



ROCK Update Wales Feb 2016: Incorporation in Wales

Wales famously has a form of incorporation of the UNCRC, unlike elsewhere in the UK. The text of:

- a. Part I of the Convention,
- b. articles 1 to 7 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, except article 6(2), and
- c. articles 1 to 10 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,

are part of the text of Welsh law, being contained in the Schedule to the **Rights of Children and Young Persons (Wales) Measure 2011**. From May 2014 Welsh Ministers, when exercising any of their functions, must have 'due regard' to the requirements of the Convention and Optional Protocols so incorporated.

Welsh Ministers have over the last three years published, revised and re-published their Children's Rights Scheme pursuant to section 2 of the 2011 Measure. Their performance under the Scheme and under the due regard duty is scrutinised by the National Assembly for Wales, both in Assembly Committee hearings and in plenary debates.

Under the Children's Rights Scheme, all Welsh Government civil servants have to undertake basic training on the UNCRC. The Scheme also sets out a process for deciding when a child rights impact assessment is required and, where it is, the steps that have to be gone through. The Scheme and CRIA process can be accessed here:

<http://gov.wales/docs/dsjlg/publications/cyp/140501-childrens-rights-scheme-2014-en.pdf>

An evaluation, commissioned by Welsh Government, of a selection of the CRIAs and of the general approach to the CRIAs, has been undertaken by Dr Simon Hoffman, Swansea University. Further details from: s.hoffman@swansea.ac.uk

The 'duty of due regard' was extended by the **Social Services and Well-being (Wales) Act 2014** to persons having 'persons having functions under the Act in relation to a child who has care or support needs, is a carer with support needs or is a looked after child or care leaver. This includes local authorities, local Health Boards, a person to whom a local authority has made a direct payment, independent reviewing officers, Welsh family proceedings officers, National Independent Safeguarding Board, Safeguarding Children Boards, Public Service Ombudsman for Wales.

In addition to these statutory duties, some public bodies in Wales have adopted whole-organisation policies committing to the UNCRC. City and County of Swansea was the first to do this, adopting a model similar in principle to the pervasive due regard duty under the 2011 Measure. Others which have adopted their own particular model are Pembrokeshire ('PUNC', a youth led UN Committee style hearing) Conwy (Children's Rights Scheme), Abertawe Bro Morgannwg University Health Board (Children's Rights Charter). Section 7 of the Social Services and Well-being (Wales) Act can be expected to produce further interest in whole organisation approaches.

The duty of due regard is beginning to be cited in arguments before the courts, for example in relation to decision to cut or re-organise public services and in family proceedings. So far such arguments have not been decisive in reported cases.

Legislative momentum appears to have stalled for the moment. The Welsh Minister for Health and Social Services repeatedly refused to accept amendments in the **Regulation and Inspection of Social Care Bill 2015** which would have extended the due regard duty to those providing regulated services to children. The Minister's reasoning was, worryingly and wrongly, that children's rights obligations should not burden those who actually deliver services and care to children, that the UNCRC is only supposed to bind governments and public bodies, and is not supposed to impose burdens on, for example, private or third sector care providers.

Infamously, the Welsh Government has on several occasions during the passage of two recent Bills rejected amendments which would have extended to children equal protection under the criminal law on common assault by removing the defence of reasonable chastisement. For more information contact cau@childreninwales.org.uk