

**Written evidence from the Children's
Commissioner for Wales to the
Consultation on the National Assembly for
Wales (Legislative Competence)
(Culture and other fields) Order 2009**



The Children's Commissioner for Wales is an independent children's rights institution established in 2001 in line with the Paris Principles¹. My principle aim is to safeguard and promote the rights and welfare of children.² In exercising my functions, I must have regard to the United Nations Convention on the Rights of the Child (UNCRC).³ My remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare and I may also make representations to the National Assembly for Wales about any matter affecting the rights and welfare of children in Wales.⁴

The UN Convention on the Rights of the Child (UNCRC) is an international human rights treaty that applies to all children and young people aged 18 and under. It is the most widely ratified international instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children.

The articles of the convention that particularly apply to the consideration of this LCO are:

Article 30

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

Article 31

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

¹ <http://www2.ohchr.org/english/law/parisprinciples.htm>

² Section 72A Care Standards Act 2000

³ Regulation 22 Children's Commissioner for Wales Regulations 2001

⁴ Section 75A (1) Care Standards Act 2000

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

Consultation Questions

1. What are your views on the general principle that legislative competence in the areas identified in Matters 2.1, 3.1 and 16.4 be conferred on the Assembly?

We support the general principle that legislative competence be conferred on the Assembly. It is important that Welsh Assembly Government is able to ensure, through placing statutory duties on local authorities, that there is equality of access to cultural and recreational activities across Wales.

Any improvement in the provision of cultural and recreational activities could potentially contribute to the Welsh Assembly Government's aim of reducing child poverty. In particular, this LCO could address issues relating to poverty of opportunity. As stated in the explanatory memorandum, 'culture is not a luxury' and we believe this LCO could assist in improving the standard of living for children. This has a resonance with article 27 of the UNCRC, especially with the assertion that government should assist families in raising standards of living.

Children and young people are not specifically mentioned on the face of the LCO but it is assumed that services for them are included in the general duties for all citizens. The Welsh Assembly Government sees children as rights holders and states clearly that:

"Children and young people should be seen as citizens, with rights and opinions to be taken into account now. They are not a species apart, to be alternately demonised and sentimentalised, nor trainee adults who do not yet have a full place in society"⁵

Children and young people as a group, however, have particular difficulties in accessing public facilities and this led the UK Commissioners to state in their report to the UN Committee on the Rights of the Child in 2008 that ⁶:

The UK Government and devolved administrations must urgently address the widely held intolerance of children in public spaces.

⁵ Children and Young People: Rights to Action

⁶ UK Children's Commissioners' Report to the UN Committee on the Rights of the Child
<http://www.childcomwales.org.uk/uploads/publications/61.pdf>

And:

Attitudes towards groups of children

147. Children and young people have told the Commissioners that the absence of appropriate, adequate and affordable play and leisure facilities has a negative impact on their lives. It can lead them to gather in public spaces, but often such gatherings are seen as anti-social and can cause tension between the young people and others. In one survey in England, two-thirds of children said they liked to play outside daily, mostly to meet friends. However, 80% have been told off for playing outdoors, 50% say they have been shouted at for playing outside and 25% of 11 to 16-year-olds were threatened with violence by adults.

The Mosquito device which originated in Wales was also thought to deserve specific mention in the UK Commissioners' report:

30. Indeed, we believe there has been an increase in discrimination against children as a whole. This is exemplified by the growing use of the 'Mosquito' device, a privately marketed product that issues a high frequency noise generally only heard by those under the age of 25. The device is used to repel teenagers from public places and indiscriminately impacts on children's use and enjoyment of these spaces and highlights the intolerance of children in the UK. While the UK Government and devolved administrations have not endorsed their use, they have not taken any steps to ban them.

Will any Measure also include duties on local authorities to take action against the use of such devices which are specifically designed to restrict children and young people's access to public space?

We would also hope that resulting measures could provide opportunities for positive intergenerational work, assisting children and young people to become an integral part of the community. This may be done through use of community facilities by people of all ages. In order for this to be achieved there should be effective consultation when assessing the leisure, cultural and recreational needs of communities within the process of delivering services. This consultation should also include children and young people, treating them as full citizens within the community and upholding the principles outlined in article 12 of the UNCRC which states that:

"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. ⁷

2. What are your views on the terms of the proposed Order? For example, are they too narrowly or too broadly drawn?

Whilst welcoming the intention to place duties on local authorities to support, improve and promote access to sport and recreational activities we question whether access to play facilities and social opportunities for children and young people should also be specifically mentioned on the face of the LCO.

Play is essential to children's development in many ways. Lack of access to appropriate play facilities can adversely affect children's health, learning and development of social skills.

There is a danger that, unless this is specifically included, the "adult" definitions of "sport and leisure" will be assumed.

Wales has led the way in the development of a national Play Policy and an associated Implementation Plan. However, recently we reviewed⁸ local authority Play Policies with particular regard to provision for disabled children and found a wide variation across local authorities with two authorities having no play policy at all.

We are aware that Part 4 of the Children and Families (Wales) Measure places a duty on local authorities to:

- to assess the sufficiency of play opportunities for children in its area;
- to secure sufficient play opportunities in its area for children so far as is reasonably practicable;
- to make arrangements to ensure participation of children in decisions of the authority which affect them.

We question, however, whether the duties to secure sufficient play opportunities in the Children and Families (Wales) Measure will have the same force as those proposed in the Culture LCO for the provision for sports and leisure.

Children and young people do not always want to access the same types of recreational activities that adults use. Often they simply need a place to "hang out" and associate with their peers. Such provision might include play areas, skateboard parks and outdoor basketball hoops, and other more informal areas

⁷ <http://www2.ohchr.org/english/law/crc.htm>

⁸ A Happy Talent, Children's Commissioner for Wales
<http://www.childcomwales.org.uk/uploads/publications/54.pdf>

CD29

(for example, hanging out areas, teenage shelters). Yet there is much evidence that these facilities are not always available.

We would suggest that such informal recreational provision is specifically mentioned on the face of the LCO.

3. What are your views on the specific exclusions to Matter 2.1 and Matter 3.1, and the exceptions contained in Article 3?

The exclusions and exceptions, for the most part, prevent the removal of existing provisions and we would support this approach.

4. Do you have any additional comments relating to the proposed Order?

No

Keith Towler

**Children's Commissioner for Wales
September 2009**