

Comisiynydd Plant Cymru Children's Commissioner for Wales

Sally Holland

By email only.

31st March 2017

Rt. Hon Carwyn Jones AM
Llywodraeth Cymru
Sed Llawr
Tŷ Hywel
Bae Caerdydd
CF99 1NA

Dear Carwyn

In your letter of 6 March 2017 I was pleased to receive your continued commitment to the core principles of the United Nations Convention on the Rights of the Child (UNCRC), and to integrating children's rights in Welsh Government's decision and policy making. I'm sure you agree that we must endeavour to match the principles of our laws and policy with meaningful actions which improve outcomes for children and young people.

Your Government has taken positive steps towards fully incorporating the UNCRC into Welsh domestic laws. In response to the unprecedented times we live in, with the looming possibility of Human Rights Law being reformed by the UK Government, it is imperative that we build upon the foundations we have laid down in Welsh civil society to empower our young citizens with their rights and entitlements. The joint statement you made with the First Minister of Scotland, Nicola Sturgeon, in June 2015 was clear that proposals to repeal the Human Rights Act sends a message to the rest of the world that the UK is not a place that prioritises and respects international standards in human rights. My counterparts and I across the UK echoed these sentiments when making representations to the United Nations Committee on the Rights of the Child, stating there should be no diminution of children's rights protection in UK law. I strongly believe we should counter any possible contraction through pre-emptively promoting and protecting the human rights of children in Wales.

Through the Rights of Children and Young Persons (Wales) Measure 2011, Wales has set itself on a path as an international trailblazer by placing a duty upon Welsh Ministers to have due regard to the UNCRC when exercising their functions. However it is regretful that a full understanding of the implications of the Measure do not appear to be apparent in relation to all Welsh Ministers' activities. It was most disappointing to hear the Minister for Lifelong Learning and Welsh language respond to the Children, Young People and Education Committee's questions regarding due regard to the UNCRC on 23 March 2017, rejecting the proposal to extend the duty to education providers as unnecessary and feeling there is no need to 'slavishly' repeat duties on different pieces of legislation. The Minister was factually inaccurate to suggest that placing a duty of due regard to the UNCRC on those exercising functions under the Additional Learning Needs and Education Tribunal (Wales) Bill (ALN Bill) would be repeating the same duty that is upon Welsh Ministers under the Rights Measure. It is my view that there would be nothing 'slavish' if every piece of Welsh legislation related to children and young people had such an overarching duty enshrined within it, to both signal Government's commitment to children's rights and lead to improved outcomes through embedding children's rights approaches to service delivery.

The fundamental misunderstanding put forward by the Minister during the scrutiny session in relation to due regard to the convention was his perception that the duty applied to Welsh Ministers through the Measure permeates through to policy makers and practitioners working directly with children and young people. It simply does not. This is why I am calling for this duty to be on the face of the ALN Bill and other pieces of significant legislation directly impacting upon the lives of children and young people. This was recognised at the outset of the Programme for Government 2011-16, where there was a commitment to introduce a Children and Young Persons (Wales) Bill, which was intended to build on the Rights of Children and Young Persons (Wales) Measure 2011. The need for the Bill was assessed by Welsh Government to have been superseded by the Social Services and Well-being (Wales) Act 2014, which brought forward a duty of due regard to the UNCRC for those exercising functions under the Act.

The Rights Measure was a significant milestone on the journey to fully implementing the UNCRC in Welsh public life, but does not constitute the final destination and whilst the Social Services Act was another major juncture there is still much more to be done. The radical educational curriculum reform programme being taken forward by Welsh Government, of which the ALN Bill is a significant part, offers a once-in-a-generation opportunity to re-align national understanding of education with the values of the UNCRC, in particular Article 29 which states how children's education should develop each child's personality, talents and abilities to the fullest, encouraging children to respect others, human rights and their own and other cultures. In the same way that Welsh Government reforms are being pursued in alignment with standards set by the OECD, explicit duties of due regard to the UNCRC for those delivering education would place the transformation programme within a coherent, politically neutral and internationally agreed set of values. It would also place children's rights as a guiding principle for learning needs and provision in Wales and make overt the role of local authorities, health boards, school governing bodies, teachers, learning support staff and relevant others as duty bearers of the convention.

I note your recent pledge of a fair deal for the people of Wales. Due regard essentially promotes fair consideration of children's rights, not necessarily their precedence over parents' rights or other related factors which would all fall within decision making in the best interests of children, as enshrined by article 3 of the UNCRC. Therefore providing a due regard duty in this Bill and as part of curriculum reform will both legally secure children's rights and work in tandem with other legislation in safeguarding children's wellbeing, putting Wales at the forefront internationally in terms of a children's rights based education.

Due regard to the UNCRC should not, and does not start and end with Ministerial functions. The rights Measure directs Ministers to pay due regard to the UNCRC and to make the convention available to children and young people through policy and law making, consistent with Articles 4 and 42. As such, legislating on the face of the ALN Bill would be a fulfilment of these duties. It would be incongruous if a situation is allowed to develop whereby looked after children, young carers, and children with care and support needs as recognised under the Social Services (Wales) Act 2014, would have numerous professionals directly supporting them from social services who are obliged to pay due regard to the UNCRC, yet would not have the same level of provision from professionals surrounding them in their education. By extending the duty of due regard to the UNCRC to all persons exercising functions under guiding legislation, we can further embed children's rights within Welsh public provision. I believe that this will help heighten public awareness of the UNCRC and help us to further foster a culture which promotes thinking about the impact of what goes on in society on children, which challenges bad practice and promotes positive outcomes. Practical improvements leading to beneficial outcomes are essential for children's rights to have real meaning.

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I am addressing this letter to you in acknowledgement of your leadership on constitutional affairs and the legislative programme, and am copying in relevant Cabinet Members with a key stake in these discussions, as well as to the Chair of the Children, Young People and Education Committee to further inform the Committee's scrutiny of the matters detailed within the letter.

I make a direct request for you, as part of your pledge of a fair deal for the people of Wales, to bring forward the due regard duty to the UNCRC on the face of the ALN Bill and all future significant legislation impacting upon the lives of children and young people within this Government.

As ever, I look forward to working with you to influence strategic changes that improve children's lives and give every child in Wales an equal chance to the best they can be.

Yours sincerely



Sally Holland
Children's Commissioner for Wales

cc Carl Sargeant AM, Cabinet Secretary for Communities and Children
Kirsty Williams AM, Cabinet Secretary for Education
Alun Davies AM, Minister for Lifelong Learning and Welsh Language
Lynne Neagle AM, Chair of the Children, Young People and education Committee
