

To: To: Lynne Neagle
MS

Chair
Children, Young People
and Education
Committee

Via email only

18 January 2021

Dear Chair,

As Children's Commissioner for Wales, I strongly welcomed your recommendation to Government that they include a due regard duty on the face of the Curriculum and Assessment (Wales) Bill.

In both my written¹ and oral evidence to your Committee I detailed why the inclusion of this duty was so essential in terms of how it may affect children's experience of this bill in their day-to-day lives. I also laid out that without this overarching duty, the Bill needs several amendments in order to make it fully compliant with the United Nations Convention on the Rights of the Child.

I was disappointed that Government rejected your recommendation, and I strongly dispute the basis on which this rejection has been made.

Please find enclosed a copy of my letter to the Education Minister on this matter, which details why the basis for their rejection of this recommendation is flawed. I am happy for that letter to be published on your Committee webpage in the usual way.

I will continue to urge Government not to lose this opportunity to ensure greater realisation of the human rights of children in Wales, and I thank your Committee also for your continued and longstanding commitment to this issue.

Yours sincerely,



Sally

¹ [CAW97 Childrens Commissioner for Wales.pdf \(senedd.wales\)](#)



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Children's Commissioner for Wales

Rydym yn croesawu gohebiaeth a galwadau yn Gymraeg. Byddwn yn ateb gohebiaeth a gwladau a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd cysylltu yn Gymraeg yn arwain at oedi | We welcome receiving correspondence and calls in Welsh. We will respond to correspondence and calls in Welsh, and contacting us in Welsh will not lead to delay.



To: Kirsty Williams
Minister for Education
Via email only

18 January 2021

Dear Kirsty,

The principal aim of the Children's Commissioner for Wales is to safeguard the welfare and rights of children and young people in Wales, as set out in the United Nations Convention on the Rights of the Child. I have therefore been consistently clear, over a period of years, that children's rights need to be at the heart of new curriculum legislation in Wales.

To do this it is essential that children's rights are part of the legislation underpinning educational reform, and I have called for a due regard duty to the UNCRC to be included on the face of the Curriculum and Assessment (Wales) Bill. This recommendation has also been made by the Children, Young People and Education Committee in their Stage 1 scrutiny of the Bill, and the Committee specify that this duty should be placed on all persons listed in section 66(3) of the Bill when exercising any of their functions conferred by or under the Bill.

I have written at length about why this change is needed¹, but I write now to dispute the flawed basis on which this recommendation has been rejected by Government. The Government response claims that, *The UNCRC is aimed at states and, accordingly, it is for Governments to ensure compliance through their laws, administrative actions and other appropriate measures. This is an important principle and, unless the state is directly providing the service, this Convention is not targeted at frontline providers of service.*

This misunderstands human rights. When public bodies, for example, education settings, are exercising a responsibility delegated by the state, these bodies have a delegated responsibility to ensure human rights. It is entirely appropriate for the Governing Bodies of schools, or for professionals employed by local authorities, to pay due regard to the human rights of children when they develop policies, strategies and practices. Including a due regard duty to the UNCRC would underline their responsibility delegated by the state, as it has done in two previous landmark Acts of the Senedd: the Social Services and Well-being (Wales) Act 2014 and the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

¹ [CCFW-Children-Rights-and-Curriculum-Reform-Position-Paper-2018.pdf \(childcomwales.org.uk\)](#)



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The response asserts that this would result in, '*creating layers of red tape and bureaucracy – teachers, schools and governing bodies would have to evidence that they have taken the Convention into account in their interactions with all children.*' But this is not the case, and has not proven to be the case in the implementation of the Social Services and Well-being (Wales) Act 2014. A due regard duty would simply mean that as policies and practice are redeveloped in line with the new curriculum, they are at the same time re-developed in line with the principles of children's human rights. Changes are and will be underway to realise the ambitions of the new curriculum, and to integrate children's rights into this would be a highly effective way of simultaneously supporting the human rights of children in Wales through their education.

And this change is needed. Whilst many children do have an educational experience that upholds and promotes their rights this is not universally the case, as illustrated by the low levels of participation experienced in secondary schools in Wales², or by the lack of information provided to some young people in EOTAS provision³, or by the frequency of exclusions of Foundation Phase aged children⁴. Currently, children's experience of their rights in education relies too often on the practice of individual professionals, rather than being embedded into policies and strategies across a whole setting, or embedded into policies at a local authority level.

There is an opportunity presented by this Bill to ensure that all children and young people experience their rights on a daily basis throughout their education. In her 1958 address to the United Nations in New York, Eleanor Roosevelt posed the following:

"Where, after all, do universal rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere."

It is exactly this that we need to achieve for children in Wales.

Yours sincerely,

² The Children's Commissioner for Wales Annual Report 2019-2020 p.67 [Annual-Report-2019-20.pdf](#) (childcomwales.org.uk)

³ [EOTAS 08 Childrens Commissioner for Wales.pdf](#) (senedd.wales)

⁴ [Building Blocks: Inclusion in the Foundation Phase - Children's Commissioner for Wales](#) (childcomwales.org.uk)





Sally

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