

Legislation Committee No 5

Proposed Rights of Children and Young Persons (Wales)

National Association of Schoolmasters & Union of Women Teachers (NASUWT) – Annex A

1. The NASUWT welcomes the opportunity to comment on the Welsh Assembly Government (WAG) proposals for a Rights of Children and Young Persons (Wales) Measure.
2. The NASUWT is the largest teachers' union in Wales and the UK.

GENERAL COMMENTS

3. The NASUWT supports the United Nations Convention on the Rights of the Child (UNCRC) and recognises the importance of the work already undertaken by the WAG in incorporating the aims of the UNCRC in the development of policies for children and young people in Wales.
4. The NASUWT notes that in commenting on evidence presented by the UK Government in 2008, the UNCRC Committee concluded that concerns remained about the UNCRC being used regularly as a framework for the development of strategies and over the lack of an overarching policy to ensure the full realisation of the principles, values and goals of the UNCRC.
5. In addition, the NASUWT acknowledges that the UNCRC Committee indicated that the UNCRC should be incorporated into domestic law in the UK, including the devolved nations.
6. The NASUWT supports the WAG view that rather than create a law that simply provides children with the rights that are in the

UNCRC, it would be better to create a law that would allow the rights and duties in the UNCRC to be thought about carefully by the Welsh Ministers and the First Minister in the decisions they are making, in order to support and improve the wellbeing of children and young people.

7. The NASUWT acknowledges that the WAG proposal, for the National Assembly for Wales (NAfW) to establish a new law called the Rights of Children and Young Persons (Wales) Measure, would provide the legislative framework to ensure that the rights set out in the UNCRC are safeguarded in Wales.
8. The NASUWT maintains, however, that it will be equally important to ensure that the application of the Measure contributes to securing an appropriate balance between the rights of the child and the rights of persons who work with and on behalf of children and young people. Therefore, the NASUWT trusts that the establishment of the new law would prompt a revision of existing legislation relating to what has become known as 'student voice', since there is growing evidence to support the view that teachers are being stripped of professional respect and personal dignity through the practice of involving pupils directly in making judgements about the suitability of staff for posts and about competencies in the classroom.
9. The NASUWT believes that such practices have arisen as a result of the fundamental principle of Article 12 of the UNCRC, which provides for the involvement of children and young people in decisions that affect their lives.
10. The NASUWT acknowledges that the fundamental principle of Article 12 has rightly attracted widespread support, but is concerned that the translation of Article 12 into practice is leading, in some cases, to gross distortions of the fundamentally sound

intentions of the student voice concept. There is now growing evidence that some of the practices being introduced in relation to student voice are seeking to influence unduly and distort the messages of pupils for purposes other than educational ones.

11. A recent dossier compiled by the NASUWT cites over 200 case studies where student voice has been abused. The case studies centre around the inappropriate use of pupils in interviewing teachers for posts and internal promotions, pupils being used to question the competencies of teachers, and the manipulation of student voice questionnaires to elicit negative comments about staff. The NASUWT can provide specific examples of such cases on request.
12. The NASUWT submits that the amendment, made to The Government of Maintained Schools (Wales) Regulations 2005 by virtue of The School Councils (Wales) Regulations 2005, that made provision for associated pupil governors to be excluded from meetings relating to areas such as staff appointments, staff pay, staff discipline, performance management, grievances submitted by staff or dismissal inadvertently allowed for their inclusion in such meetings and gave a green light for the abuse of student voice.
13. In addition, the NASUWT submits that the case studies in the dossier provide compelling evidence that Article 13 of the UNCRC is being breached as a result of some of the practices being introduced under the guise of student voice, since the right to freedom of expression enshrined in Article 13 is qualified by a restriction that recognises that the exercise of the right must demonstrate a respect for the rights and reputations of others.

SPECIFIC COMMENTS

14. The NASUWT offers the comments that follow in relation to the questionnaire.

QUESTION 1: Is ‘due regard’ the right duty to put on the Welsh Ministers and the First Minister?

The NASUWT believes that the ‘due regard’ duty strikes an appropriate balance between the competing issues and priorities that need to be considered when relevant functions are carried out by Welsh Ministers and the First Minister.

QUESTION 2: Do you think it is right to apply the ‘due regard’ duty only to functions which the Welsh Ministers have put in the children’s scheme?

The NASUWT submits that in the present economic climate it would be impractical to apply the ‘due regard’ duty to functions outside the children’s scheme.

QUESTION 3: Have we included in the Schedule the right parts of the UNCRC and its Optional Protocols in order to reflect the rights and duties in them?

The NASUWT recognises that the parts of the UNCRC and its optional Protocols included in the Schedule cover a comprehensive range of rights and duties. The NASUWT note that Article 42 of the UNCRC has not been included, despite reference being made to this article in relation to Section 5 of the proposed Measure.

QUESTION 4: What do you think about the idea of writing the scheme by referring to particular policies, policy areas or service areas which have a relevance to children?

Subject to further consultation with the NASUWT and other relevant parties, the NASUWT sees merit in the suggestion that the functions to which the 'due regard' duty will apply, and which will be stated in the children's scheme, should refer to particular policies, policy areas or service areas that are relevant to children.

QUESTION 5: Do you think that would help everyone to understand more easily which areas of the Welsh Ministers' work are affected by the 'due regard' duty?

The NASUWT suggests that this would depend on the way in which the references to the policies and policy or service areas are made. Simplicity of language and transparency would be paramount. This will require further consultation on the detailed scheme.

QUESTION 6: Do you think that a scheme written in that way would be clear from a legal point of view?

The NASUWT maintains that this would depend on the language use in particular, in relation to the avoidance of any ambiguity.

QUESTION 7: Have you any other thoughts or ideas about the best way of setting out in the scheme which functions the ‘due regard’ duty applies to?

The NASUWT believes that the most obvious way of setting out the functions to which the ‘due regard’ duty applies is to list them.

QUESTION 8: Are the policies and policy areas on this list ones which should be considered when it comes to writing the children’s scheme?

The NASUWT acknowledges that the policies and policy areas listed should be considered when writing the children’s scheme.

QUESTION 9: Are there any others that should be considered?

The NASUWT has no doubt that the list is not exhaustive and would cite some notable omissions: Foundation Phase; 8-14 Review; Pupil Participation and Effective Schools; School Councils; Literacy Strategies; Numeracy Strategies; Truancy Strategy; and Behaviour in Schools: Safe and Effective Intervention. The NASUWT submits that further work is required in this area.

In addition, an appropriate balance between the rights of the child and the rights of persons who work with, and on behalf of, children and young people needs to be secured through a revision of existing legislation relating to student voice. The NASUWT submits that the amendment, made to The Government of Maintained Schools (Wales) Regulations 2005 by virtue of The School Councils (Wales)

Regulations 2005, that made provision for associated pupil governors to be excluded from meetings relating to areas such as staff appointments, staff pay, staff discipline, performance management, grievances submitted by staff or dismissal inadvertently allowed for their inclusion in such meetings and gave a green light for the abuse of student voice.

QUESTION 10: Is there a benefit in the children's scheme having to include what the Welsh Ministers say they will do to make sure that they meet the 'due regard' duty?

The NASUWT sees merit in this proposal.

QUESTION 11: Is it right that the Welsh Ministers should have to get agreement from the National Assembly for Wales before the children's scheme can be made or changed?

The NASUWT maintains that this is the correct approach, as to do otherwise would undermine the democratic structure of the NAFW.

QUESTION 12: Is 1 November 2011 (the date by which the Welsh Ministers must have put a draft of their first children's scheme before the National Assembly for Wales) the right date?

The NASUWT maintains that the date should be based on a realistic assessment of whether or not it is achievable.

QUESTION 13: Is it right that, no later than six months after the United National Committee on the Rights of the Child has made a suggestion or recommendation, the Welsh Minister must think about whether they should change their children's scheme?

The NASUWT believes that six months is an appropriate period of time since the Minister only has to consider if changes should be made to the scheme.

QUESTION 14: Is it right that, apart from this, it should be up to the Welsh Ministers to decide when to think about changing their children's scheme?

The NASUWT believes that, apart from suggestions made by the UNCRC Committee, it should be the responsibility of Ministers to decide when to think about changing their children's scheme. This would not preclude suggestions for change being made to the Welsh Ministers.

QUESTION 15: Are the things which the Welsh Ministers must think about when they are making or changing the children's scheme, the right things?

Given the catch-all nature of Section 3 of the proposed Measure, the NASUWT finds the question to be somewhat irrelevant.

QUESTION 16: Is it the list of people the Welsh Ministers must ask for views when making or changing the children's scheme, the right list?

The NASUWT recommends that reference should be made to consultation with those workers and trade unions affected directly or indirectly by the children's scheme.

QUESTION 17: Is it right that the Welsh Ministers should have to publish reports about how they and the First Minister have met the 'due regard' duty?

The NASUWT maintains that such accountability is necessary to give credibility and weight to the 'due regard' duty and such reports appear to be necessary if work undertaken in Wales in relation to the UNCRC is to be included in the UK reports on progress to the UNCRC Committee.

QUESTION 18: Are the dates by which the reports must be published the right dates?

The NASUWT notes that the dates appear to be both reasonable and logical in terms of the UK reporting cycle.

QUESTION 19: Is this the right duty to help everyone to know about and understand the UNCRC and its Optional Protocols?

The NASUWT has noted previously that the Schedule does not make reference to Article 42 of the UNCRC on which this duty is based. The

NASUWT accepts, however that the duty goes further than Article 42 in that it makes reference to promoting knowledge and understanding of the UNCRC and the Protocols rather than just making the principles and provisions widely known.

QUESTION 20: Does the duty to do things so that more people (including children and young people) may know about and understand the UNCRC and its Optional Protocols, meet the duty in the UNCRC (article 42)?

The NASUWT believes that the duty not only meets the requirements of Article 14, it goes beyond those requirements for the reasons stated in the answer to question 19 above.

QUESTION 21: Is it right that the Welsh Ministers should be able to change some laws where they have decided in one of their reports that this would be a good idea?

The NASUWT believes that it is both right and necessary for the Welsh Ministers to be able to change some laws, within the legislative framework and powers of the NAFW, when such a change is required. Indeed, the NASUWT has, in this response, called for changes to be made to The Government of Maintained Schools (Wales) Regulations 2005 in relation to the role of associate pupil governors.

QUESTION 22: Is there a benefit in them being able to do that?

The NASUWT submits that the Welsh Minister must be able to suggest changes to the law where there is a belief that such changes are necessary.

QUESTION 23: Is there a benefit in making the Welsh Ministers think about whether the things in the UNCRC and its Optional Protocols are also important for young people aged 18 to 24?

The NASUWT accepts the rationale that has been proffered in respect of extending the age range from 0 to 17 as covered by the UNCRC and the Optional Protocols to cover young people aged 18 to 24. The NASUWT accepts the rationale for not including 25 year olds.

QUESTION 24: Should the Welsh Ministers think instead about other ways of protecting the rights of young people aged 18 to 24?

The NASUWT doubts that the present economic climate would allow the Welsh Ministers to provide other ways of protecting the rights of young people aged 18 to 24.

QUESTION 25: Is there a benefit in making the Welsh Ministers think about whether parts of this Measure (like the 'due regard' duty) should cover young people aged 18 to 24?

The NASUWT does not doubt that there would be a benefit in applying the 'due regard' duty to cover young people aged 18 to 24 but questions where the capacity exists to accommodate such an

approach.

QUESTION 26: Is there a benefit in making the Welsh Ministers say in their children's scheme what they are going to do to find out what people (including children and young people) think about this issue?

The NASUWT believes that this would be an appropriate approach as any findings could then be considered within the context of other competing issues and priorities that Welsh Ministers have to consider.

QUESTION 27: Is it right that the Welsh Ministers should be able to make laws to change this Measure to make it, or parts of it, cover young people aged 18 to 24?

The NASUWT finds no difficulty in giving Welsh Ministers such a right, as long as the law was made within the legislative framework and structures of the NAFW, and that final approval of any such law rested with the NAFW.

QUESTION 28: Is it right that before the Welsh Ministers can do this, they must get the agreement of the National Assembly for Wales?

The NASUWT refers to the answer given to question 27 above.

QUESTION 29: Is it right that the National Assembly for Wales should have no role in agreeing laws changing what it is in the Schedule?

The NASUWT finds no reason for the NAFW to have a role in agreeing laws that the Welsh Ministers and First Minister must make in relation to changes to the UNCRC and its Optional Protocols.

QUESTION 30: Is there a benefit in having the Schedule?

The NASUWT recognises the benefit in having the Schedule and that the proposed Measure will allow the Welsh Minister to make laws to change what is in the Schedule so that it is kept up to date.

QUESTION 31: Do you think it is right that the courts in England and Wales should be able to decide the meaning of the text of the rights and duties in the Schedule, bearing in mind how we live in the UK compared with other countries?

The NASUWT believes that it is right that courts in England and Wales can make such decisions, given that people in the UK cannot take cases to the International Court of Justice (ICJ).

QUESTION 32: Do you think that the Measure is flexible enough to allow the courts to do that?

The NASUWT believes that the Measure will allow people to take cases to the courts in England and Wales where they believe that 'due regard' has not been given to the UNCRC. The NASUWT submits that this would allow the courts to decide on the meaning of text in the

rights and duties enshrined in the Schedule.

QUESTION 33: Are the terms in Section 8, in particular the phrases ‘signed or otherwise indicated agreement to’ and ‘ratified’, the correct ones?

The NASUWT has no reason to doubt that the terms of Section 8 and the particular phrases enshrined therein are correct.

QUESTION 34: Do you agree that the Ombudsman can look at a complaint that the Welsh Ministers or the First Minister have failed to meet their duties in the Measure?

The NASUWT believes that this is an appropriate role for the Ombudsman, although the NASUWT understands that due process in terms of complaints must be followed before any such involvement can take place.

QUESTION 35: Do you agree that the Children’s Commissioner can look at whether the Welsh Ministers or the First Minister have failed to meet their duties in the Measure?

The NASUWT believes that such an approach would fall within the powers of the Children’s Commissioner.

QUESTION 36: Do you think that it is right that the Ombudsman and the Children’s Commissioner should be able to do that?

The NASUWT refers to the answers given to questions 35 and 36 above, but, in principle the NASUWT agrees that both the Ombudsman and the Children's Commissioner should be able to act in this way.

QUESTION 37: Is this Measure a good way of safeguarding and improving the well-being of children and young people, and will it make a difference?

The NASUWT trusts that the Measure will realise these ambitions.

QUESTION 38: Is there anything else you want to say to us about the Rights of Children and Young Persons (Wales) Measure, or about anything else we have said in this document?

The NASUWT cautions against the NAFW embracing the Measure without assessing fully the financial implications that may arise.

Chris Keates

General Secretary

For further information on the Union's response, contact Rex Phillips, Wales Organiser.

NASUWT Cymru
Greenwood Close
Cardiff Gate Business Park
Cardiff

CF23 8RD

029 2054 6080

www.nasuwt.org.uk