



CS 1 - The Children's Commissioner for Wales

Legislative Committee No.5:

The Children's Commissioner for Wales' response to the Proposed Carers Strategies (Wales) Measure

The Children's Commissioner for Wales is an independent children's rights institution established in line with the Paris Principles¹. 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 young carers and their families in relation to the Proposed Carers Strategies (Wales) Measure.

Please refer to annex 1. for the articles within the UNCRC which are relevant to The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (Carers LCO).

Introduction

We would like to welcome the proposed Measure and recognise its potential in implementing the recommendations in the Children's Commissioner for Wales' review of young carers, *Full of Care*². We see this as an opportunity for the rights and needs of young carers to be incorporated into legislation. The National Assembly for Wales and the Welsh Government should encourage young carers to be covered by both the proposed Carers Measure and relevant children's legislation where appropriate.

The provisions within section 2 of the proposed Measure in relation to advice and information to carers, which, according to the Explanatory Memorandum³ will include provisions in relation to young carers is to be commended. We are, however, concerned that the remaining provisions of the proposed Measure will

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

² <http://www.childcomwales.org.uk/uploads/publications/138.pdf>

³ <http://www.assemblywales.org/ms-ld7876-em-e.pdf>

not provide for young carers, namely 2 (1) (b) and (c). Whilst the wording of the proposed Measure does not specifically preclude, nor explicitly refers to provision for young carers, the Ministerial statement which accompanied the tabling of the proposed Measure as well as the Explanatory Memorandum⁴ makes clear that Measures relating to young carers should be developed under The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (Vulnerable Children LCO). This runs contrary to the statements made during the scrutiny of The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (Carers LCO):

“...the Deputy Minister’s evidence reflects the intent of future proposed Measures (under the Carers LCO) in ensuring that all carers are fully embraced”

“...we agree that it will not be assumed that what may be regarded as substantial (care) for an adult carer would not be the same for a young carer.”⁵

There was cross party support in the commitment⁶ to address young carers’ issues via Measures under The Carers LCO⁷. It is with disappointment that we note the policy and legislative shift resulting in the current position of the Welsh Government, with the exception of provisions relating to information and advice within this proposed Measure.

Our response to the Proposed Carers Strategies (Wales) Measure has been drafted in the context that the Welsh Government should revise their position on provisions relating to young carers within the Measure and we have also outlined the rationale for the Children’s Commissioner for Wales’ stance.

Recommendation 9 of the Carers Measure Stakeholder Advisory Group (CMSAG) on which the Deputy Minister has based her decision notes:

“...that Measures developed under the LCO for vulnerable children would be the most appropriate way for Welsh Ministers to address the inappropriate caring burden of young carers and not the draft Carers’ Measure. In providing this advice, the CMSAG also considers that young carers should still be embraced by the broader information and engagement provisions of the proposed

⁴ <http://www.assemblywales.org/ms-ld7876-em-e.pdf>

⁵ <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/cr-ld7467-e.pdf?langoption=3&ttl=CR-LD7467%20-%20Legislation%20Committee%20Number%203%20Report%20on%20the%20National%20Assembly%20for%20Wales%20%28Legislative%20Competence%29%20%28Social%20Welfare%29%20Order%202009>

⁶ <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=109033&ds=12/2008#rhif6>

⁷ <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/lco-ld7559-e.pdf?langoption=3&ttl=LCO-LD7559%20-%20The%20National%20Assembly%20for%20Wales%20%28Legislative%20Competence%29%20%28Social%20Welfare%29%20Order%202009>

Carers Measure

The Children's Commissioner for Wales office disagrees with the CMSAG conclusion. Whilst we agree that young carers are children first, we should ensure that they are catered for by the most appropriate legislative mechanisms. We do not agree that young carers, by virtue of being children, should only have their needs assessed and addressed through the Vulnerable Children LCO.

As noted in the CMSAG report and as reaffirmed by the Welsh Government⁸, it is appropriate that many young carers' particular needs should be '*considered and assessed as an integral part of the care assessment and care management process which applies to all other vulnerable children / young people and their families*'. However, not all young carers' needs will meet the criteria under the Framework for the Assessment of Children in Need and their Families under the provision of the Children's Act 1989. The Framework for Assessment would not, for example, identify the needs that young carers may have for leisure and recreation activities or educational opportunities such as school trips and educational or sport travel.

The key to addressing the rights and welfare of all young carers is not necessarily to 'address the inappropriate caring burden', but to assess the **impact** of caring on the young carer and to provide appropriate support which they need to improve their quality of life and enable them to fully enjoy their rights.

The impact of caring may not necessarily result in a young carer exhibiting high levels of need and neither will they necessarily be a 'vulnerable child' and there is a chance that many young carers will not meet the assessment criteria or would not want to proceed with the assessments under the Children Act 1989.

We do not concur with the CMSAG that seeking to assess and manage the needs of young carers outside the Children Act 1989 duties would create a 'fault line'. Indeed we would take an opposing view that this proposed Carers Measure has the potential to provide a bespoke and sensitive care package for families which can be based on the rights of the child. This could mean direct support for the young carer by means of respite care to enable the young carer to access play and leisure entitlements or having a support worker to assist in preparing meals for siblings etc.

It may not require the intervention of children's services to provide appropriate support. It may be a care assistant or community health worker in the adult services providing support for other members of the family, be they the young carer or siblings. Not only would this approach provide a wrap around service for

⁸ <http://wales.gov.uk/dhss/publications/children/childrenfirst/606358/facnf-maindoc-2001-e.pdf;jsessionid=jQQtJGHbyG3yCMs3xBHlty1YvkzLLC2FpS2pQPGzJ2GFQhCglpPJ!335850833?lang=en>

families in need of varying degrees of support but it would also make better use of resources.

The danger in depending on provision under the Children Act 1989 is exemplified when examining the difficulty in quantifying the number of young carers in Wales. We can take the Data Unit Wales figures on young carers⁹ which notes that in 2008/09 there were 888 young carers known to social services (74.66% who had been assessed) and compare that with even the most conservative of figures in the 2001 census of 10,471 young carers aged between 5 and 17 in Wales. This figure only represents the families who were willing to report that a young carer lived in the household.

These figures reflect the need for robust data collection at local and national levels. It also demonstrates that not all young carers that are known will be vulnerable, that some professionals are reluctant to identify and record young carers and also demonstrates that some young carers and / or their families prefer to remain hidden and anonymous.

The reasons for such under-representation are numerous, and include:

- Most young carers seeing their life as 'normal'
- In cases of substance abuse young carers won't report their parents and so are not identified as such
- adults being cared for decline services on offer and prefer to place the responsibilities on their children, sometimes for fear that accessing statutory services will lead to children being taken away
- Adults may not meet criteria for accessing adult services which should assist in identifying young carers
- Services not identifying young carers, as they do not see identification and assessment as their responsibility.

CMSAG report

In expanding their explanation on recommending that Ministers address young carers issues under measures developed under the LCO for vulnerable children, the CMSAG report references the opportunities that exist via the proposed Children and Families Measure to:

- *“further strengthen the arrangements to address the needs of young carers that arise because of the community care needs of other family members*
- *To address that broader needs of young carers through approaches associated with the eradication of child poverty”*

⁹<http://dissemination.dataunitwales.gov.uk/webview/http://dissemination.dataunitwales.gov.uk/webview/index.jsp>

Whilst recognising that this may well be the case to a certain degree and would potentially influence the content of strategies, there is little evidence to suggest that the Children and Families Measure would have young carers issues at the core of its agenda.. The Integrated Family Support Teams (IFSTs) when operational, should be aware of any carers issues, however, we would suggest that only a small number of young carers in Wales would benefit from young carer support via the IFSTs.

In the same way that there is a link between poverty and caring responsibilities and that poverty should influence the local carers strategies by reflecting local circumstances, we would again argue that young carer's needs would not be a central concern for child poverty strategies.

In the same way that not all young carers will be 'vulnerable', not all young carers will be living in poverty.

Whilst appreciating the connection between the caring agenda and the proposed Children and Families Measure, considering that so many young carers would not be affected by the two elements within the Measure and the lack of evidence of connected young carers policy development, we do not believe the Welsh Government should base their position on such grounds.

1. Is there a need for legislation (by means of an Assembly Measure) to be made to introduce a new requirement on the NHS and Local Authorities in Wales (“the relevant authorities”) to work in partnership to prepare, publish and implement a joint strategy in relation to carers and if so why? If not, what alternatives do you propose?

There are important legislative frameworks in relation to young carers in place as noted in the explanatory memorandum, for instance the Carers (Recognition and Services) Act 1995 and the Carers (Equal Opportunities) Act 2004, however research undertaken by the Children's Commissioner for Wales' office indicates shortcomings in applications of Government (UK and Wales) policy¹⁰. The Children's Commissioner for Wales recently undertook a research project, *Full of Care*, with over 149 young carers from various young carers projects throughout Wales. The project's purpose was to highlight and review the obstacles that prevent young carers accessing their rights as set out by the United Nations Convention on the Rights of Child (UNCRC). These articles are set out in annex 2.

The practical and financial support needed for young carers incorporates social care, health, education, leisure and many other areas and whilst we accept there is much good practice, we welcome the legislative underpinning of this need to

¹⁰ <http://www.childcomwales.org.uk/uploads/publications/138.pdf>

for a holistic and citizen centred approach. A strategic and consistent approach is needed at both a national and local level and the proposed Measure could provide for that.

The duties to produce strategies will help to address inconsistencies within service provision. This proposed Measure would also help focus on our concerns about the widespread failure to assess children and young people as carers. Young Carers have a right to such assessments and without them there may be gaps in levels of support and promotion of their wellbeing. For example, when care workers visit adults with caring needs, do they always refer the needs of the child / children within that household to children's services?

As well as the assessment issues, we also believe that this Measure has the potential to create the comprehensive and seamless service which families need and to which young carers have a right. When a care worker prepares a meal for the adult with caring needs, have the needs of the children within the family been met? This could mean relieving the young carer of the responsibility to prepare meals for siblings, thus enabling the young carer to access their entitlement to leisure and social interaction.

As noted in the Children's Commissioner for Wales' response to the scrutiny of the Carers LCO, the interaction and cooperation of between various service providers, especially in relation to effective assessment and appropriate support is essential in enabling young carers to access their rights and entitlements under the UNCRC.

A citizen centred, inter-departmental and multiagency approach is essential to address the complex needs of young carers (both those who are vulnerable and those who may not meet the vulnerable threshold). This is borne out in the research undertaken on behalf of the office which shows that 54% of young carers said they only get support from people when it's a crisis.

Those results were reinforced by other results which strongly indicated the need for an interventionist approach by the services. The question "How do you rate the support you receive from the different services?" the responses were far from complimentary:

Social Services – 40% said 'OK or better'

School/College – 54% said 'OK or better'

Health Services – 59% said 'OK or better'

Young Carers Service – 91% said 'OK or better'

We also raised concerns in the Carers LCO response about the deliberations regarding paying for care and discussions around the implications of any application of cost. As previously noted, some parents with caring needs are choosing not to access free social care on the grounds that the child can provide

that care. Application of costs would compound this disincentive to access services – particularly in the current financial climate. By placing duties on a range of bodies to take responsibility for young carers issues, both in identification, assessment and provision, this proposed Measure could play an important role.

2. Are the sections of the proposed Measure appropriate in terms of reforming legislation relating to the provision of information and advice to carers? If not, how does the proposed Measure need to change?

In considering this question, consultees *may* wish to consider, in particular, the nature of the provisions in the proposed Measure that:

(a) The definition of appropriate advice and information as defined in the Measure (Section 3);

Appropriate information and advice is key in enabling young carers to access their rights and entitlements and also in supporting the young carer or person being cared for to get the support and treatment they need. Despite the duty placed on local authorities, by the Carers (Equal Opportunities) Act 2004, to inform carers, regardless of their age, of their rights to an assessment we are not convinced that this is happening consistently in practice. This provision has the potential to address the need to consider young carers' work, education, health and leisure needs which often suffer due to their caring roles.

Article 12 of the UNCRC states:

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

We would seek assurances that the 'appropriate information and advice' would facilitate the UNCRC article 12 entitlement which would necessitate age appropriate material and appropriately trained staff to deal with young carers.

The information and advice should also cover the breadth of the rights of the young carer as noted above – from education to leisure.

Consideration must also be given to the accessibility of that information and this should be a consideration in defining appropriateness. We have already noted the need for age appropriate information, but it is essential that the information is also provided at various locations where a young carer (identified as a carer or not) may frequent. For many young carers, young carers projects provide the

only source of advice and support.¹¹ This information must be made more widely available so that children and young people who may be young carers, but may not have been identified as such, are able to understand that they may be eligible to access support.. It should also be noted that many young carers, already identified will prefer to get information in ways that will not stigmatise them. They may feel more comfortable in accessing information from a young carers service rather than from a teacher in school.

One key area of concern which could potentially be addressed is that of administering medication. In our research sample 50% of the young carers administer medicines to those they care for and yet 73% said they had received no training on how to do this. The Children NSF does not include any actions to support children and young people who care for disabled parents or siblings. Training in managing challenging behaviour is also an issue for the 57% of young carers surveyed who said they cared for someone with mental health problems.

The recommendation in the Commissioner's report that:

*"Health and social care professionals should assess the appropriacy of young carers administering medication, performing manual handling and caring for those with mental health problems taking into account their age and ability. If necessary, alternative arrangements should be made, equipment provided and/or training given."*¹²

should be at the forefront of all drafting of regulations in relation to provisions 3 (1) (a) (b) and (c).

(b) Local authorities must ensure that in deciding what services to provide to or for a carer or the person cared for, they consult the carer. Also authorities are required to ensure that they consult carers before they make decisions of a more general nature about service provision to or for carers and the persons cared for. (Sections 2 (1) (b) & (c));

It is essential that young carers are listened to in the provision of care packages and that any of their support needs are taken into account. There is a concern that if the young carer is not identified then they will not be in a position to contribute to those assessments and also unease where there may be a difference of opinion between the cared for and the young carer.

For young carers to be able to influence planning and service development at a local level it is important that project workers are able to be effective systemic advocates as well as supporting young carers to be involved and participate in all aspects of the service planning and delivery that they receive. Such involvement

¹¹ <http://www.childcomwales.org.uk/uploads/publications/138.pdf>

¹² *ibid*

should be underpinned by the National Children and Young People's Participation Standards for Wales.¹³

Article 13 of the UNCRC states:

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

(c) Welsh Ministers with the power to make regulations about the following:

- i. the services in respect of which the duty to prepare a strategy applies;**
- ii. the matters to be dealt with in the strategy;**
- iii. how and when the strategy is to be published;**
- iv. keeping the strategy under review (including setting a period after which the strategy must be reviewed or replaced);**
- v. the consultation which must be undertaken before or during the preparation, implementation or review of the strategy;**
- vi. arrangements to monitor and evaluate the implementation of the strategy;**

(Section 5 (2) (a)-(f))

(d) Welsh Ministers would be able, for each strategy, to designate an NHS organisation as the lead authority for the purposes of co-ordinating and overseeing the preparation and publication of the strategy and any subsequent review.(Section 5 (3)); and

(e) The proposed Measure would also place a duty upon the lead authority, or, where there is no designated lead, the responsible authorities acting together, to submit the strategy to Welsh Ministers. Welsh Ministers would then be required to inform the responsible authorities that they are satisfied with the draft strategy, or if they were not satisfied, give the responsible authorities such directions as considered necessary for ensuring that the strategy complies with their requirements. (Section 6);

¹³ *ibid*

3. How will the proposed Measure change what organisations do currently and what impact will such changes have, if any?

There needs to be a service which is wrapped around the whole family's needs, not just the individual needing care or the carer. This holistic approach could incorporate the same principles of the IFSTs into carers strategies.

Within the current configuration, national policy for young carers sits within the Older People and Long Term Care Directorate and there is a danger that this arrangement could lead to the needs of young carers being lost within the policy making system. Currently, for example, the national Carers Strategy insists that young carers should be assessed under the Framework for Assessment – yet they have a legal right to also be assessed under the Carers (Recognition of Services) Act. We believe that this Measure has the potential to assuage our concerns by setting the holistic policy agenda for all carers and their families. The solutions to young carers' challenges lay not just within the confines of children's services.

The Measure will also need to address the necessity of having confidence that any decisions taken about a young carer respects their rights and are not taken for the convenience of social services or the needs of the adult being cared for.

We would expect the Measure to secure a change in the make up of service provision for carers, providing a seamless and comprehensive service for the family unit, which would, in turn, facilitate better outcomes for young carers.

A citizen centred, inter-departmental and multiagency approach is essential to address the complex needs of young carers (vulnerable and those who may not meet the vulnerable threshold). This is borne out in the research undertaken on behalf of the Commissioner's office which shows, as previously noted, that young carers say they only get support from people when it's a crisis.

4. What are the potential barriers to implementing the provisions of the proposed Measure (if any) and does the proposed Measure take account of them?

As the proposed Measure is presented and the position taken by the Deputy Minister, the potential barriers as the Children's Commissioner for Wales' office see it are:

- in relation to fragmentation between legislative remits
- in the Identification and assessment of young carers
- that young carers are not always visible within adult care assessments.

best placed to comment on this.

5. What are the financial implications of the proposed Measure for organisations, 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.

We are not best placed to comment

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

We would like to reiterate our comments relating to the Carers LCO where we stated our concern that the wording '*substantial amount of care on a regular basis*' may not recognise the unique model of care that some young carers provide. Annex 1, question 3 elaborates on this.

There were general concerns as to whether the Carers LCO definition of carers was consistent with the Welsh Government's own definition of young carers. Government responses have provided assurances that the discrepancies between definition of young carers and the wording of the Carers LCO would not mitigate or have the potential to mitigate against young carers. Allied to this is the reassurance referenced in the Carers LCO committee report that:

"...we agree that it will not be assumed that what may be regarded as substantial (care) for an adult carer would not be the same for a young carer"¹⁴

We would urge the Welsh Government to consider not only the inappropriate burdens placed on young carers but also to consider the varying degrees of impact. The impact may be in terms of health and wellbeing but it may also have developmental implications with aspects such as education, play and leisure.

Subordinate Legislation

7. What are your views on powers in section 8 for Welsh Ministers to make subordinate legislation?

8. Question 2(c) above sets out the powers to make regulations (subordinate legislation) that the Proposed Measure would give to the

¹⁴ <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/cr-ld7467-e.pdf?langoption=3&ttl=CR-LD7467%20-%20Legislation%20Committee%20Number%203%20Report%20on%20the%20National%20Assembly%20for%20Wales%20%28Legislative%20Competence%29%20%28Social%20Welfare%29%20Order%202009>

Welsh Ministers. It is proposed that all of these powers would be exercised by the 'negative resolution procedure'¹.

Has the appropriate balance been struck between the provisions in the Measure and the power delegated to Welsh Ministers, to set out the detail of the requirements to be placed on the relevant authorities in Wales through subordinate legislation? Is the use of the negative procedure appropriate in each case or are any of the powers sufficiently significant for the affirmative procedure to apply?

We request additional time to a consider our position on this question and will submit a further paper accordingly.

A handwritten signature in black ink, appearing to read 'Keith Towler', with a horizontal line underneath it.

**Keith Towler
Children's Commissioner for Wales**

February 2010

Annex 1

The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (relating to Carers)



Introduction

The Children's Commissioner for Wales is an independent children's rights institution established in line with the Paris Principles¹⁵. 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 young carers in relation to the proposed LCO.

For reference, a number of the individual articles from the UNCRC that relate directly to children and young people's mental health are reproduced in Appendix 1.

Children's Commissioner for Wales
Oystermouth House
Charter Court
Phoenix Way
Llansamlet
SWANSEA SA7 9FS
Tel: 01792 765600

Any enquiries about this submission should be directed to:
Monica Roberts, Personal Assistant to Children's Commissioner for Wales
Email: monica@childcomwales.org.uk

We do not require our submission to be treated as confidential.

¹⁵ <http://www2.ohchr.org/english/law/parisprinciples.htm>

Introduction

The preamble to the UNCRC states that:

'The States Parties to the present Convention:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recognising that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,'

We wish to highlight the need for protection and assistance for families and within that context young carers who may provide care and or emotional support for their family members.

The Children's Commissioner for Wales recently undertook a research project with over 149 young carers from various young carers projects throughout Wales. The project's purpose was to highlight and review the obstacles that prevent young carers accessing their rights as set out by the United Nations Convention on the Rights of Child (UNCRC), noted in Appendix 1. The report will be launched in June 2009.

It is difficult to provide exact data on the number of young carers in Wales. Data relating to the numbers of young carers was reported in the recent Children and Young People's Well-Being Monitor for Wales¹⁶. The monitor reported that:

The 2001 Census recorded that there were approximately 860 children under 18 years old providing more than 50 hours of care a week. Of these children, 240 were of primary school age.

However, in the course of our recent research, workers from young carers projects suggested that the figure is more likely to be one in ten children or young people in Wales. We are concerned that there may be underassessment of children as young carers. Such assessments are their right and without such an assessment there may be gaps in levels of support and promotion of their wellbeing. It is important that these children's rights, as defined by the UNCRC, are not breached as a result of their caring responsibilities.

¹⁶ Welsh Assembly Government (2008)

.Policy for young carers sits within the Older People and Long term Care Directorate of the Welsh Assembly Government. There is a danger, in our view, that this arrangement could lead to the needs of young carers being lost within the policy making system.

It is against this background and the deliberation as to whether this LCO has the potential to address some of the issues that are of concern to us that evidence is submitted.

1. What are your views on the general principle that legislative competence in the area identified in Matter 15.9 be conferred on the Assembly?

The levels of disability and long term illness in Wales would suggest that a holistic and robust approach is needed to address any gaps in support for young carers in relation to their rights and entitlements under the UNCRC.

Consolidation of further matters to be added within schedule 5 of the Government of Wales Act 2006 is welcome because interaction and cooperation between the various service providers, many of which currently fall within Field 15, is essential to the success of any resulting measures.

The underpinning two fold commitment, specified in Matter 15.9, of supporting carers in their responsibilities as well as promoting their health and wellbeing is welcomed, especially in relation to young carers and their rights under the UNCRC, such as ensuring assessment which will lead to appropriate support.

This LCO may enable the National Assembly for Wales to draw down powers which will ensure that young carers are able to access their rights and entitlements under the UNCRC. Specifically in relation to:

- accessing information and having a voice in decisions which affect them
- health - both physical and mental
- rights in education – dignity and development
- rights to relax and play
- protection from activities which harm their development.

Additionally there is the overarching Article 3 from the UNCRC, which emphasises the need for all services to make the best interests of the child a primary consideration when making decisions about children. Appendix 1 lists the articles which relate directly to the provisions which may be conferred upon the National Assembly for Wales.

What is of central concern to us is our confidence that any service provided and any decision taken about a young carer respects their rights, and is not taken, for instance, for the convenience of social services or the needs of the adult being cared for.

Our recent research¹⁷ found that a high percentage of young carers administering are medicine. According to our research, 50% of young carers said they have to give medication to someone they care for and yet only 27% had been offered any training for this. This evidence suggests that there may be possible breaches of the UNCRC in

¹⁷ Children's Commissioner for Wales report due to be published June 2009

relation to article 13 (information) and 3 (best interest of the child).

2. What are your views on the terms of the proposed Order e.g. are they too narrowly or broadly drawn?

We question whether the terms of the proposed order have been drafted in such a way that will enable the implementation of the broad policy agenda that is needed for young carers. A citizen centred, inter-departmental and cross service approach is essential to address the complex needs of young carers. A question is raised as to the ability of the LCO to afford this due to the wording in matter 15.9:

“This matter includes, in particular, social care services..”

It would be preferable that “in particular” be removed from the LCO. The practical and financial support needs of young carers can be provided by social care, health, education, leisure and many other service areas. The explanatory memorandum reflects this need and states a commitment towards this approach, however, the wording included in the order could lead to confusion. .

The need to ensure clarity is borne out in the calls from the young carers during our research for a clear school policy to support the needs of young carers including the provision of a dedicated liaison worker with a remit to act as a focal point for multi-agency working.

During our research project, young carers were invited to rate services. It is clear from the results noted below that many responsibilities fall either outside the remit or necessitate cooperation with Social Services.

The results also provide a clear indication of the need for an interventionist approach by the services noted below:

Social Services – **40%** said ‘OK or better’
School/College – **54%** said ‘OK or better’
Health Services – **59%** said ‘OK or better’
Young Carers Service – **91%** said ‘OK or better’

54% said they only get support from people when it’s a crisis.

We welcome the inclusion of “information” in the definition of services provided by “social care services” in connection with the well-being of any person. We would prefer that it was made clear that the statutory obligations would be possible in areas other than social services. As the wording stands currently, does it mean, for example, that education would not be subject to the duty of providing relevant information to young carers, which is an essential element in upholding the rights and welfare of the young carer?

Access to relevant information is an area which needs addressing. According to the young carers in our recent research:

“There is a role for health services in identifying young carers and providing them with information, support and where necessary, training, to enable them to effectively fulfil their caring role.”

3. Is the definition of carer in the proposed Order appropriate? If not, how should the proposed Order be re-drafted and why?

Though we welcome the clear commitment made by the Deputy Minister both in the explanatory memorandum (Para. 15) and her Ministerial Statement regarding the LCO, we seek reassurance that the wording of Matter 15.9 will not exclude young carers from the scope of the order.

According to the Welsh Assembly Government, young carers are defined as: *“children and young people who help look after a member of the family who is sick, disabled, has mental health problems or is affected by substance misuse.”*¹⁸

We would therefore question whether or not the definition as worded in the LCO is appropriate to ensure provision for young carers. It is not clear if there is a ‘fit’ between the LCO definition and the definition used by Welsh Assembly Government.

There is no reference to carers who are affected by ‘*substance misuse*’ in the LCO. We are also concerned that the wording ‘*substantial amount of care on a regular basis*’ does not recognise the unique model of care that some young carers provide.

We would ask the meaning of ‘*substantial amount*’ be clarified. Is it constituted only in terms of time commitment? As the non-designated carer, it may be that the young carer is providing more infrequent care or respite periods for the primary adult carer. This can also be true of other young carers who often play a pivotal role in ensuring the family home functions but will not have necessarily been designated as a ‘carer’. It is paramount that the wording of the LCO guarantees the rights and welfare of all young carers and that the term ‘substantial amount’ does not prevent some young carers from being provided with greater support and information services.

The Welsh Assembly Government definition of young carers¹⁹ also states ‘young people who help look after...’ It is unclear as to whether this definition is encapsulated within the current wording of the LCO.

Assurance is sought that the discrepancies between the Welsh Assembly Government definition of young carers and the current wording of the LCO does not mitigate or have the potential to mitigate against young carers.

¹⁸ (Welsh Assembly Government (2004). *Caring for Young Carers: Raising Awareness of Young Carers’ Issues, A Training Resource for Schools*. Cardiff: Welsh Assembly Government.)

¹⁹ Ibid.

The Welsh Assembly Government has reaffirmed the principle that young carers who are under 16 should be considered under the Framework for the Assessment of Children in Need and their Families²⁰ under the provisions of the Children Act 1989.

Young carers can also have their needs as carers assessed under provisions in Carers (Recognition and Services) Act 1995. The Welsh Assembly Government need to be confident that Social Services departments are undertaking both assessments to which the young carers are entitled.

They should also question, whether or not, when care workers visit adults with caring needs, they systematically refer the needs of the child / children within that household to children's services.

We have concerns regarding the current Welsh Assembly Government *Paying for Care* consultation and the implications of any application of costs. Many adults with caring needs are currently refusing free social care on the grounds that the child can provide that care. Additional cost would be a significant disincentive to reverse this worrying trend.

4. Do you consider that the excepted Matters, relating to field 15, would have implications for the effectiveness of any future proposed Measures brought forward under Matter 15.9? If so, please explain why.

We do not consider that the excepted matters would have implications for the effectiveness of any future proposed Measure. Similar exceptions were discussed and agreed upon during the formulation of the National Assembly for Wales (Legislative Competence) (No.3) Order 2007 (Relating to Vulnerable Children).



**Keith Towler
Children's Commissioner for Wales.
February 2009**

²⁰ <http://wales.gov.uk/dhss/publications/children/childrenfirst/606358/facnf-maindoc-2001-e.pdf;jsessionid=jQQtJGHbyG3yCMs3xBHlty1YvkzLLC2FpS2pQPGzJ2GFQhCglpPJ!335850833?lang=en>

Annex 2

Relevant articles of the UNCRC

The LCO has the potential to address many of the articles in the UNCRC – some more closely linked than others:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (order public), or of public health or morals.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

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, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access

to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

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 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.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare

ENDS