

CR15

Legislation Committee No 5

Proposed Rights of Children and Young Persons (Wales) Measure

Response from Welsh Women's Aid

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

About Welsh Women's Aid

Welsh Women's Aid (WWA) is one of four UK Women's Aid Federations and was founded in 1978 to campaign and lobby for improvements in public policy and government legislation in relation to women and children experiencing domestic abuse in Wales. WWA is the national umbrella organisation with a membership of 34 local Women's Aid (WA) Groups situated throughout Wales. Our member groups provide emergency temporary accommodation, outreach and floating support, information and practical support on legal issues, benefits, housing, children's issues and other matters related to the experience of domestic abuse. As a national organisation we also provide training, specialist support and information to affiliated groups and challenge and inform national policy on their behalf.

Welsh Women's Aid also manages the Wales Domestic Abuse Helpline, a free 24 hour, gender neutral, bilingual and confidential helpline providing support and information on emergency accommodation, welfare and benefit rights, housing issues, legal issues, child welfare and perpetrator programmes.

Children and young people make up more than half the service users of our member groups and as such provisions for children are a core element of the services available to women experiencing domestic abuse. Local groups provide support to children and young people through group work, one-to-one work, therapeutic play to help them to come to terms with and overcome the effects of domestic abuse. WWA and local WA groups also provide training in domestic abuse and its effects on children and young people, to statutory and voluntary organisations. In 2007 Welsh Women's Aid successfully applied for core funding for 7 regional children's service development workers and an additional full time national worker. The project is entitled; 'Children Matter' as the promotion of children as service users in their own right, entitled to a quality service, is the focus of all our work. We have been working hard towards a more cohesive and consistent quality in

children's and young peoples services in refuge and in the community all across Wales.

Welsh Women's Aid responded to the initial Rights of the Children and Young Persons (Wales) Measure consultation in May.

Consultation Questions

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?

Welsh Women's Aid (WWA) strongly recommend 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 UNCRC and its Optional protocols, when making decisions of a strategic nature. Such a Measure would be an essential action to ensure the realisation of all rights in the UNCRC for all children in Wales.

As we stated in our response in May, WWA recommend that the Welsh Assembly includes a clear and robust definition of the term 'due regard' within the Measure. As the current Measure stands it lacks any definition of what the duty to have 'due regard' actually requires of Welsh Ministers and the First Minister. If a clear definition is not provided, it will be very difficult to tell whether the Ministers are complying with the duty.

The definition should clearly outline what 'due regard' means and what responsibilities and duties it would require from the Ministers, including information on a clear process by which the WAG would ensure that 'due regard' has been given to the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols in decision-making for relevant functions. This would enhance transparency in policymaking and allow for greater accountability.

Many other agencies have developed their own definitions, showing the importance of having a clear and robust definition of 'due regard'. WAG should be very clear about what its own interpretation is and should include a definition and publish guidance of what is expected under the 'due regard' duty in this instance.

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?

There is a need to ensure that Ministers, officials, wider society and children clearly understand what the terms 'strategic nature' means so that there is complete clarity about which issues will be subject to this duty. WWA recommend a clearer definition should be provided around what is meant by 'a decision of a strategic nature' as identified in section 1(2).

WWA define a decision of a strategic nature to mean a decision that sets the direction, course of action and parameters for how to exercise ministerial functions. The term is certainly wide and broadly clear: however concerted effort will be required to achieve consistent interpretation, understanding and practice by all those who will be involved in the implementation process. The scope of the duty is limited in terms of functions and the range of duty-bearers. This is not a problem as long as it is clearly recognised that the obligation to comply with the UNCRC refers to all functions and all duty bearers.

The Welsh Ministers and the First Minister should have due regard to the rights and obligations in the UNCRC even if a policy will have an indirect impact on children and young people e.g. Welsh Assembly Violence Against Women Strategy 'The Right to be Safe Violence Against Women Strategy (2010), and related Violence Against Women and Domestic Abuse Implementation Plan (2010). There should be sufficient scope to easily amend or expand the functions within the children's scheme to which the 'due regard' duty applies.

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?

Yes. WAG already uses the UNCRC as its basis for policymaking for both children and young people in Wales, and numerous policies cover both children and young people. As such, it would seem to make sense to ensure that the provisions and rights in the UNCRC and its Optional Protocols cover young people up to and including the age of 25, as well as children, to ensure consideration is given to a young person's continuing vulnerabilities when she or he reaches adulthood.

This is particularly important in the case of vulnerable young people, who may fall between the ages of 18 and 25 inclusive (i.e. older than 'children' as covered by the CRC) but who may be particularly vulnerable to having their rights infringed or violated. Vulnerable young people are more likely to access support services, and to have a specific set of needs which mainstream adult services are unable to adequately address. As such, WWA would advocate that the Welsh Ministers think carefully about whether the

Measure should apply to young people as well as to children; in addition to being in keeping with the usual method of making policies for 'children and young people' in WAG, extending entitlement to include young people as well as children could protect some of the most vulnerable young people within our society.

WWA is the national umbrella group for 34 local Women's Aid groups across Wales, which provide emergency temporary accommodation, outreach and floating support, information and practical support on a range of issues for women and children affected by domestic abuse. Our local groups provide direct support to children and young people, both in refuges and in the community, to help them to come to terms with and overcome the effects of domestic abuse. Both children and young people in Wales exposed to domestic abuse face considerable barriers to realising their potential, and domestic abuse is a violation of numerous rights of children as set out within the UNCRC, for example:

- Article 6 on the right to life and maximising survival and development;
- Article 18 on entitlement to services;
- Article 19 on protection from violence;
- Article 20 on alternative care when a child's best interests cannot be met by his or her family;
- Article 34 on protection from sexual exploitation or abuse;
- Article 37 on protection from torture and deprivation of liberty;
- Article 39 on promoting recovery and reintegration of victims of neglect, exploitation or abuse.

Furthermore, in relation to domestic abuse, WAG has already indicated that the rights of young people (as well as children) are included within its duties under the UNCRC. In WAG's response to the NAFW's Communities and Cultures Committee Inquiry into Domestic Abuse (the Inquiry took place in 2008; WAG provided a response on 4 February 2009), then-Social Justice Minister Brian Gibbons stated:

'Under the UNCRC, the Welsh Assembly Government has a duty under Articles 19 and 34 of the Convention to protect children and young people from violence, abuse, and neglect by their parents or other adults. Under Article 39, WAG has a further duty to ensure that systems are in place to provide help and support for children and young people who have experienced or witnessed domestic abuse to help restore their self respect'. (italics added)

WWA believes that there needs to be a more coordinated response across Wales to children and young people experiencing domestic abuse, and extending the reach of this Measure to include both children and young people could improve the outcomes of some of the most vulnerable 18—25-year-olds in Wales. A significant number (45%) of women in Women's Aid refuges across Wales fall into the category of 'young people', and, while they are service users in their own right, these women are

particularly vulnerable due to their young age with regards to issues such as accessing and maintaining tenancy, life skills, social skills and education. A significant number of these women have also been in care as children. Furthermore, more 16 and 17 year olds enter Women's Aid refuges as independent service users than with their mothers – i.e. under the UNCRC's definition they are legally children, but are accessing services because they have experienced domestic abuse themselves.

Different agencies in Wales define the age boundary between 'child' and 'adult' at different ages. Social Services view 18-year-olds as adults; the Police view 16-year-olds as adults; and in education the age is 25. WAG recognises the special requirements of young people up to the age of 25 in documents such as Extending Entitlement. Extending the reach of the rights within the UNCRC to children and young people up the age of 25 would help to ensure a more consistent approach to the treatment of young people, considering the current incoherence regarding different agencies defining 'child' and 'young person' at different ages.

With regards to the services that our local Women's Aid groups provide in Wales, WWA would question the boundaries between a 17-year-old girl and an 18-year-old woman using Women's Aid services as victims/survivors of domestic abuse; given WAG's approach to 'children and young people' in its policymaking, and the protection needed by our groups' vulnerable service users. WWA would advocate that Ministers include young people (particularly vulnerable young people such as victims of domestic abuse) within the Measure. Extending the UNCRC to include young people and to safeguard their rights could have a significant and positive impact upon young women whose basic human rights are infringed by the experience of domestic abuse.

Considering whether to extend the Measure to include young people could also have important ramifications for other forms of violence against women and girls, particularly the Optional Protocol on the Sale of Children, Child Prostitution and Pornography. WWA would welcome the extension of the rights within this Protocol to cover all young people up to the age of 25. This would provide a legal lever for the protection of vulnerable groups such as sex workers and young people in Wales who have been victims of trafficking for the sex trade. Research is currently being undertaken to map the extent of sex work within Wales at Swansea University (part of several research projects being conducted into sex work by a research team at the University; the All Wales Network of Sex Projects was launched there in April 2010). Initial indications are both that numbers are very high, and that violence against these workers (which include young men and women) is rife. Amnesty International estimated in 2008 that there were at least 60 women in Cardiff alone who have been trafficked here for the sex trade, and a 2008 report by ECPAT UK found that there are child victims of trafficking for reasons ranging from the sex trade to domestic servitude in Wales. Both reports include case studies of girls and young women aged up

to 25. As such, extension of the rights within the UNCRC to include young people aged 18—25 would be extremely welcome.

Also, while the above Conventions have been signed and ratified by the UK Government and the Welsh Assembly Government and is therefore responsible for ensuring that citizens in Wales receive the rights to which they are entitled under those Conventions, WAG does not use all of them as its bases for policymaking in certain areas. For example, while WAG uses the UNCRC as a basis for policymaking in subjects relating to children in Wales, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is not used as its basis for policymaking in all areas relating to women's equality, including violence against women. WWA would therefore recommend firstly that WAG adopts the relevant UN Conventions as its basis for policymaking in the relevant area in Wales, to ensure that Wales is living up to all of its international requirements under the UN and to follow its own example of national policymaking to fit international human rights law - a process which it commendably exemplifies in the case of the UNCRC. Secondly, WWA would recommend that where Conventions are referred to in other key policies (such as 'The Right to be Safe', WAG's new Violence Against Women Strategy, which refers to CEDAW), these are joined-up with the UNCRC to ensure effective protection and cohesive, collaborative, cross-government policymaking in relevant areas, as well as to avoid undue repetition.

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?

We are delighted to see that the two Optional Protocols to the Convention on the Rights of the Child - on the sale of children, child prostitution and child pornography, and on protection for children in armed conflict - are included in the proposed Measure and fully support this approach. WWA recommend that the text to the other treaties need to be included to ensure transparency and also clear understanding of how the proposed Measure will link with other treaties.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography is an important tool for tearing through the mantle of invisibility surrounding the sale of children, child prostitution, child pornography and other forms of sexual exploitation, to mobilise societies and to translate political commitment into effective protection of children from all forms of violence. A significant number of children are affected by

child prostitution, child pornography and child exploitation in England and Wales. In December 2009 the UK Human Trafficking Centre reported in its published statistics that between April and December 2009 the cases of 527 potential victims of trafficking were referred to the National Referral Mechanism. Out of the 527 people, just over 140 were described as children (i.e. under 18) making 26.7% of referrals. Home Office statistics reveal that 80,000 women are involved in prostitution - over 50% were under 25 years of age and 75% of women involved in prostitution began when they were under 18. Up to 70% of women in prostitution spent time in care, 45% report sexual abuse and 85% physical abuse within their families (Home Office, 2006). More than half of UK women in prostitution have been raped and/or seriously sexually assaulted. At least three-quarters have been physically assaulted (Home Office, 2004a).

Therefore it is important that all Protocols are taken into account when the Welsh Ministers consider strategic decisions that could help further protect children who are victims of violence. The Welsh Government could use the proposed Measure to combat child prostitution, child pornography and sexual exploitation of children in travel and tourism.

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?

Yes. It is vital that WAG use the proposed Measures to strengthen its rights-based policy approaches for children and young persons.

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

The Measures, if complied with fully as intended, will have a significant impact on strengthening the rights of the child. As stated above, all other UN Conventions that are relevant and applicable should also be considered to safeguard children.

The UK Government has signed and ratified eight UN Conventions and Covenants, all of which are applicable to the rights of young people aged 18—24. These are:

1. Convention on the Rights of the Child (CRC)
2. International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
3. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
4. UN Convention Against Torture (CAT)
5. International Covenant on Civil and Political Rights (CCPR)

6. International Covenant on Economic, Social and Cultural Rights (ICESCR)
7. UN Convention on the Rights of Persons with Disabilities
8. International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention)

There are various other policies and pieces of legislation which would enable the Welsh Ministers to protect the rights of young people aged 18—24; an obvious example being the Human Rights Act. WAG should use all Conventions that have been signed and ratified by the UK Government as the basis for policymaking. As stated above, while WAG uses the UNCRC as a basis for policymaking in subjects relating to children in Wales, the CEDAW should be used in all areas relating to women's and girls equality. It is worth noting that the Committees for the UNCRC and CEDAW are considering joining together for future examinations of Member States. Marrying up policymaking in relevant areas under these two conventions in Wales – such as domestic abuse and other forms of violence against women covered by both the UNCRC Optional Protocol and CEDAW – would be a progressive, effective and pioneering tactic for WAG to adopt in Wales.

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?

WWA would suggest that the main barriers to implementing the Measure would be lack of awareness and understanding of the Convention and thus the need for training and education of officials. It is vital that all departments within the Assembly implement the provisions and ensure that it is considered when any strategic decisions are made. As we have seen with other cross departmental strategies, for example the violence against women strategy, some departments assume that the strategy will not impact on them or is not relevant. It is vital that all departments implement the Measures, not only the Minister for Children, Education and Lifelong Learning. The potential barriers can be overcome through training for civil servants within the Assembly and clear information being provided to them and also public information.

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

WWA would recommend that (apart from the Measure itself, for which 'legalese' is necessary to some extent) the language of the final document and any associated materials – particularly materials aimed at children and young people – should be simplified and made clearer and less technical. This would assist people in understanding the rights to which they are

entitled and keep them engaged in learning about those rights, as well as making it easier for WAG officials to comprehend.

Several of our regional workers have attended WAG's consultation events relating to this measure. Feedback from attendees has shown that at these events, there was a general view from the third sector that this Measure is an attempt by WAG to 'water down' the rights in the UNCRC. While WWA does not think this is WAG's intention, it would be useful for WAG to clarify this to increase understanding throughout the third sector and enhance support for the Measure.

Welsh Women's Aid looks forward to continuing to contribute to the development of policy in this important area. We hope our response has been useful and would welcome being contacted for any future opportunities to contribute to this agenda.

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.

In relation to this consultation we did not gather the views of the children and young people that our member groups support. In relation to the previous consultation in May, our regional workers, who provide direct services to children, have attended WAG's consultation events relating to this measure and provided feedback to WWA.

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.

It is unlikely that there will be any financial implications for our organisation as a result 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)?

If the Welsh Minister is complying with the rights under UNCRC then it would be appropriate, when it is necessary to amend the proposed Measure by subordinate legislation. If any subordinate legislation is proposed it is vital that the Welsh Minister consult on any amendments. It would be beneficial if a clear list of key stakeholders, persons or bodies were included – a list allowing for flexibility so that the right organisations are consulted on the right issues, including third-sector organisations such as WWA.

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?"

WWA supports 8(5) which allows the Welsh Ministers to amend the Measure where there has been a change to the Convention or protocols or additional protocol has been signed by the UK Government. WAG has led the way in the UK in terms of adopting the UNCRC as the basis of policymaking in the area of children and young people, and allowing Welsh Ministers to change laws in this area, if it would progress children's rights in Wales, would seem to be the most progressive and appropriate approach.

Name: Nesta Lloyd – Jones

Organisation: Welsh Women's Aid

Address: 38 – 48 Crwys Road, Cardiff, CF24 4NN.

Date: 26th August 2010.