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Legislation Committee No 5

Proposed Rights of Children and Young Persons (Wales) Measure

Response from The Wales UNCRC Monitoring Group

NGO Monitoring Group on the UNCRC

Written submission for evidence to Committee 1st July 2010

1. Introduction

1.1 The Wales UNCRC Monitoring Group is a national alliance of non-governmental and academic agencies, tasked with monitoring and promoting the UNCRC in Wales. Chaired by Save the Children, the group's membership includes: Action for Children, Aberystwyth University Centre of Welsh Legal Affairs, Barnardos Cymru, Cardiff University Department of Child Health, Children in Wales, Funky Dragon, NACRO Cymru, NSPCC Cymru, Save the Children Wales, and Swansea University - School of Law.

Members with Observer status: Children's Commissioner Office for Wales, Equality and Human Rights Commission, Welsh Assembly Government, Welsh Local Government Association, Children and Young People's Partnership Support Unit.

1.2 The UNCRC Monitoring Group was established in July 2002 just prior to the hearing of the UK Government's 2nd periodic report to the UN Committee on the Rights of the Child in Geneva. The Group has increased in size and strength since this time, resulting in an increasing engagement of NGOs and academic institutions in developing their understanding and other partners' understanding of the importance of the UNCRC. It has also developed an important constructive yet critical collective voice that

monitors the Welsh Assembly Government and UK Government's obligation to realise the rights of children.

1.3 As part of the monitoring process to the UN Committee on the Rights of the Child the UNCRC Group produced an interim report in 2006 called 'Righting the wrongs: the reality of children's rights in Wales'. In 2007, the Group published 'Stop, look, listen: the road to realising children's rights' which is the Wales NGO alternative report that was submitted to the UN Committee on the Rights of the Child as part of the UK State party reporting process.

1.4 We were pleased to respond to the pre-legislation consultation on the Proposed Rights of Children and Young Persons (Wales) measure and we welcome this opportunity to give evidence to Legislation Committee 5 on the proposed Measure as part of the scrutiny process of the National Assembly for Wales.

2. Background

2.1 The UNCRC was adopted unanimously by the United Nations in 1989 and has achieved the highest level of acceptance of any human rights instrument. An almost universal ratification provides a powerful endorsement to the significance of children's rights. It has also been described as the most complete of the international human rights instruments as it includes civil and political, and economic, social and cultural rights.

2.2 The Convention is a treaty that is legally binding in international law on the UK State Party, but 20 years after ratification, has very limited legal effect in the UK. The failure to undertake incorporation into UK domestic law means that children and young people continue to lack an effective way to hold the government to account for the 'promises' made to them as set out in the UNCRC.

2.3 At a UK level the approach has been a piecemeal and sectoral one with individual pieces of legislation such as the Children Act 1989 and the Children Act 2004, for example, addressing some aspects of some of the rights and obligations of the UNCRC. But overall there is a clear failure to commit to the duty to work towards the progressive realisation of children rights by means of an overarching, coherent strategy including sufficiently wide-ranging legislation. This failure has been noted by the UN Committee on the rights of the Child and is the subject of specific recommendations in the 2002 and 2008 Concluding Observations on the UK's State Party reports.

3. Question 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?

3.1 It is important to remember that the UNCRC already imposes binding obligations on the Welsh Assembly Government.⁽¹⁾ Although it is not part of UK law, international law requires that Ministers should comply with the Convention when making any decision that affects children and young people under the age of 18, just as they are bound by the Convention on the Rights of Persons with a Disability, the International Covenants on Civil and Political Rights and on Economic and Social Rights and all other international treaties ratified by the UK.

3.2 The Welsh Assembly Government has led the way, uniquely in the UK, in its efforts to promote children's rights in Wales. The appointment of the first Children's Commissioner, the adoption of the UNCRC as a basis for the

¹ The Vienna Convention on the Law of Treaties, ratified by the United Kingdom on 25 June 1971, states at article 26, '*Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*'

Assembly's and Welsh Ministers' work in relation to children and young people and the Welsh Ministers' and the Assembly's stance on corporal punishment of children, all distinguished a specifically Welsh approach to implementation and are developments that have been welcomed by the UN Committee on the Rights of the Child in its Concluding Observations in 2008.

3.3 The Committee also however noted their concerns that

.....the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it(2)

3.4 We therefore welcomed Rhodri Morgan's announcement as First Minister in July 2009 of his intention to propose law which would '*embed the principles of the United Nations Convention on the Rights of the Child into law*'(3)

3.5 We believe that there *is* a need for legislation 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.

3.6 Children living in Wales are, along with other UK children, covered by the Human Rights Act which offers vital protection for children and young people under 18. However recent legislative developments that actively exclude children and young people – for example, the Equality Act 2010 which does not give legal protection against unfair treatment on the basis of age to those under 18 - strengthen the case for a change in the approach needed to protecting children's rights.

² Concluding Observations 2008 para10 Legislation CRC Committee

³ National Assembly for Wales, Record of Proceedings, 14/07/2009

3.7 We believe that the administrative law ‘duty to have due regard’ to the UNCRC is an appropriate one at this stage in Welsh devolution and that this would impact on all decisions made by the administration; executive or legislative.

However, placing a duty on the Welsh Ministers to have due regard only when making decisions of a strategic nature we believe to be unsatisfactory, and will lead, as we have already seen, to confusion and ultimately be ineffective.

3.8 The Welsh Assembly Government’s Explanatory Memorandum at Para 2.5 summarises the intention thus:

At the core of the proposed Measure are provisions that will require the Welsh Ministers to put in place arrangements so that when they and the First Minister make strategic decisions about how to exercise their functions, they will comply with a duty to have due regard to the United Nations Convention on the Rights of the Child.

Two things trouble us about this:

3.9 It appears that the law is being used to require Ministers to do something that they already have power to do: that is, to seek advice and information about how the exercise of their functions could further, undermine or otherwise impact on UNCRC implementation. Given the commitment of successive Welsh government administrations since 2000, and the National Assembly since 2004, to the UNCRC as an overarching source of principles in relation to matters affecting children and young people in Wales, it is startling if in 2010 they feel the force of law is required before they will actually follow through that position and think about the UNCRC when making strategic decisions (whatever that means) about how to exercise their functions.

3.10 It appears that the impact of the duty is being deliberately confined to the policy development, strategy-writing and broad planning aspects of WAG

business. Of course, Ministers should have due regard to the UNCRC when engaged in these kinds of activities. But what is left out is equally as important and is the part that is tangible from outside the walls of the WAG: that is, the actual decisions, actions and inactions that comprise the exercise of functions.

3.11 We have argued and continue to urge that it is to the exercise of functions, not just the back-room, internal Welsh Assembly Government process, that the duty should attach. The pre-legislative draft did attach the duty to 'functions' but only to those that were to be identified by Ministers as 'relevant'. The overwhelming view of those responding to pre-legislative scrutiny was that this was inadequate: the duty needed to pervade across the exercise of all functions.

3.12 We continue to hold that view. We think that law is required to give effect to such a duty. We are not convinced that law is required in order to impact only on internal government process. New law should change the legal position: the 'decisions of a strategic nature' formula does not appear to us to do so in a way that is meaningful to those outside the machinery of government.

3.13 Accordingly the alternative approach that we propose is that already offered in our and other responses to the pre-legislative consultation: the duty to have due regard should apply to the exercise by Ministers of their functions.

This would mean that Ministers would be under a duty to give due regard to the UNCRC in the same way that they do with sustainable development / equality of opportunity etc.

3.14 The UNCRC would become another legally-prescribed point of reference along with these other general objectives; the obligations of the UNCRC would be explicitly recognised as part of the legal framework within which policy is developed and government decisions are taken at devolved level in Wales.

3.15 Our alternative formula has the advantage of being simple, straightforward and pervasive - which was, we understood, the original intention when Welsh Ministers gave their commitment to developing this legislation back in 2009.

3.16 Now, Ministers have explained that their concern about the alternative formula is that it would be too difficult and heavy-handed to apply the duty across everything done in the exercise of powers and duties.

3.17 There are two problems with this response:

Firstly, it ignores or severely underestimates the import of 'due regard'.

'Due regard' is a phrase that has been considered by the courts as well as being amenable to lay understanding. Where a decision, whether strategic, tactical, mundane, principled, major or minor, could further, undermine or otherwise impact upon implementation of the UNCRC, 'due regard' means giving the Convention appropriate weight together with all the other factors which Ministers must consider.

Where a decision of any of these kinds could not have any such effect, 'due regard' means that the Convention should not, in practice, feature in the consideration.

The 'decisions of a strategic nature' formula does not deliver a solution to the perceived problem. It is therefore an irrational response to it. Whether a decision is strategic or not is not the point: what matters is whether the decision can impact on UNCRC implementation; put another way, whether it engages the rights and obligations of the Convention.

For example, correspondence has been mentioned as something not 'strategic' in nature, but suppose the correspondence related to or came from a child and concerned a matter to which the UNCRC had obvious relevance? Conversely, some 'strategic' decisions will not have any relevance in terms of UNCRC implementation.

3.18 Secondly, a further perceived problem about the approach we have suggested is that it will mean that everyone engaged in advising and supporting Ministers in exercising their functions will have to know about the UNCRC, and this is impossible or inordinately expensive to achieve. We find this unimpressive given that:

- The same draft Measure contains a direct duty on Ministers to take such steps as are appropriate to promote knowledge of the UNCRC amongst the general public including children and young people: surely it is not intended that the only persons not targeted are to be WAG's own officials;
- We assume that training on human rights, equality, sustainable development, etc obligations is a staple part of induction and in-service training for WAG officials. If not, questions ought to be asked about how Welsh Ministers are complying with sections 77, 79 and 81, etc of the Government of Wales Act 2006 as well as with section 6 of the Human Rights Act 1998.

We are aware that training on participation rights is now incorporated into the core training programmes for all Divisional officers across the Welsh Assembly Government, and that a series of Policy Seminars facilitated by Save the Children's Turn on the Rights Group are being rolled out across Welsh Assembly Government offices in Wales raising awareness of the Convention.

It must surely be feasible to develop these models and for information about the UNCRC and about Ministers' duty to have due regard to it to be incorporated into future core training.

Any genuine issues about the need for adequate training could be addressed as an issue of implementation of the Measure and/or in the children's scheme.

4. Question 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?

4.1 Above, we have explained that we think the formula is inappropriate and ill-advised: an irrational response to a much-exaggerated, perceived problem. As to what a 'decision of a strategic nature' is we note that the formula has been used in section 1 of the Equality Act 2010 which imposes on a much wider and disparate group of public bodies (including Welsh Ministers) a duty to have due regard to the desirability of exercising their functions in a manner designed to reduce inequalities in outcome due to socio-economic disadvantage.

4.2 Welsh Ministers will no doubt have considered what is said in the Explanatory Note to section 1 of the Equality Act 2010 and will no doubt have had the benefit of conferring with relevant UK government departments as to what is intended by it.

These sources appear to us the best current indicators of what 'decisions of a strategic nature' might mean, pending further suggestions from the Welsh Ministers as to what they want the phrase to mean in the context of the draft Measure.

4.3 However it seems to us curious that Welsh Ministers have preferred the Equality Act 2010 model, designed for a broad range of public bodies spanning the whole of the UK and numerous statutory bodies in England and Wales exercising disparate functions, to the model established in law specifically for functions exercised by devolved Welsh government. It is to the exercise of 'functions' that the equality and sustainable development duties in sections 77 and 79 respectively of the Government of Wales Act 2006 apply - not to 'decisions of a strategic nature about how to exercise' functions. We have explained above that that is the approach we think should be followed here.

4.4 We note the explanations offered by the Deputy Minister and his advisers in evidence to the Legislation Committee on 24 June. They suggested that current thinking was in terms of catching 'high level' decisions about 'long

term objectives': not 'day to day' 'decisions. A distinction seemed to be being drawn between what high level officials and Ministers deal with on the one hand and what officials lower down in the WAG do on behalf of Ministers on the other.

4.5 If this is correct, it worries us very much, since the vast majority of interactions between WAG and the public, including children and young people, are with WAG officials at relatively low or middle level, not Ministers and their senior advisers.

4.6 Also the internal deliberations to which the Deputy Minister and his advisers seemed to be referring are the subject of internal governmental communications which would not routinely be disclosed to a member of the public or even an Assembly Member short of a Freedom of Information request. This is in contrast to Cabinet minutes and the actual exercise of powers and duties, which are a matter of public record. So we are concerned about how there is to be effective accountability in practice for carrying out the duty.

4.7 A further serious concern is that if it is intended to distinguish between 'high-level strategy' or 'long-term objectives' and 'day to day' decisions, this will do little to address the implementation gap. That is, the gap between the good intention and the practical outcome. This is something the WAG has itself identified as requiring greater effort in its National Action Plan following the Concluding Observations of the UNCRC Committee in November 2008.

4.8 In short we think the formula is unclear, incomplete, opaque and will tend in practice to frustrate proper scrutiny and accountability for carrying out the duty to have due regard.

4.9 We are very concerned about the impact of seeking to consult on a matter of this nature. Organisations external to WAG and interested

members of the public, including children and young people, will be invited to respond to a consultation about implementing what was originally envisioned as *'embedding of the UNCRC in law for children and young people in Wales'*. They will find that far from engaging in a consideration of what children's rights means for them and their government, they are asked to explore the meaning of a 'decision of a strategic nature' in the context of WAG's own internal business process.

4.11 With respect we think it wildly optimistic of the Deputy Minister to hope (in his evidence to the Legislation Committee on 24 June) for an open, transparent and inclusive discussion about this. We anticipate incredulity, confusion and disillusion on the part of consultees.

4.12 Whilst for the reasons explained above we are unable to do more than guess at what 'decisions of a strategic nature' might mean, we draw attention to the fact that our alternative formula has the relative virtue of being already defined in the Government of Wales Act 2006, section 158 of which says simply that 'functions' means power or duty.

This is, we submit, worthy of the description 'robust, clear and transparent' (quoting again the Deputy Minister in evidence to the Legislation Committee on 24 June) whereas the phrase 'decisions of a strategic nature about how to exercise their functions' is not.

5. Question 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?

5.1 In our response to the initial consultation on this Measure we stated:

We appreciate the spirit behind the intention to adopt the principles of the UNCRC for young people over 18 years and we fully acknowledge the need to pay special attention to access to rights for this age group. Further, the inclusion of over-18s in aspects of the implementation, such as consultation, seems wholly appropriate. However, we would see it as simply not possible to apply the UNCRC as such to over-18s.

5.2 From examining the initial consultation responses received it is clear that a number of organisations came out in favour of giving *further consideration* to protect the rights of young adults between the age of 18 and 24.

A more or less equal number however were clearly not supportive of *including* the rights of young adults in a Measure intended to embed the rights of children under the UNCRC into Welsh law:

It follows on from Question 23 that we believe Ministers should continue to consider the ways in which young adults over 18 can access their rights more fully, by recognising the vulnerable position many young adults are in and building on the strategic approaches and policies already put in place.

There would be benefit in Welsh Ministers thinking about how the “due regard” duty should cover young people aged 18-24 as many of the current policies and guidance for Children and Young People’s services include this age group and it is important to act consistently and equitably.

However, the protection of the rights of children aged 0-18 years must be the overwhelming priority (Consultation response Local Health Board)

5.3 We do of course recognise that many young people over 18 years of age struggle to access their rights and we applaud the Welsh Assembly Government’s commitment to securing rights for these young people through their policies for young people between 18 and 24 years. However, a proposed Measure to extend the principles of the UNCRC to young adults remains, in our view, inappropriate:

5.6 The UNCRC definition of a child is contained in Article 1 of the Convention:

For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

5.7 The rights contained in the UNCRC are designed to support the developmental needs of children and young people; the Convention was created to give additional human rights to under 18s in recognition of their lack of formal capacity, their vulnerability, their evolving capacities and for the principles necessary for children's development e.g. protection and provision of services.

5.8 It does not make sense to extend its provision to young adults who have legal capacity in their own right. For example, how can the Welsh Ministers apply the principle of 'best interests' (Article 3) to a 24 year old? Article 31 'the right to play' to adults? Or Articles 9 and 10 on separation and reunion with parents? How does Article 37 on juvenile justice apply to a young adult? E.g. children should not be tried in adult courts or imprisoned with adults. We would be interested to hear the view of the Ministers on this point.

5.9 In addition, to give children's rights to adults also undermines the important principle that children need additional rights to adults. Vulnerable adults should (and do) have separate legal rights that safeguard and promote their human rights.

5.10 The inclusion of this section in the Measure (and the explanation of it in the original consultation document) in our view, creates confusion and perpetuates misunderstandings about children's rights and of the meaning and purpose of the UNCRC.

Ministers should continue to consider the ways in which young adults over 18 can access their rights more fully, by recognising the vulnerable position many young adults are in and building on the legislation, strategic approaches and policies already put in place.

6. Question 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?

6.1 Yes, we would agree that Part 1 of the Convention and the Optional Protocols referred to should be included on the face of the Measure – this makes it very clear that the principles and provisions of those parts of the Convention are to be imported into domestic law in Wales.

6.2 Article 42 is omitted and whilst we recognise the intention that its import is covered by the direct duty in Section 5 of the proposed Measure we have concerns about the strength of this duty, please see our comments under Question 8.

6.3 Whilst powers in Wales may be limited in some respects in relation to the optional protocols there is still much that the Welsh Assembly Government and the National Assembly can do through taking preventative action, promoting and protecting rights through inter-agency working and through provision of children's services.

6.4 Welsh Ministers also already have the power to protect and promote the rights of Welsh children by making representation to non devolved bodies, e.g. criminal justice, immigration etc; to Westminster; and to international bodies about the rights of children in Wales under these protocols.

6.5 Regarding the Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; we know that there are concerns about, and that research⁽⁴⁾ evidences the existence of trafficking of children and young persons under 18 in Wales. Steps have been taken to act on this by the Welsh Assembly Government and the National Assembly. In addition our inability to protect children from becoming involved in child prostitution and child pornography is fully documented and our safeguarding services and structures deal with these issues on a daily basis.

6.6 It is our view then, that the Welsh Assembly Government has a clear remit to affect the implementation of this optional protocol - ensuring that knowledge, awareness, policies and procedures for individual and inter-agency working are in place to ensure early recognition and action to protect children's rights in these circumstances.

In addition the protocol gives recommendations that are well within the powers of the Welsh Assembly Government; informing children of their rights, training professionals, protecting their rights as witnesses, providing support services:

States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.⁽⁵⁾

6.7 On the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; again we would urge the Assembly Government and Ministers not to underestimate the contribution Wales can make to implementing this protocol and protecting the rights of young people in these circumstances.

⁴ 'Bordering on Concern: Child Trafficking in Wales' ECPAT 2009

⁵ Article 9(2) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

6.8 Article 7 makes provision for the rehabilitation of those who are victims of violations of the protocol for example. In addition there is much that can be done through education and awareness and monitoring to ensure that young people understand the contract they are entering, that sign up is voluntary, and that under 18s get special protection in keeping with the provisions of the Protocol.

7. Question 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?

7.1 We have stated above the reasons why we think the 'decisions of a strategic nature' formula requires to be substituted by a requirement to have due regard to the UNCRC when exercising functions. Accordingly we think sections 1 and 2 need to be changed to achieve that.

8. Question 6: How will the proposed Measure impact on improving and strengthening the rights of the child?

8.1 The Measure will not improve or strengthen the rights of the child. No new rights or obligations are contained in it.

8.2 What it may do is improve public awareness of children's rights as recognised in the UNCRC and institutional awareness of the obligations of the Welsh Assembly Government as one manifestation of the State Party to the UNCRC. Section 5 of the Measure is, subject to the points we make below (Q. 8) potentially very useful in this regard.

8.3 The 'core' of the Measure – the duty to have due regard to the UNCRC when making decisions of a strategic nature about how to exercise Ministerial functions – may have the effect that when advising Ministers, WAG officials begin routinely to refer to relevant provisions of the UNCRC.

Possibly the need to respect and protect children's rights as required by the UNCRC will become a factor routinely considered when officials are drafting strategies, developing policy and planning future business. This is of course a good thing. It may impact on the way in which Ministers exercise their functions: presumably Ministers intend that it will.

8.4 However the defects of this formula, already been rehearsed above:

- Law is not required to give effect to the apparent objective;
- Insofar as it makes a difference it will not be very visible to the outside world;
- Lack of visibility undermines accountability.

8.5 Rather than continue to debate this in the abstract it will be useful to look at examples of what the duty will and will not impact on – and what our alternative formula would and would not impact on.

A number of scenarios have been drawn to our attention and we think Ministers should be asked to explain how the 'decisions of a strategic nature' formula' would impact on what Ministers actually do in the exercise of their functions in these examples:

- Funding decisions about adoption placements
- Further education provision for severely disabled young people;
- Awarding contracts for work-based training for 16 – 18 year olds
- Funding decision about early years workers in Funky Dragon
- Child care provision
- Provision of support services through CAMHS

8.6 We believe that in our alternative approach Ministers would have to consider and be able to show they had considered relevant UNCRC obligations when exercising their powers and duties in these matters. Considering and being able to show due regard for those obligations would become a criterion affecting the legality of the exercise of the powers and duties.

We believe that this is not the effect of the ‘decisions of a strategic nature’ formula, which appears to be designed not to impact on the legality of the exercise of Ministerial functions.

9. Question 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?

9.1 The ‘decisions of a strategic nature’ formula contains in-built barriers of difficulty of understanding, transparency and accountability. The problems are not adequately met by the requirement to consult over the children’s scheme.

9.2 Another barrier is a possible lack of political will on the part of Ministers and officials, in respect of which the Measure contains inadequate potential to scrutinise and compel compliance.

10. Question 8: Are there any other comments you wish to make about specific sections of the proposed Measure?

10.1 We welcome the fact that Section 5 of the Measure has now been amended so that Ministers must take such steps *as are appropriate* to promote knowledge and understanding ...of the Convention.

However we remain concerned that this Section does not import Article 42 in its entirety into the Measure, i.e. the phrase ‘active’ remains absent despite a number of consultation respondents recommending its inclusion. As we noted in our previous consultation response we see no reason why the wording of the Article cannot be imported directly into the Measure -

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike. (Article 42 UNCRC)

- **and** include the additional duty on Ministers to ensure ‘understanding’ of the Convention.

10.2 The UN Committee's recommendations describe in some detail and go on to list those professions whose work directly impacts on children (legal profession, teachers, health workers amongst others) and how governments must ensure that professional and on-going training incorporates teaching on the UNCRC. Guidance also goes on to state that part of the work of Ministers in carrying out this duty will be to recognise and support the role of NGOs, international bodies, statutory bodies including the Children's Commissioner for Wales, educational providers, professional bodies and civic society in promoting awareness and understanding about the UNCRC. We would wish to see the intentions of Article 42 more specifically reflected in Section 5 of the Measure itself

11. Question 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.

11.1 The views of children and young people have been reflected in the earlier consultation responses from a number of organisations including those from Funky Dragon who carried out their own consultation with young people as well as facilitating the Welsh Assembly Government's consultations sessions in North and South Wales with children and young people.

11.2 The clear message is that children and young people experience the attainment or violation of rights across the different areas of their lives. Even in its previous format relating to 'relevant functions' children and young people struggled to understand a Measure that appeared to separate out and prioritise their rights by placing a due regard duty on Ministers only when they make certain decisions.

What then, are they going to make of the proposed public consultation about what a 'decision of a strategic nature' is?

12. Financial provisions

Question 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.

12.1 We presume that there are no financial implications for the UNCRC Monitoring Group in the current proposals

13. Subordinate Legislation

Question 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)?

13.1 Amendment by future subordinate legislation is not itself objectionable but should be subject to safeguards in the form of extended legislative scrutiny of proposals to amend.

13.2 Ministers are being given the power under section 6 to amend primary legislation – that means their own Measures but also Acts of the UK Parliament if the issues fall within the competence of the Assembly. This is a significant power.

13.3 Yes, it is for a good purpose but there is an issue of democracy here. The Human Rights Act 1998 gives an equivalent power to UK Ministers – to amend UK legislation where a UK court or the European Court of Human Rights has ruled that legislation is not compatible with the ECHR rights.

13.4 The power under section 6 of the Measure is less constrained than the section 10 HRA power in that the latter applies only where there has been a court ruling identifying an incompatibility.

13.5 The section 6 power applies when a report made by the Ministers themselves has concluded that it is desirable to amend legislation to give better effect to the rights i.e. the trigger comes from the Ministers themselves.

They are then able under section 6 and 10 to change primary legislation subject only to laying the order before the Assembly and the Assembly approving it.

13.6 The problem with this is that such approval by the Assembly gives the Assembly only the opportunity to vote for or against the order – not to amend it. (The 1998 GWA allowed amendments of subordinate legislation in plenary but the 2006 Act does not.)

13.7 This is a real disadvantage. The HRA 1998 deals with the issue by requiring two stages in Schedule 2 – by requiring the laying of a draft containing the proposed order and the required information and allowing for representations to be made during a 60 day period and THEN a draft is laid before each house for 60 days and if recommendations have been made during the first 60 day period then there must be a summary of the representations and an indication of any changes made as a result of those representations.

Given the significant powers given to the Assembly, just approval without any chance to make such representations etc seems very disappointing.

13.8 The position of 18 to 25 year olds should in our view be dealt with separately and not by attempting to adapt a text designed to protect minors for the purpose of protecting a specific group of persons over the age of legal majority.

14. Question 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?"

14.1 This power is on the face of it less problematic in terms of democratic scrutiny of the exercise of Ministerial functions because it concerns the updating of the Measure to keep pace with changes in the obligations imposed on the UK as a State Party to the UNCRC or its Optional Protocols. However there would be merit in applying some degree of control by the Assembly if only to ensure the opportunity for focus and debate on the impact for devolved government of the relevant changes.

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