



## Legislation Committee 5

### Proposed Welsh Language (Wales) Measure 2010

The Children's Commissioner for Wales is an independent children's rights institution. 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 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 children and young people in relation to this Proposed Welsh Language Measure.

The Welsh Government sees children as rights holders and states clearly that:

*"Children and young people should be seen as citizens, with rights and opinions to be taken into account now. They are not a species apart, to be alternately demonised and sentimentalised, nor trainee adults who do not yet have a full place in society"*<sup>1</sup>

Any reference to citizens within this response relates to citizens of all ages.

As well as *Children and Young People: Rights to Action (2004)*<sup>2</sup> which outlines children and young people's policy in Wales and sets out seven core themes, each linked to relevant UNCRC articles we also have *Extending Entitlement*<sup>3</sup> is the Welsh Assembly Government's legal direction on youth services. It sets out universal basic entitlements for young people aged 11-25 years. The 10 entitlements are clearly consistent with the UNCRC. As noted in the Funky Dragon report *Our Rights, Our Story*<sup>4</sup>, submitted as part of the last UNCRC monitoring round:

"The significant point being that the language of entitlement is adopted, marking a shift in the conceptual basis towards a rights-based approach."

### Consultation Questions

**1. Is there a need for a proposed Measure to deliver the stated objectives of (as set out in paragraph 3.10 of the Explanatory Memorandum):**

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<sup>1</sup> WAG (2004) *Children and Young People: Rights to Action*. p.4

<sup>2</sup> *ibid*

<sup>3</sup> WAG (2002) *Extending Entitlements*

<sup>4</sup> <http://www.funkydragon.org.uk/en/fe/page.asp?n1=1437&n2=2108>

The UN Convention on the Rights of the Child (UNCRC) is an holistic framework consisting of 42 articles that children and young people across Wales are entitled to. Annex 1 outlines the articles which are obviously connected to the Proposed Welsh Language Measure. We see Welsh language provision as a rights issue, relevant to numerous UNCRC articles.

An article often referred to in the context of language is article 30:

*'UNCRC Article 30:*

*In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language<sup>5</sup>*

However, due to the link between language and identity and the way in which language influences how people see and understand the world around them, every experience a child and young person has is affected by language. No article can therefore be divorced from linguistic consideration. For example, the best interest of the child has a resonance in all articles. Other salient articles include:

Article 12: Child's view being taken into account

Article 31: Relating to play and leisure

Article 23: Special and appropriated care

Article 29: Education: Personal development and respecting cultural identity

Article 28: Education and dignity

It is important to remember the specific relevance that linguistic rights have for children, especially those who, at a young age, will often be monolingual Welsh speakers and in need of particular services, be it in health, education, play and leisure and other services. This can have a major developmental impact on a child's development.

I believe there is a need for a Measure to deliver the stated objective, set out in paragraph 3.10.

The findings from the Funky Dragon report, *Our Rights, Our Story* noted:

*"Largely young people were happy that Wales has its own unique language, and when asked what they would change about living in Wales, their responses were often to do with increasing the use of Welsh, and improving the way that it was taught to allow this to happen."<sup>6</sup>*

This would suggest that there is a need to extend the opportunities available to make use of the Welsh Language, making it more accessible. Therefore, the stated objectives are appropriate, especially in relation to clarity of what the citizen should expect, having a strong advocate and champion of the Welsh language, affording official status to the Welsh Language and providing a level of accountability and recourse via a more effective reinforcement regime.

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<sup>5</sup> <http://www2.ohchr.org/english/law/crc.htm>

<sup>6</sup> [http://www.funkydragon.org/en/fe/fileloader/load\\_docs.asp?filePathPrefix=8951&fileLanguage=e](http://www.funkydragon.org/en/fe/fileloader/load_docs.asp?filePathPrefix=8951&fileLanguage=e)

**Providing greater clarity and consistency for Welsh speakers in terms of the services they can expect to receive in Welsh;**

The lack of consistency in service provision for young Welsh speakers, which impacts on levels of expectations of what young Welsh speakers should expect, was expressed in the Funky Dragon report *Our Rights, Our story*:

*“37.31% thought that it was easy to get information in the Welsh language. When crossed with the numbers of people living in Rural/Urban areas this shows that in urban areas it is more difficult to access information in the Welsh language.”<sup>7</sup>*

This suggests that there are areas of service provision which do not provide an equality of service for those wishing to access services through the medium of Welsh.

The European Council’s Committee Expert Group on the European Charter for Regional or Minority Languages recently undertook a spot visit to the UK and I believe it is worth noting a number of comments contained in their report<sup>8</sup> as it reinforces the argument that a strong Welsh Language Measure is needed.

*‘Article 13 - Economic and social life*

*With regard to administration, the authorities at all levels of government continue their efforts to use the Welsh language including the implementation of the Welsh Language Schemes. However the degree to which the schemes are delivered in practice still varies substantially. In the field of health and social care, much remains to be done with regard to services in Welsh.’*

On social care, the Committee Expert Group noted:

*‘...the provision of health and social care services in Welsh is still largely missing...’*

*And recommendation 5 of their report was that the state party should:*

*‘Take further measures to ensure that health and social care facilities offer services in Welsh.’*

In relation to Welsh Language Schemes developed under the Welsh Language Act 1993, they noted:

*‘During the on-the-spot visit, the Committee of Experts received information from some NGOs and the Welsh Language Board that Schemes are often contravened and broken. Some NGOs called for the creation of statutory language rights.’*

They also drew attention to another weakness of the current legislative framework. On the issue of increased numbers of complaints in the health sector, the report noted:

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<sup>7</sup> *ibid*

<sup>8</sup> [http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf)

'The problems identified include very little training of medical staff in Welsh and the fact that over 90% of contact with the health service is through the primary care sector. As this is largely provided by the private sector (i.e. doctors' surgeries) most of this work does not come directly under the auspices of the 1993 Welsh Language Act.'

The report also notes the progress made in relation to the accessibility of Welsh medium education, however outlined concerns on the variability, both geographically and between sectors of education.

**2. Is it easy to understand the practical implications of the proposed Measure for your organisation? Please explain the reasons for your answer.**

Yes. However, I note that the Proposed Measure contains provisions in Part 2, section 20, in relation to the joint and collaborative working between the Welsh Language Commissioner and prescribed ombudsmen so I will, if the Proposed Measure is progressed, consider a need for a formal protocol between my office and that of the Welsh Language Commissioner.

My understanding of the Measure is that the subordinate legislation making powers would only relate to the definition of 'ombudsmen' as opposed to the nature of joint work and collaboration.

The provisions within Part 2, Section 20 are to be welcomed and are sensible both in terms of sharing resources, be they financial or expertise, as well as ensuring that there is no duplication of work.

It may be worth noting the Welsh Government's deliberations on a possible Child's Rights Measure. It is quite possible that were such a measure introduced, it would have implications for this Proposed Welsh Language Measure, with crossovers in remits becoming even more explicit.

It may well be the case that issues brought to the attention of the Children's Commissioner for Wales has resonance and relevance in relation to contravention of standards in the design or delivery of services. I look forward to engaging with the new Language Commissioner as well as building on the relations between my office and other authorities and ombudsmen.

**3. Subject to any answer given in relation to question 2, how will the proposed Measure change what your organisation does currently and what impact will any such changes have?**

As a listed public body under Schedule 6, not only will I ensure that my office complies to the standards outlined as a result of the Proposed Measure, but I will also endeavour to show leadership to other public service providers in Wales to help ensure that children and young people across Wales can access their rights and entitlements in their preferred language, ensuring equality in language choice.

The Measure could, as a result of reducing the complexities of the current system, also make it easier for us in our considerations of Welsh language issues relating to children and young people in my service evaluation function.

**4. Are the sections of the proposed Measure appropriate in terms of achieving the stated objectives?**

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

**a) make further provision about the official status of the Welsh language (section 1).**

I share the concerns of other consultees that there is a danger of missing an opportunity of affording official status and equal status to the Welsh and English languages in Wales, and that the current wording does not provide for this. The Measure states that it makes '*further provision about the official status of the Welsh Language in Wales*', without providing a definitive statement.

The current wording is not reflective of the stated objective in the Welsh Government's programme of government which was to '*confirm official status for both Welsh and English...*'<sup>9</sup>

As well as being a symbolic statement, this would also provide for an important legal precedent. It would provide a clear statement of intent and could have the impact of promoting a sense of national ownership of the Welsh Language, by Welsh speakers and non-Welsh speakers alike. It could also be beneficial in providing clarity in any legal proceedings relating to Welsh language provision or contested measures of what is deemed commensurate. The Barrister Gwion Lewis presented a compelling argument in a seminar organised by Mudiad Dathlu'r Gymraeg in February 2010 when he stated that any measure to specifically promote a particular language in the interest of that minority language, if challenged, would benefit from the added robustness to the reasonability principle in defending that measure. If the language under scrutiny was an official language within a particular country, the official status would provide a useful dynamic.

I would also hope that if official status were afforded, policy makers would become more aware of their obligations to develop services through the medium of both Welsh and English. Currently, for instance, although in preparing their Frameworks, Children and Young People Partnerships are asked to recognise the importance of culture and first language in Wales, the recognition given to the Welsh Language in relation to the Seven Core Aims, is inconsistent. Whilst national overarching policy documents may reference the need to consider Welsh Language issues there is anecdotal evidence that these issues are not consistently articulated or delivered within the single plans.

**b) establish the office of the Welsh Language Commissioner and his / her functions (sections 2-21).**

I would be very happy to discuss the intricacies of Commissioners' status with the committees. The creation of the Commissioner is an important development as it forms a firm basis for regulation and accountability. A statutory advocate, separate from Government with investigative powers is consistent (though not identical) with the legislative make up of comparative Commissioners in Wales.

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<sup>9</sup> <http://wales.gov.uk/about/programmeforgovernment/strategy/publications/onewales/?lang=en>

The establishment of the Welsh Language Commissioner is an opportunity to redress the balance between service provider and the citizen via a more robust regulatory process. The establishing of the office of Commissioner, however, will not necessarily empower the citizen. I would seek clarification as to what level of involvement the citizen will have within the Commissioner's processes.

I noted in my response to the Legislative Competency Order:

'The 1993 Act defines equality by saying that the Welsh language is to be equal to English as far as it is '... appropriate under the circumstances and is reasonably practicable.' In practice, this has sometimes meant a public body obligation to provide services in both languages but leaving the citizen with no right to access that service. It is the service provider who has defined what is appropriate and reasonably practical. The citizen may dispute this but has no recourse in relation to language legislation due to the lack of enforcement powers under the 1993 Act.'<sup>10</sup>

It appears that, as the Proposed Measure stands, the Welsh Language Commissioner's provisions affords accountability in relation to the regulatory process but not necessarily or directly for the citizen.

The citizen may be able to influence the Welsh Language Commissioner's work programme by helping to identify systemic failures of services via interaction with the Welsh Language Commissioner's office, however the formal avenues for engagement in recourse terms are limited. It must be made clear to the citizens what can be expected from the Commissioner and what the nature of engagement will be.

### **Accountability**

I believe that the establishment of the Welsh Language Commissioner's office should comply with the Principles relating to the Status of National Institutions (The Paris Principles) within the United Nations General Assembly resolution 48/134 of 20 December 1993. These principles can be found on the Office of the United Nations High Commissioner for Human Rights web site: <http://www2.ohchr.org/english/law/parisprinciples.htm>

The statement notes:

*2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*

It is not only the financial arrangement which could potentially affect the independence of a Commissioner.

I would suggest that the Welsh Language Commissioner would be better served to be appointed under the same procedures as the Public Services Ombudsman and appointed by the National Assembly for Wales, rather than by the First Minister. This would seem more appropriate,

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<sup>10</sup> [http://www.assemblywales.org/cd29\\_children\\_s\\_commissioner.pdf](http://www.assemblywales.org/cd29_children_s_commissioner.pdf)

especially given the powers of the Commissioner to impose sanctions on and bring proceedings against Welsh Ministers. The influence of Welsh Ministers in their ability to instruct the Commissioner as well as the role of Welsh Ministers in specifying standards under section 25 also merits further consideration.

**d) establish a new system for placing Welsh language duties on persons in the form of standards (sections 24-69).**

I do not believe that the initial intention outlined in the One Wales agreement to afford rights for Welsh speakers is provided via the new standards which would be developed under this Measure.

As noted previously, the rights issue is of special interest to me as it has particular relevance to children. Many younger children are of course monolingual Welsh, therefore particular services of necessity need to be provided through the medium of Welsh. The failure to do so has the potential to have a substantial negative impact on the child's development and on the rights and welfare of that child.

It is unclear how the Proposed Measure builds on the provisions of the Welsh Language Act 1993 in terms of empowering the citizen. It is questionable whether or not the balance of power between service provider (and their statutory obligations) and the rights of the citizen (referred to in response to 4(b)) has been achieved.

I agree with the comments made by others during this scrutiny process who have called for strengthening the hand of the wronged citizen. Attention should be directed at recourse and remedy for those who have suffered following the failure of a public authority to comply with language standards.

Others have noted the irony that the only rights explicitly afforded by the Proposed Measure is the right for service providers to challenge the standards to which they have a duty to comply (part 4, chapter 7).

I believe that the Welsh Government should make any obligation on different public services as clear and as transparent as possible so that citizens understand what they can expect and when they will be able to use the Welsh Language.

In my response to the Legislative Competency deliberation, I noted:

'The Beecham review into public services in Wales recommended the implementation of a "citizen model of public service delivery" which would deliver tangible outcomes that matter most to citizens.'<sup>11</sup>

The standards included in sections 24-69 have the potential to make this clear with a simplified system, however there is not enough detail to assess the potential impact. In theory, the standards could actually provide for less provision through the medium of Welsh.

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<sup>11</sup> *ibid*

I do, however, welcome the outlining of the nature of standards, namely under 37 (2). The four categories are service delivery, policy making, operational and record keeping standards. Too often, service providers see the current Welsh Language obligations in the context of administration (correspondence, publicity material) only. The fact that development of linguistic skills strategies in public bodies has been slow and variable signifies the lack of planning in relation to actual service delivery and that language issues have not been an integral part of the policy making and service configuration set up. This lack of mainstreaming has led to gaps in provision as identified by the Committee Expert Group from Council of Europe.

It would also be useful, considering the emphasis on education within the UNCRC, to clarify whether Welsh Language education provision will be impacted upon by the Proposed Measure, bearing in mind the recent transfer of the administration of Welsh Language Education Schemes from the Welsh Language Board into the Welsh Government.

**e) establish a procedure for the Commissioner to investigate a failure to comply with standards (sections 70-99).**

I have previously noted my concerns about the place of the citizen within this process.

**g) establish a Welsh Language Tribunal (sections 109-124).**

I would suggest that my comments relating to the independence of the Welsh Language Commissioner is also relevant to the Tribunal.

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

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

May 2010



## **Appendix 1**

Please note Appendix 1 notes the most obviously relevant UNCRC articles. We would argue however, due to the link between language and identity and the way in which language influences how people see and understand the world around them, that every experience a child and young person has is affected by language, therefore no article can be divorced from linguistic consideration. For example the best interest of the child has a resonance in all articles. We would also say the same regarding the seven core aims stated in the Welsh Assembly Government's strategy *Children and Young People: Rights to Action*, with certain aims linking very closely to article 30 of the UNCRC

### **Article 23**

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

### **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

### **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 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

### **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.