also attend as an observer at the State Party examination on 23/24 May 2016.
2. The Monitoring Group offers the following remarks to assist the Committee in its examination of the UK State Party, in particular with regard to the State Party's response to the List of Issues.
3. We respectfully remind the Committee of the devolved legislative and policy context on the rights of the child in Wales. Despite its subordinate position within the State Party, the National Assembly for Wales – uniquely amongst the several legislatures within the State Party - has enacted both general and sectoral laws giving further effect to the Convention in Wales. Four of the 22 Welsh local authorities, one Welsh health board and one Welsh police force have made authority-wide commitments to the Convention: this movement has grown even in the short time since the pre-sessional hearings, suggesting a 'bottom-up' momentum from the municipalities as well as 'top-down' direction from the Welsh Ministers and the National Assembly for Wales.
4. We are pleased to have the opportunity to 'commend' as well as to offer constructive criticism. At the same time, even where progress has been made and 'commended', we urge that this means the State Party at the devolved level of the Welsh Ministers and the National Assembly for Wales, as well as at the UK level, needs to maintain and increase efforts towards full implementation of all the requirements of the Convention.

5. The Group's remarks are set out under the headings used by the UK State Party in its Response to the Committee's List of Issues, with the relevant paragraph numbers indicated.

#### **Bill of Rights (3 – 4).**

6. We commend the Welsh Ministers for expressing their support for the Human Rights Act 1998. We remind the Committee that the Welsh constitutional framework contained in the Government of Wales Act 2006 and subsequent Welsh legislation, including the Rights of Children and Young Persons (Wales) Measure 2011, contains independent guarantees of protection of human rights. The Government of Wales Act 2006 includes a prohibition on Welsh Ministers and the National Assembly for Wales acting incompatibly with the Convention rights under the European Convention on Human Rights. ***The Welsh Ministers can, within devolved competence, and should maintain and enhance protection for human rights in relation to all devolved areas, irrespective of any dilution in protection that may occur at the UK State Party level.***

#### **UNCRC implementation (5 – 10).**

7. We commend the Welsh Ministers for promoting and implementing the Rights of Children and Young Persons (Wales) Measure 2011, which places a duty on Welsh Ministers to have due regard to the Convention on the Rights of the Child, and for promoting a similar duty on persons exercising functions in relation to children, enacted under the Social Services and Well-being (Wales) Act 2014. While these legislative measures do not create legal remedies for individual rights violations, they are significant advances towards incorporation of the Convention in Wales, compared to the other parts of the State Party. However, we note with concern the rejection by Welsh Ministers of:
  - a. extension of the duty to providers of regulated children's services under the Regulation and Inspection of Social Care (Wales) Act 2015; and
  - b. equalisation of protection for children under the criminal law on assault (see further under 'Corporal punishment' below)
8. ***Welsh Ministers should follow the logic of the 'due regard' provisions in the Rights of Children and Young Persons (Wales) Measure 2011 and the Social Services and Well-being (Wales) Act 2014, and impose a general public sector duty of due regard to the Convention in Wales, applying to all public bodies and all bodies delivering public functions. They should also revert to the position taken by successive Welsh administrations before 2011, in favour of equalisation of protection of children under the criminal law.***

#### **Children's Commissioners (11 – 14).**

9. We commend the Welsh Ministers' position that the remit of the Children's Commissioner for Wales should extend to any matter, devolved or non-devolved, affecting a child or children in Wales. This will significantly enhance enjoyment of their rights by children in Wales and is supported by the legacy report of the National Assembly for Wales' Children,

Young People and Education Committee.<sup>1</sup> However, we regret the Welsh Ministers' continued opposition to securing the independence of the Children's Commissioner for Wales by making the office accountable to the National Assembly for Wales (the parliament) rather than the Welsh Ministers (the government). Contrary to the State Party's assertion at paragraph 14 of its Response to the List of Issues, the Commissioner's independence is not 'established in statute'. ***The Welsh Ministers should promote legislation to reform the Commissioner's statutory role and remit, including by making the Commissioner accountable to the National Assembly for Wales.***

#### **Age discrimination legislation (15 – 16).**

10. Comprehensive law reform on this issue is beyond the competence of the National Assembly for Wales. However, the Welsh Ministers can take executive action and can promote sectoral measures within legislative competence to address aspects of discrimination against children, for example in relation to planning and use of public space.

#### **Counter-terrorism (19 – 22).**

11. We commend the positive measures taken in Wales as described at paragraph 22 of the State Party's Response to the List of Issues. However, ***we urge the Committee to question the State Party and the Welsh Ministers about the ways in which children's own experiences and views are taken into account in the implementation of these measures, and the steps being taken to monitor and evaluate effectiveness from a child-rights perspective.***

#### **Legal Aid (23 – 28).**

12. Wales is not mentioned in the State Party's responses. Although formally there is a single legal system for England and Wales, there are issues about access to justice which are specific to Wales, including the rights of Welsh speakers within the justice system. There are increasing differences in legal and administrative procedures in Wales compared to England. There is a need to gather data about the scale and nature of the problems faced by unrepresented litigants in Wales in family proceedings and the impact on cost and quality proceedings where no-one has legal advice and representation. ***We urge the Committee to question the State Party about under-representation of the Welsh perspective and of the experiences of children in Wales in the justice system, including the commissioning of publicly funded legal services. For example, of the 40 members the Family Justice Youth Board for England and Wales, only one member is from Wales.***

#### **Youth parliaments (29 – 32).**

13. Paragraph 30 of the State Party's response to the List of Issues is not an adequate response. 'Young Wales' is funded as part of a three-year project delivered by Children in Wales under the Welsh Government Children and Families Delivery Grant scheme. It informs and enables children and young people to participate effectively and have their

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<sup>1</sup> <http://www.assembly.wales/laid%20documents/cr-ld10654/cr-ld10654-e.pdf>

views heard by government Ministers and policy makers and reports to Welsh Ministers and civil servants. It is not structured as a 'democratic youth assembly or parliament' but was tasked by Welsh Ministers with the role of facilitating the participation of young people in the UK Youth Parliament annual debates. ***We urge the Committee to challenge the State Party as to the statistical basis for the assertion that participation of previously disengaged groups has increased. We urge the Committee to recommend the establishment of a youth parliament for Wales.***

#### **Voting age (33 – 34).**

14. ***We urge the Committee to recommend that the voting age should be lowered to 16.***

This would be consistent with young people's views expressed in the National Assembly for Wales Votes@16 consultation during 2015.<sup>2</sup>

#### **Corporal punishment (35 – 37).**

15. The State Party's response on this issue is inadequate. In its Concluding Observations following its last examination of the State Party in 2008, the Committee acknowledged the distinct position of the Welsh Government, which then favoured complete removal of the 'reasonable chastisement' defence. The Committee also acknowledged that Wales lacked devolved legislative competence to enact the necessary law reform. ***We urge the Committee specifically to express disappointment at the repeated failure of Welsh Ministers to support amendment of the law in Wales since acknowledging, in 2011, that the National Assembly for Wales does now have such competence.***

#### **Restraint (38 – 43).**

16. We note the regulations, guidance, requirements and training to which the State Party refers but strongly ***urge a recommendation for systematic collection of information about the use of restraint, and for continuous monitoring and review.***

#### **Children in Care (44 – 51).**

17. We commend the steps taken by the Welsh Ministers with regard to early intervention and family support but note the absence of explanation of the fluctuations in numbers of children in the care system in Wales. ***We urge the Committee to recommend systematic investigation, data collection and review of the numbers of and reasons for children coming into care, paying specific regard to the General Comment on Best Interests of the Child.***

#### **Mental health (52 – 57).**

18. Inadequacies in provision of treatment, support and preventive help for child and adolescent mental health are of major concern throughout the State Party, as reflected in the alternative reports from all parts of the State Party. Whilst noting the efforts in Wales referred to at paragraph 55 of the State Party's response to the List of Issues, ***we urge the Committee to challenge the implication that more money going in to secondary services is***

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<sup>2</sup> <http://www.yourassembly.org/wp-content/uploads/2015/07/Vote@16-REPORT-E-small.pdf>

*in itself an indicator of success. We urge the Committee to commend to Welsh Ministers a broader approach, identifying the proper role of specialist and non-specialist services, properly funding both, and supporting effective interaction between the two, informed by experts by experience and by those who work with them.*

#### **Sex and Relationship Education (58 – 64).**

19. We note the requirement in Wales, mentioned at paragraph 62 of the State Party's response to the List of Issues, for SRE to be taught in the curriculum. However, there is wide variation in the content, and ***we urge the Committee to make a recommendation that the Welsh Ministers take steps to ensure the content includes healthy relationships, consent and respect, not just the mechanics of sex and contraception.***

#### **Child poverty and welfare reform (65 – 71).**

20. Whilst we remain concerned about the persisting high levels of child poverty in Wales, we commend the Welsh Ministers for their decision - alone amongst the UK nations - to retain poverty reduction targets, and for the stronger focus on children's rights in the Welsh Ministers' revised Child Poverty Strategy. However, we are concerned about the lack of a delivery plan and that the age-inclusive Tackling Poverty Action Plan does not adequately focus on children's issues. ***We urge the Committee to question the State Party at both the UK and Welsh Ministerial levels about the consideration given specifically to the impact on children of austerity cuts and the children's rights implications of recent annual budget processes.***

#### **Asylum and immigration (83 – 89).**

21. Whilst these topics are non-devolved, the Welsh Ministers do have responsibility for law and policy relating to health, education, housing, social care and other support services to children in the asylum system who are resident in Wales. We feel strongly about the plight, highly publicised in some cases in Wales, of children turning 18 who were given leave to remain as children and then face being sent back on attaining adulthood, with cruel and potentially catastrophic consequences. Responsibility for this lies with the State Party at the UK level.

#### **Youth Justice (90 – 96).**

22. We deplore the continuing adherence of the State Party at the UK level to the age of 10 as the minimum age of criminal responsibility. We commend the Welsh Ministers' long-standing commitment to the principle that in Wales, planning and delivery of youth justice services are based on the principle that those under 18 are 'children first, offenders second', and the benefits of this policy in the practices of local youth justice services in Wales. However, this cannot fully mitigate the severity of the unduly low age of criminal responsibility, which remains outside devolved competence in Wales.

#### **Child sexual exploitation (107 – 110).**

23. We commend the Welsh Ministers for the actions referred to at paragraph 109 of the List of Issues. Some members of the Monitoring Group are involved in the implementation of these measures. This collaboration represents a good example of cooperation at the devolved level between the Welsh Government and civil society groups on a matter to which the Welsh Government has attached due priority. ***We commend this as a model which should be followed in relation to child sexual abuse more widely.***