



Welsh Government
Consultation Document

Draft Children's Rights Scheme 2021

Arrangements for having due regard to the United Nations
Convention on the Rights of the Child (UNCRC) and its Optional
Protocols when Welsh Ministers exercise any of their functions

Date of issue: 17 December 2020
Action required: Responses by 26 March 2021

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This consultation seeks your views on the 'Draft Children's Rights Scheme 2021'.

Section 2 of **the Rights of Children and Young Person (Wales) Measure 2011** requires Welsh Ministers to publish a Children's Rights Scheme which sets out the arrangements Ministers have in place to have due regard to part 1 of the UNCRC and 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 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).

How to respond

This is a written, electronic consultation. The consultation response form can be found at the back of this document. You are welcome to choose how you respond, you can: complete the online form; download the form and complete manually and post to us at the address provided; or send via email.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

Children's Branch
Children and Families Division
Communities and Tackling Poverty Department
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

e-mail: childrensrights@gov.wales

This consultation document can be accessed from the [Welsh Government's website](#)

Children and Young Persons (Wales) Measure 2011
Children's Rights Scheme 2012
Children's Rights Scheme 2014

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:

Welsh Government

Cathays Park

CARDIFF

CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Tel: 01625 545 745 or

0303 123 1113

Website: <https://ico.org.uk/>

Foreword

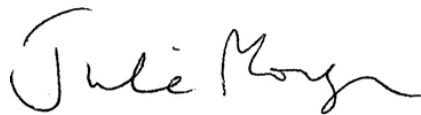
Wales is a country where children's rights are a fundamental entitlement and not an optional extra. We have led the way in children's rights by enshrining them in law through The Rights of the Children and Young Persons (Wales) Measure 2011¹. We were the first UK nation to make such significant legislative arrangements to ensure the centrality of children's rights.

I want to see a Wales which recognises children and young people as active citizens with an important contribution to make in their communities and nation.

This updated Children Rights Scheme (CRS) is structured around *The Right Way: A Children's Rights Approach in Wales* developed by the Children's Commissioner for Wales. This new structure provides a strategic framework to integrate children's rights into every aspect of decision-making.

I warmly welcome the wide ranging and in-depth inquiry into Children Rights by the Children, Young People and Education Committee. I am pleased to have included a number of the committee's recommendations within this revised CRS.

I look forward to your hearing your views during the consultation period.



Julie Morgan MS

Deputy Minister for Health and Social Services



¹ [Rights of Children and Young Persons \(Wales\) Measure 2011](#)

Preface

Overview

The Children's Rights Scheme is made under Section 2 of **The 'Rights of Children and Young Persons (Wales) Measure' 2011**. It sets out the arrangements Welsh Ministers have made, or propose to make, for the purpose of securing compliance with the duty placed on them under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 ('the Measure') to have due regard to the requirements of;

- Part I of the Convention,
- 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
- 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

when exercising any of their functions.

Structure of the CRS

In March 2017 the Children's Commissioner for Wales published a guide called *The Right Way: A Children's Rights Approach in Wales*². This CRS is structured around the five principles of the Right Way approach which provides a strategic framework to integrate children's rights into decision-making, policy and practice. This document is structured according to the following principles:

- **Embedding children's rights** – putting children's rights at the core of planning and delivery
- **Equality and non-discrimination** – ensuring that every child has an equal opportunity to be the best they can be and is not discriminated against
- **Empowering children** – enhancing children's capabilities as individuals so they're better able to take advantage of rights
- **Participation** – listening to children and taking their views meaningfully into account.
- **Accountability** – authorities should be accountable to children for decisions and actions that affect their lives.

Background to this consultation

This document has been written to provide a long term direction of travel. It includes desired outcomes for each of the principles set out above. The CRS includes both:

- structures currently in place; and

² [The Rights Way – A children's Rights Approach in Wales](#), Children's Commissioner for Wales, March 2017

- arrangements we propose to develop to further progress the Children Rights agenda within Welsh Government.

The Measure requires Ministers to involve children and young people, the Children’s Commissioner for Wales and other appropriate people, when preparing a new Scheme or changing the existing one. This has been completed.

We have had ongoing discussions with the Children’s Rights Advisory Group (CRAG), an expert stakeholder group, on how to develop this revised CRS. We have also reflected on the feedback from the compliance report³ published in January 2018.

In reviewing the Scheme, Ministers must consider any other reports, suggestions, general recommendations or other document published by the UN Committee on the Rights of the Child (‘The Committee’). The Committee’s last concluding observations⁴ about the UK were issued in 2016 and regard has been paid to those in preparing this revised Scheme. The next set of concluding observations by the Committee will be issued after the UK submits its next report to the Committee in 2021 on progress in implementing the UNCRC.

The Welsh Government will need to consider whether the Scheme in place at that time needs to be revised or remade in light of any suggestion or general recommendation made by the Committee.

Ministers have also considered the following reports in the development of this scheme:

- The National Assembly for Wales Children, Young People and Education Committee scrutiny of the Measure and its final report *Children Rights in Wales*⁵, August 2020;
- Equality and Human Rights Commission Report, *The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales*⁶, August 2018.
- *Evaluation of the Welsh Government’s Child Rights Impact Assessment procedure under the Children’s Rights Scheme pursuant to the Rights of Children and Young Persons (Wales) Measure 2011*⁷, 2015.

³ [Report on the compliance](#) with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011- published in June 2015 - January 2018.

⁴ The UN Committee following the State Party Report submitted by the UK Government: ‘[Concluding Observations’ about the UK](#) - 12 July 2016

⁵ The Welsh Parliament - Children, Young People and Education Committee – [Children’s rights in wales Report](#) – 11 August 2020

⁶ [The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales](#), Dr Simon Hoffman & Sean O’Neill, Equality and Human Rights Commission, August 2018

⁷ [Evaluation of the WG’s CRIA procedure under the CRS pursuant to the Rights of Children and Young Persons Wales Measure \(2011\)](#) – Dr S Hoffman & C Morse – Wales Observatory on the Human Rights of Children and Young People (June 2015)

Next steps following the consultation period

Following the consultation, we will reflect on the feedback and update the CRS. We will then implement all the arrangements listed in this document and publish the CRS in Autumn 2021.

Children's Rights Scheme 2021

1 Introduction

The Rights of Children and Young Persons (Wales) Measure 2011 (referred to as 'the Measure' in the rest of this document), was passed by the National Assembly for Wales (NAfW) in January 2011. Section 1 of the measure embeds consideration of;

- (a) Part I of the United Nations Convention on the Rights of the Child ('UNCRC'),
- (b) articles 1 to 7 of the Optional Protocol to the Convention on the Rights of the Child in 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,

into Welsh law, by placing a duty on the Welsh Ministers to have due regard when exercising any of their functions.

The Children's Rights Scheme (CRS) is made under Section 2 of the Measure and sets out the arrangements the Welsh Ministers have made, or propose to make for the purpose of securing compliance with the duty under section 1.

2 Background

2.1 Wales and the UNCRC

The UNCRC is an international convention setting out the civil, political, economic, social and cultural rights of children. The text of the Convention on the Rights of the Child was approved by the Member States of the United Nations on 20th November 1989.

On the 16th December 1991, the Government of the United Kingdom of Great Britain and Northern Ireland ratified the UNCRC and it came into force in respect of the United Kingdom on 15th January 1992. The United Kingdom has also ratified two 'Optional Protocols'⁸ to the UNCRC.

States that have ratified the UNCRC are required, by article 44, to report to the United Nations Committee on the Rights of the Child (the Committee) on the measures they have adopted to give effect to the rights recognised within the UNCRC and progress made towards enjoyment of those rights.

In 2002 the National Assembly for Wales (NAfW), set up by the Government of Wales Act 1998, developed the Seven Core Aims for children and young people which summarised the UNCRC as a basis for planning, decisions on priorities and objectives nationally and on a local level.

⁸ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography

In January 2004 the NAFW adopted the UNCRC as the underpinning basis for its policies concerning children and young people. For the purposes of this Scheme, 'children' and 'young people' refer to those up to the age of 18 years to align with the UNCRC itself.

Following the Government of Wales Act 2006, when the NAFW formally separated from the Welsh Government, the commitment to the UNCRC was transferred to the Welsh Ministers.

2.2 What is the duty on Welsh Ministers?

Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 states that from 1 May 2014:

Welsh Ministers must, when exercising any of their functions, have due regard to the requirements of -

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

The functions of Ministers means:

Everything that the Welsh Ministers may do because legislation has given the Welsh Ministers the power to do it, and; everything the Welsh Ministers must do because legislation has placed a duty on the Welsh Ministers to do it.

This means the duty on Ministers applies whenever they use any of their powers to make a decision, or there is a duty upon them to make a decision. All actions of the Welsh Government are taken using powers or duties of the Ministers.

The duty imposed by section 1 of the Measure above will be referred to as the 'due regard duty'.

The Measure places the due regard duty on Ministers and they must be fully aware of the duty when they make their decisions. The due regard duty applies to Ministers even where Welsh Government officials are carrying out functions on behalf of Ministers. The duty also applies to Deputy Ministers.

The term 'due regard' requires a balanced consideration of issues. This means that Ministers, when exercising their functions, must think about how what they are doing relates to the rights and obligations in the UNCRC. In identifying any negative impact on children and young people Ministers must consider whether any action can be taken to avoid or minimise this impact. Ministers must also consider how, by using their functions they can improve the way children and young people access their rights. Having considered this, the outcome needs to be given balanced consideration (due regard) against the other factors that the Ministers must take into account in making the decision in question.

3 Embedding children's rights within Welsh Government

Desired outcomes:

- High quality policy making to improve the lives of children and young people;
- Enable young people to realise their rights through better policy making and implementation.

Children's rights are at the core of policy making in Wales. Children's rights underpin our ambition for each and every child to have the best start in life and to fulfil their potential.

Compliance with the duty to have due regard to the UNCRC has been firmly embedded alongside other legal duties on Ministers such as the Public Sector Equality Duties under the Equality Act 2010⁹, legislation relating to the Welsh Language and the duty not to act incompatibly with the rights contained within the European Convention on Human Rights (ECHR).

There are also treaties which have been ratified by the UK Government and are therefore legally binding (Annex A).

We propose the following arrangements:

3.1 Development of a manual for Welsh Government officials - to clarify roles, responsibilities and support

This manual will support all Welsh Government officials in fulfilling the due regard duty on behalf of all Ministers. It will:

- provide background information on the UNCRC and links to available resources
- outline the central role of the Children's Rights Impact Assessments (CRIA) in supporting the due regard duty, within the Intergrated Impact Assessment (IIA) process;
- outline the importance of engaging with children and young people to listen to their views
- provide links to further support (including an outline of the role of the Children's branch in Welsh Government which has been established to support officials in fulfilling the due regard duty); and
- outline the importance of raising awareness of the UNCRC.

⁹ <http://www.legislation.gov.uk/wsi/2011/1064/made>

The manual will set out the responsibilities of the following roles within Welsh Government:

Ministers

Welsh Ministers must have due regard to the UNCRC when exercising any of their functions. They must give balanced consideration to children's rights as part of their decision making process.

Welsh Government officials

Ministers expect Welsh Government officials to have due regard by paying proper consideration to the UNCRC before they provide information, advice, options and recommendations. Officials are expected to undertake a CRIA, which is the process Welsh Government has developed to support Welsh Ministers in ensuring the due regard duty is fulfilled. If a CRIA is not undertaken on a particular policy/decision, officials will need to record the reasons why.

Deputy Directors

Deputy Directors have a specific role in signing off the CRIA as they are the accountable officers. The manual will outline the key leadership role that Deputy Directors play to lead the CRIA process within their divisions and to constructively challenge and support officials in their duty to give due regard to the UNCRC and its optional protocols in order to provide robust advice to Ministers.

Publishing and communicating the manual

In order to promote transparency, we propose **to publish this manual on the Welsh Government website at the same time that we publish the final CRS**. This manual will be updated on an annual basis, if required, to take into consideration any changes to processes within Welsh Government. **The CRIA template will also be included in the manual.**

We will relaunch a communication campaign and refresh the information hub for Welsh Government officials.

3.2 Produce a multi-layered training approach to develop Welsh Government officials' understanding of the UNCRC and the due regard duty

The Welsh Government recognises the need for officials to have access to a strong body of knowledge about children's rights to enable them to provide comprehensive advice to Welsh Ministers. This multi-layered approach will bring together the different training tools, resources and information sharing opportunities for Welsh Government officials.

3.3 Training for Ministers

A bespoke training approach will be developed for Welsh Ministers.

3.4 External expertise to support children rights

We have established the Children Rights Advisory Group which includes representatives from The Children's Commissioner for Wales' office, Children in Wales, the Wales Observatory on Human Rights of Children and UNICEF. This forum provides Welsh Government officials with the opportunity to receive ongoing expert, external advice on how Welsh Government policies are supporting children rights.

4 Equality and non-discrimination

Desired outcome:

- Clear evidence presented to Ministers which improves equality of opportunity and reduces discrimination against children and young people

The Welsh Government recognises the importance of evidence as a foundational building block for government decision making.

4.1 Develop a children's rights evidence strategy

We propose to develop a Children Rights evidence strategy to gather and disseminate the latest intelligence with Welsh Government officials. The strategy will share the latest evidence for different groups of children and young people to enable Welsh Government to better understand potential discrimination issues. The strategy will consider the latest evidence at a national, UK and international level. Where gaps are identified, we propose to commission distinct pieces of research to support the policy making process

This strategy will also take into consideration:

- expert feedback and insights from stakeholders in the Children and Young People sector;
- evidence, experiences and research directly from children and young people.

4.2 Children's Rights Impact Assessments (as part of the Integrated Impact Assessment)

The Integrated Impact Assessment (IIA) allows us to undertake a rounded assessment of the impact of a proposed action, including the social, economic, cultural and environmental effects.

The Children Rights Impact Assessment (CRIA), forms a key part of the IIA, and is the tool officials are expected to use to support Welsh Ministers in ensuring the due regard duty is fulfilled. The CRIA provides a framework for officials to think about, and record, whether the policy proposals are supporting children and young people's rights. It enables officials to consider what the policy/legislation/advice is trying to achieve, the impacts that might have (positive and negative), the effect (or unintended consequence) of the policy/legislation/advice on different groups of children and young people and whether any measures can be taken to reduce, remove or mitigate those impacts if possible.

The CRIA template includes prompts to support officials in their analysis, to evidence that children's rights have been considered and that every opportunity has been taken to identify ways of realising the relevant rights to support Ministers as they take decisions.

The CRIA template will be included in the manual for Welsh Government officials which will be published at the same time as the final CRS.

5 Empowering children

Desired outcome:

- Children and young people are aware of and can exercise their rights

Children rights should empower children and young people so they are better able to take advantage of their rights, and to engage with, influence and hold accountable the people and organisations that affect their lives.

Section 5 of the Measure places a duty on Ministers to take appropriate steps to promote knowledge and understanding amongst the public (including children and young people) of the UNCRC and its Optional Protocols. This duty is intended to give effect to the obligation stated in article 42 of the UNCRC.

5.1 Development of an awareness raising strategy

We will build on the current awareness strategy and propose to use the introduction of the new curriculum in 2022, and the inclusion of human rights in the Humanities Area of Learning and Experience, to focus the next phase. The strategy will be aimed at children, young people, their parents/carers and professionals working with children. The strategy will outline measurable outcomes to promote knowledge and understanding of the United Nations Convention on the Rights of the Child and its Optional Protocols.

5.2 Implementing the awareness strategy

We propose to establish a raising awareness external stakeholder group to bring together external organisations who have a role in supporting this agenda. The purpose of the group will be to:

- develop a collective vision to improve awareness and understanding of the UNCRC;
- clarify the respective roles and responsibilities of each organisation; and
- agree a coherent high level timeline of activity

6 Participation

Desired outcomes:

- Welsh Government decisions, policies and communication are improved by hearing the opinions of children and young people
- Young people realise their rights through active participation in the policy process

6.1 Participation Model

Article 12 of the UNCRC recognises the right of children and young people to express their views freely in respect of matters which affect them, and that the views of the child be given due weight in accordance with the age and maturity of the child.

The Welsh Government will develop a long term participation strategy to ensure children and young people are provided with meaningful opportunities to express their views and for their views to be taken in account. Welsh Government officials will be expected to proactively identify opportunities for children and young people to have their voices heard as part of the policy/legislation and decision making process.

We will continue to work with Young Wales to develop a representative model to enable meaningful participation of children and young people.

6.2 Implementing the participation strategy

We will establish a stakeholder steering group to share approaches and good practice in participation across the Welsh public sector.

6.3 Provide children with accessible information

Welsh Government officials will be encouraged to produce child friendly versions of guidance, consultations and policy documents where they have determined that policy proposals/legislation will affect children and young people.

7 Accountability

Desired outcomes:

- Clear accountability to children for decisions and for outcomes that affect children's lives
- Clear and transparent processes to enable children and young people to challenge how Welsh Government is implementing the due regard duty.

7.1 Feedback process for children and young people

We will create a child friendly complaints process for children and young people to challenge when they feel that Minister(s) have not complied with the due regard duty when making decisions that affect their lives. There are also organisations that can support children and young people through providing feedback/support (please see Annex B)

7.2 Publishing CRIAs

To promote transparency, CRIAs are published on the Welsh Government website.

7.3 Completion of a CRIA

The public, including children and young people, are able to challenge the Welsh Government where they believe the Welsh Ministers have failed to comply with the due regard duty. This may include where a CRIA has not been undertaken as part of the IIA. If a CRIA is not undertaken officials will need to record the reasons why.

7.4 Children Rights Scheme

The Senedd must approve the CRS (and/or any revisions to the scheme) and therefore has a role in scrutinising the arrangements Welsh Ministers have in place to comply with their due regard duty.

The Welsh Ministers may revise or remake the scheme at any time in accordance with Section 2 (5) of The Measure.

7.5 Compliance report

The Measure requires the Welsh Ministers to publish a report every 5 years on how they and the First Minister have complied with the duty to have due regard. However, in order to promote transparency and accountability, the Welsh Government is committed to publishing its compliance report every 2.5 years. Publishing a mid-term report provides the Welsh Government and the Senedd with an opportunity to reflect on the effectiveness of the arrangements as set out in this CRS.

The next Compliance report will cover the period February 2018 to September 2020.

7.6 Children's Commissioner for Wales Annual Report

The Children's Commissioner for Wales is required to make an Annual Report to the First Minister. This annual report is one of the ways the Children's Commissioner holds Welsh Government to account.

**Consultation
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Children's Rights Scheme - Consultation Questions

Question 1:

Do you think that the arrangements set out in this revised Children's Rights Scheme are sufficient to ensure that Welsh Ministers have due regard to the UNCRC and its Optional Protocols, when exercising any of their functions?

Yes

Please tell us why:

No

How do you think these arrangements could be strengthened?

Question 2:

Do you think structuring the CRS, following the Right Way approach, supports Welsh Ministers to have due regard to children's rights according to the UNCRC, when exercising any of their functions?

Yes

Please tell us why:

No

Please tell us why:

Question 3:

Do you agree with the outcomes outlined in the document under each of the sections?

Yes

Please tell us why:

No

How do you think these outcomes could be strengthened?

Question 4:

We would like to know your views on the effects that these proposals would have on the Welsh language.

Question 5:

If you have any related issues which we have not specifically addressed, please use this space to tell us about them.

Annex A

A list of relevant International Treaties (non-exhaustive) ratified by the UK Government:

- United Nations Convention on the Rights of the Child
- The International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- The International Covenant on Civil and Political Rights (1966) and its optional protocols and the second optional protocol
- The International Covenant on Economic, Social and Cultural Rights (1966)
- The Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999)
- The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)
- UN Convention on the Rights of Persons with Disabilities (2006)

Annex B: Organisation that can support young people in providing feedback

The Children's Commissioner for Wales has power to provide advice, representation and assistance to children and young people who may wish to challenge Welsh Ministers. The Children's Commissioner has the power to review how the Welsh Government's work has affected children and young people in Wales. The following is a link to the Commissioner's website: www.childcomwales.org.uk/contact

MEIC – This is the Advocacy and Advice helpline for children and young people in Wales. The advocates at MEIC help children and young people to be heard by others. MEIC is available to advise and provide information to children and young people wishing to challenge Welsh Ministers. They can even contact others on their behalf. The following is a link to the MEIC website: www.meiccymru.org