

**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 Principles<sup>1</sup>. 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.

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

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<sup>1</sup> <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 Wales<sup>2</sup>. 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.

.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.

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<sup>2</sup> Welsh Assembly Government (2008)

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 research<sup>3</sup> 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 relation to article 13 (information) and 3 (best interest of the child).

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<sup>3</sup> Children's Commissioner for Wales report due to be published June 2009

## **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.*”<sup>4</sup>

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 carers<sup>5</sup> 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.

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 Families<sup>6</sup> under the provisions of the Children Act 1989.

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<sup>4</sup> (Welsh Assembly Government (2004). *Caring for Young Carers: Raising Awareness of Young Carers’ Issues, A Training Resource for Schools*. Cardiff: Welsh Assembly Government.)

<sup>5</sup> Ibid.

<sup>6</sup> <http://wales.gov.uk/dhss/publications/children/childrenfirst/606358/facnf-maindoc-2001-e.pdf;jsessionid=jQQtJGHbyG3yCMs3xBHlty1YvkzLLC2FpS2pQPGzJ2GFQhCglpPJ!335850833?lang=en>

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).

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

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

## **Appendix 1 – 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

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