



National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009

The Children's Commissioner for Wales is an independent children's rights institution established in line with the Paris Principles. In exercising his functions, the Children's Commissioner for Wales must have regard to the United Nations Convention on the Rights of the Child (UNCRC).

The United Kingdom government ratified the convention in 1991 and in doing so committed to bringing all domestic legislation and guidance into line with the Convention. The Welsh Assembly Government has adopted this Convention as the basis for all its policy development in relation to children and young people.

The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare. Our focus therefore is on the rights and welfare of children and young people in relation to the proposed Legislative Competence Order (LCO).

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Introduction

The Welsh Assembly Government has adopted the UNCRC as the guiding principle for policy development for children and young people. The overarching strategy, Children and Young People Rights to Action, is based within a UNCRC framework.

Devolution has heralded a new, more inclusive approach to governance and children and young people have assumed an eminent position in Welsh policy making and, since the Government of Wales Act 2006, of Welsh law making.

The 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”¹.

Extending Entitlement² is the Welsh Assembly Government’s legal direction on youth services. It sets out universal basic entitlements for young people aged 11-25 years. The 10 entitlements are clearly consistent with the UNCRC. As noted in the Funky Dragon report, *Our Rights, Our Story*:

“The significant point being that the language of entitlement is adopted, marking a shift in the conceptual basis towards a rights-based approach.”

The challenge to decision makers and practitioners at all levels is to ensure that children’s rights are realised at the point at which children experience the outcome of policies, structures and services. It is in this context that we respond to this proposed Legislative Competence Order (LCO) and in all references to ‘the citizen’ we naturally include children and young people.

Legislation alone will not address all the complex issues related to the aspiration of a creating a bilingual Wales, however it is one useful tool. It will also serve to protect rights and entitlements which are interconnected with other pieces of legislation, such as the Children Act 1989.

Parts of the Children Act 1989³ as well as the Guidance and Regulations place a duty on agencies to take a child’s language into consideration when assessing and providing services. These considerations are linked to appropriate power and choice.

The Central Council for Education and Training in Social Work (CCETSW) summarised anti-oppressive practice in relation to care settings as:

- *Clients have the right to choose which language to use with their worker*
- *Language is more than a means of communication- it is an essential part of a person’s identity;*
- *People can express themselves more effectively and comfortably in a chosen language;*
- *Good practice means giving users real choice over language use;*
- *A quality and comprehensive service in Wales now means a bilingual service.*⁴

The Children’s Commissioner for Wales is supportive of the Welsh Assembly Government’s proposed Legislative Competence Order which would confer on to the

¹ WAG (2004) Children and Young People: Rights to Action. p.4

² WAG (2002) Extending Entitlements

http://wales.gov.uk/docrepos/40382/4038232/4038211/extending_entitlement/DGEE.pdf?lang=en

³ http://www.opsi.gov.uk/Acts/acts1989/Ukpga_19890041_en_1.htm

⁴ Davies, E., 2001, They All Speak English Anyway – the Welsh Language and Anti-oppressive Practice, Cardiff: CCETSW

National Assembly for Wales, the powers to legislate on matters relating to the Welsh language as it seems to be the appropriate and logical arena to do so.

We see a commitment to seek legislative competence to enable the Government to bring forward Measures to confirm official status for both Welsh and English, linguistic rights in the provision of services and the establishment of the post of Language Commissioner, as positive steps which could have an affirmative impact on the rights and entitlements of citizens.

Appendix 1 notes the most obviously relevant UNCRC articles. We would argue however, that due to the link between language and identity and the way in which language influences how people see and understand the world around them, that every experience a child and young person has is affected by language, therefore no article can be divorced from linguistic consideration⁵. We would also say the same regarding the Seven Core Aims stated in the Welsh Assembly Government's strategy, Children and Young People: Rights to Action, with certain aims linking very closely to article 30 of the UNCRC which is referenced in question four.

1. Should the National Assembly for Wales be able to make laws on the promotion and use of the Welsh language? [See also questions 4 and 5, 11 below].

2. Should the National Assembly for Wales be able to make laws about which services the public should be able to receive bilingually? [For more detailed consideration of this aspect, see questions 6 - 9, 11 below].

3. Should the National Assembly for Wales be able to make laws on the freedom of persons to use the Welsh language with each other? [See also question 10 below].

Response to Questions 1 to 3

The Office of the Children's Commissioner for Wales believes that the National Assembly for Wales should be able to make laws on the promotion and use of the Welsh language; on which services the public should be able to receive bilingually, and on the freedom of persons to use the Welsh language with each other.

Given the experience of the strengths and weaknesses of the Welsh Language Act 1993, the development of Welsh language planning and the understanding of the linguistic nature of modern Wales, we see it as a logical step that the powers over the Welsh Language are conferred to the National Assembly for Wales.

The vision set out in Iaith Pawb is:

"...a truly bilingual Wales, by which we mean a country where people can choose to live their lives through the medium of either or both Welsh or English and where the presence of the two languages is a source of pride and strength to us all"⁶.

⁵ Carter, H. and Aitchison, J. (1994) *A Geography of the Welsh Language*. Cardiff: University of Wales Press.

⁶ <http://wales.gov.uk/depc/publications/welshlanguage/iaithpawb/iaithpawbe.pdf?lang=en>

This is a Welsh Assembly Government national action plan and one would assume that a degree of legislative underpinning was needed for this vision to be realised. This legislation would be best made in Wales considering that the Welsh language is (by and large) unique to Wales and any developments would principally affect the lives of people in Wales, above any other part of the UK. The National Assembly for Wales is the appropriate body to legislate on Welsh language issues.

It is at this level - the measure stage - that a comprehensive discussion needs to be taken forward to define concepts such as rights and freedoms. The measure will need to clarify for citizens what public services are and what they can expect to be delivered.

4. What are your views on the general principle that legislative competence in the area identified in Matters 20.1 and 20.2 be conferred on the Assembly? i.e. Matter 20.1: Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality

(i) 20.1 Promoting or facilitating the use of the Welsh Language; and the treatment of the Welsh and English Languages on the basis of equality.

The Children's Commissioner for Wales welcomes the principle as it has the potential to address one of the findings from the Funky Dragon Report, *Our Rights, Our Story*:

*"Largely young people were happy that Wales has its own unique language, and when asked what they would change about living in Wales, their responses were often to do with increasing the use of Welsh, and improving the way that it was taught to allow this to happen."*⁷

This has resonance with the One Wales commitment to creating a truly bilingual Wales as noted above.

The Beecham review⁸ into public services in Wales recommended the implementation of a "citizen model of public service delivery" which would deliver tangible outcomes that matter most to citizens.

We believe that the Welsh Assembly Government should make any obligation on different public services as clear and transparent as possible so that citizens understand what they can expect.

The Funky Dragon report *Our Rights, Our story* stated:

*"37.31% thought that it was easy to get information in the Welsh language. When crossed with the numbers of people living in Rural/Urban areas this shows that in urban areas it is more difficult to access information in the Welsh language."*⁹

⁷ http://www.funkydragon.org/en/fe/fileloader/load_docs.asp?filePathPrefix=8951&fileLanguage=e

⁸ Beyond Boundaries (2006)

<http://new.wales.gov.uk/topics/improvingservices/strategy/beyondboundaries/?skip=1&lang=en>

⁹ http://www.funkydragon.org/en/fe/fileloader/load_docs.asp?filePathPrefix=8951&fileLanguage=e

This suggests that there are areas of service provision which do not provide an equality of service for those wishing to access services through the medium of Welsh.

We would also suggest that there may be other public services, in areas such as health, education, training and social welfare which currently do not provide an equal service. Due to the Welsh language being a minority language in Wales, this is, of course, a complex issue with its roots in Welsh language awareness and workforce planning. Our hope is that this transfer of power and resulting measures will focus minds and look at Welsh language issues within the context of equalities which in turn will always result in higher quality services and better outcomes. It may pave the way to address the inconsistencies across services and different parts of Wales.

The direction towards promoting and facilitating is a welcome addition to the current principles outlined in the 1993 Act, namely treating both languages on the basis of equality. It is important that the order is drawn broadly enough to ensure that the bodies providing services of a public nature are included. It will assist in Welsh language awareness raising generally as well as improving services for Welsh speakers through mainstreaming.

(ii) Matter 20.2: freedom of persons wishing to use the Welsh language to do so with one another (including any limitations on it).

The Children's Commissioner for Wales welcomes the principle: *Any restriction on the use of the Welsh language goes against the principle of equality.* Discussion is needed during the development of Measures on the definition of what 'freedom' means and whether or not this constitutes a 'right'. For example, do Welsh speakers already have the 'freedom' to use their preferred language but not the 'right'? This would entail a reasoned narrative of the implications of these concepts, best served during discussions around any proposed measures.

The UNCRC states:

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 practice his or her own religion, or to use his or her own language.

Clarification may be needed to identify the nature of any limitations.

5. The Explanatory Memorandum states that Matter 20.1 would echo and build on the principles that underpin the Welsh Language Act 1993 and would allow the Assembly to legislate on the range of functions carried out at present, by the Welsh Language Board, and to build on these functions. Do you agree that it will allow the Assembly to do this? If not, how should it be amended?

We agree that the contents of Matter 20.1 build on the Welsh Language Board's functions and the principles of the 1993 Act and has the potential to address some of the limitations of that Act. There may be a need to amend the make up or functions of the Board to respond to legislative developments.

This LCO provides opportunities to redress the balance between service provider and citizen with more of an emphasis on the citizens' ability to access appropriate services.

The 1993 Act¹⁰ defines equality by saying that the Welsh language is to be equal to English as far as it is '... appropriate under the circumstances and is reasonably practicable.' In practice, this has sometimes meant a public body obligation to provide services in both language but leaving the citizen with no right to access that service. It is the service provider who has defined what is appropriate and reasonably practical. The citizen may dispute this but has no recourse in relation to language legislation due to the lack of enforcement powers under the 1993 Act. This raises questions about accountability. If public service providers operated proactively, incorporating language planning, hopefully these scenarios would not occur in any case.

6. What are your views on the scope of the proposed Order with respect to the categories of persons on whom it would allow the Assembly to impose duties to provide particular services bilingually to the public e.g. is it too narrowly or broadly drawn (Matter 20.1 (a) - (i))? Please indicate clearly to which subsection(s) your comments relate i.e. (a) - (i) and any particular sub-subsections under (h).

The Funky Dragon report stated how children and young people wanted to increase the opportunities to make use of the Welsh Language. The scope of the categories of persons whom it would allow the Assembly to impose duties to provide particular services bilingually to the public should therefore be as broad as possible to address this sentiment. The language permeates to all facets of a child or young person's life and the Order should reflect this. It would be possible to examine examples from other countries with minority languages to examine different models of legislation. Other examples of equality legislation such as the Disability Discrimination Act 1995 may also be examined as to the nature of bodies listed. Much of this deliberation depends on what the citizen deems to be a public service and what the expectations are, however, this discussion is best held at the measures stage.

¹⁰ http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930038_en_1.htm

7. Is the definition used for "public authorities" for this Matter appropriate ("each public authority within the meaning of section 6 of the Human Rights Act 1998")? If not, what definition should be used and why?

The definition seems appropriate. However, we would add that although it may be expected that the current provisions of the 1993 Act with regard to partnerships to ensure that both English and Welsh are treated on the basis of equality, it is not always clear whose Welsh Language Scheme, if any, is in operation, or whether or not a new scheme should be constituted. In line with the partnership approach being progressed in Wales (including Children and Young People's Partnerships, Local Service Boards etc.), we would seek assurances that these entities are included in any provision and that responsibilities towards language provision is not neglected.

It is important that the citizen is clear of the definition of 'public authority' and efforts to this end should be made when developing measures.

9. In relation to Matter 20.1 sub-section (e) - persons providing services to the public who receive public money amounting to £200,000 or more in a financial year", and includes "moneys made available directly or indirectly": (i) Is it necessary to set out the definition of "public money" in the propose Order? If so, is it appropriate (as set out under "Interpretation of this field")?

We do not believe that there is a need at the LCO stage to define "public money" or to set a threshold. We believe that it would be more appropriate for these discussions to be had during the Measures stage.

As negotiations around proposed measures commence, efforts must be made to ensure that citizens are clear on what bilingual provision they should expect and not have to assess levels and streams of funding when engaging with service providers.

10. Is the scope of Matter 20.2 appropriate ("provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations on it)")? Will it allow the Assembly to legislate in future to implement the policy proposal as outlined in the Explanatory Memorandum?

See response to question 4 (ii)

11. What are your views on Articles 4 and 5 of the proposed LCO which deals with the application of the proposed LCO to Crown bodies?

The Children's Commissioner for Wales supports Articles 4 and 5 of the proposed Order, in respect of amending the Government of Wales Act 2006, and in relation to the functions of Crown Bodies.

We would also question, as have the Welsh Language Board, on what basis Crown bodies should not be expected to comply with any duties as they provide services to the public in Wales.

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style and is underlined with a single horizontal line.

Keith Towler
Children's Commissioner for Wales

March 2009

Appendix 1

Please note Appendix 1 notes the most obviously relevant UNCRC articles. We would argue however, due to the link between language and identity and the way in which language influences how people see and understand the world around them, that every experience a child and young person has is affected by language, therefore no article can be divorced from linguistic consideration. For example the best interest of the child has a resonance in all articles. We would also say the same regarding the seven core aims stated in the Welsh Assembly Government's strategy *Children and Young People: Rights to Action*, with certain aims linking very closely to article 30 of the UNCRC

Article 23

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article

and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

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.
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.