

Senedd Cymru
Y Pwyllgor Plant, Pobl Ifanc ac Addysg

Welsh Parliament
Children, Young People and Education Committee

Ymchwiliad i effaith argyfwng Covid-19 ar blant
a phobl ifanc yng Nghymru

Inquiry into the impact of the Covid-19 outbreak on
children and young people in Wales

COV 106
Ymateb gan: Arsyllfa ar Hawliau Dynol Plant

COV 106
Response from: Observatory on Human Rights of
Children

Submitted by the Observatory on Human Rights of Children at Swansea University

1. The Observatory on Human Rights of Children is based at Swansea University and Bangor University. The Observatory supports children's human rights through research and working with organisations on ways to put the UN Convention on the Rights of the Child (CRC) into practice. This submission is on behalf of the Observatory at Swansea University.

Children's Rights and Covid-19

2. The UK is experiencing a public health crisis. The Welsh Government has exercised emergency powers to introduce regulations and has issued guidance in response to the Covid-19 pandemic. These have had, and will continue to have, direct and significant impacts on everyone in Wales, including children.
3. On 15th April, 2020, the UN noted that children are at risk of being the biggest victims of the pandemic. The UN predicts a sharp increase in child poverty, huge impacts on childhood learning and increased risks to child safety and child health. This means that special attention should be given to all children when emergency measures are introduced. The UN has sought to remind States that without urgent action the pandemic could become a 'child rights crisis'.
4. In almost every aspect of a child's life it is possible to identify some impact arising from Covid-19 in Wales. For all children, the impact of the pandemic is likely to be significant, and for some it will be highly prejudicial and life changing. Examples include:
 - Children are adversely affected by school closures which impact worst on those who are already prejudiced by inequalities in education affecting

poorer households. This has serious repercussions for the child's right to development and education (CRC, Arts. 6 and 28).

- Some children will live in households where household income has been reduced. For many this will continue even as lockdown is eased putting more children at risk of poverty, affecting e.g. their physical and mental health, housing, nutrition, and opportunities for development (rights affected include CRC, Arts. 2, 3, 6, 24, 27, 28 and 29).
- An increased risk of child abuse as vulnerable children are cut-off from contact with mechanisms which help to identify when abuse is taking place, in particular schools (a serious risk of violation of CRC, Arts. 6 and 19).

The Need for Children's Rights Impact Assessment

5. While the UN Committee on the Rights of the Child recognises that crisis situations exceptionally permit measures to be introduced that may restrict the enjoyment of children's human rights in order to protect public health, these restrictions must be "imposed only when necessary, be proportionate and kept to an absolute minimum."
6. In order to: [a] properly assess and mitigate any risk to children's rights from measures in response to Covid-19; and, [b] to assess the extent to which measures are necessary, proportionate and kept to an absolute minimum the Welsh Government should undertake Children's Rights Impact Assessment (CRIA).
7. CRIA is strongly recommended by the Committee, UNICEF and others as a key mechanism to predict the impact of legislation or policy on children. In Wales the Children's Rights Scheme 2014 requires a CRIA of all proposals for policy or legislation likely to have a direct or indirect impact on children so that Ministers act in compliance with their duty to have due regard to the CRC when exercising their functions under section 1, *Rights of Children and Young Persons (Wales) Measure 2011*.
8. The Committee makes no allowance for CRIA to be set aside in times of emergency. In Wales, neither the Child Rights Measure nor the Children's Scheme have been disapplied by any emergency legislation. CRIA should have been carried out on all emergency measures in response to Covid-19 which directly or indirectly affect children, or groups of children in Wales.
9. While urgency may have provided a reason for not carrying out CRIA on initial guidance and regulations, this does not apply after-the-event, or to

subsequent guidance, or when Ministers are reviewing regulations or devising a lockdown easement strategy.

10. We have had the opportunity of reading in advance the UNCRC Monitoring Group's submission to the inquiry. We support and endorse the submission and agree with the Group's recommendations for ongoing iterative CRIA, and for immediate CRIA to address urgent issues (restrictions on the right to assembly, the impact of digital exclusion, and the consequence of limiting family contact).
11. The potential of CRIA may be demonstrated by reference to restrictions on movement imposed by the *Health Protection (Coronavirus Restrictions)(Wales) Regulations 2020*. These regulations immediately raised concerns about their disproportionate impact on disabled children, in particular autistic children. Recent guidance has to some extent mitigated the situation (para.12 of the guidance). Had CRIA been carried out on the draft regulations we have no doubt that due regard to the UNCRC (and in particular Arts. 2, 3, 6(2), 12, 15, 23, 24, 28, and 31) would have led to earlier recognition of the disproportionate impact on this group of children, and sooner adoption of guidance to mitigate its adverse effect.
12. It is of great concern that Ministers have not carried out CRIA on regulations, policy or guidance introduced in response to Covid-19 (to our knowledge, and save the School Admissions Appeals procedure). **It is extremely worrying that a mechanism which was introduced to ensure that children's rights are properly taken into account in Ministerial decision-making should be so easily set aside at a time when children's rights are at greatest risk.** This is not only a departure from obligations imposed by Welsh Law, but also a failure to adopt a procedure which would help minimise the risk of adverse impacts on children from emergency measures.
13. We are also concerned that it was suggested to the Committee in evidence from the Welsh Government earlier in this inquiry that there was no requirement for CRIA as there were no easements which had been applied to children's services legislation (transcript, CYPEC, 5.05.2020, para.112). This reflects a fundamental misconception often affecting CRIA. CRIA should be applied to all policy and legislation which is likely to impact directly or indirectly on children, and not just children's policy or children's services legislation.

14. CRIA is one mechanism to help ensure children's rights receive proper consideration in government decision-making, including in times of crisis. Another is consultation with civil society. In this respect it is reassuring that the Welsh Government established a COVID 19 Moral and Ethical Advisory Group Wales (CEAGW). However, it is surprising that neither the CEAGW's name nor its terms of reference make any reference to human rights or children's rights. The terms of reference include to 'provide advice on moral, ethical, culture specific and faith considerations' but omit human rights or children's rights. This omission seems inconsistent with the Welsh Government's claim to adopt a rights-based approach generally, and specifically in response to Covid-19.¹ It also overlooks a legitimate and internationally endorsed framework to guide the actions of government in times of crisis. Although the CEAGW membership includes individuals who are very capable of putting forward a human rights and children's rights perspective, the terms of reference should have explicitly included these within the terms of reference.

¹ <https://gov.wales/written-statement-statement-work-covid-19-moral-and-ethical-guidance-wales-cmeag-wales-advisory>