



Swansea University  
Prifysgol Abertawe



## Cronfa - Swansea University Open Access Repository

---

This is an author produced version of a paper published in:

*Child Rights Conference, Tromso Norway*

Cronfa URL for this paper:

<http://cronfa.swan.ac.uk/Record/cronfa16092>

---

### **Conference contribution :**

Hoffman, S. & Williams, J. (2013). *'The Beauty of Due Regard: Implementation of the UNCRC'*. Child Rights Conference, Tromso Norway,

---

This item is brought to you by Swansea University. Any person downloading material is agreeing to abide by the terms of the repository licence. Copies of full text items may be used or reproduced in any format or medium, without prior permission for personal research or study, educational or non-commercial purposes only. The copyright for any work remains with the original author unless otherwise specified. The full-text must not be sold in any format or medium without the formal permission of the copyright holder.

Permission for multiple reproductions should be obtained from the original author.

Authors are personally responsible for adhering to copyright and publisher restrictions when uploading content to the repository.

<http://www.swansea.ac.uk/library/researchsupport/ris-support/>

# The beauty of “due regard”: incorporating the CRC in devolved governance

Dr Simon Hoffman\*

Jane Williams

*Implementation of the UNCRC requires action to be taken across many areas of policy and administration. In federal or federal-type systems, where governmental responsibility is allocated between internal levels, accountability for vital areas such as health, education, social services, child care and employment may lie with governments beneath or within the State party. These governments may exercise substantial autonomy within overall constitutional parameters. In this situation an internal tier of government which seeks to promote the UNCRC more vigorously than the State party government must take care to observe constitutional proprieties whilst maximising legal impact of the treaty obligations. In the UK, devolution laws passed in 1998 delegated legislative and executive powers to Scotland, Wales and Northern Ireland without ceding the sovereignty of the UK Parliament. Using devolved legislative competence, the National Assembly for Wales has enacted a ‘duty of due regard’ for the CRC and its Optional Protocols. The duty binds devolved government: that is to say, Welsh Ministers, who are accountable to the 60-member, elected National Assembly for Wales. This duty is not replicated elsewhere in the UK. The intention of the new law is to ‘mainstream’ the requirements of the CRC in all decision-making at the level of devolved government in Wales – not only in areas traditionally associated with children, but across all devolved policy fields, including such diverse topics as transport, spatial planning, agriculture, sport, tourism and economic development. This paper will explain the way the new law works and will suggest ways in which the impact of ‘due regard’ can be maximised using a variety of mechanisms of accountability. The paper will invite consideration of the application of this legislative model at different levels of government and in different legal and political systems.*

\* Co-directors – Observatory on Human Rights of Children and Young People

## Introduction

Subsidiarity has been described as a ‘structural principle of international human rights law’, of central importance for resolution of the tensions between universality and legitimate pluralism and between state sovereignty and the authority of international institutions.<sup>1</sup> In academic discourse about subsidiarity, the principle is understood to be rooted in fundamental values such as political liberty, self-determination, accountability, dignity and diversity and thus imbued with the moral force which underpins the

---

<sup>1</sup> Carozza, P.G., ‘Subsidiarity as a Structural Principle of International Human Rights Law’ [2003] *American Journal of International Law* 97:38 – 79.

international legal order.<sup>2</sup> Subsidiarity favours local control over creation and implementation of law and policy, except where local controls cannot effectively deliver goals which are consistent with those values. As such, the principle is associated with the allocation of responsibility between tiers of governance in systems as various in form as federalism in the United States, devolution in the United Kingdom and, most explicitly, the European Union.<sup>3</sup> The principle of subsidiarity emerges in western philosophical thought long before the emergence of modern international human rights law.<sup>4</sup> Although not authoritatively defined the principle requires as a minimum that governmental authority is exercised at the level closest to those affected by it.<sup>5</sup> Higher level intervention is only justified to the extent necessary to achieve a particular aim which cannot be effectively achieved by a lower tier of government.<sup>6</sup> The principle of subsidiarity may also be taken to include the notion that the exercise of governmental authority is justified only where necessary to achieve the goals of human dignity and freedom.<sup>7</sup> Since international human rights treaties are agreements reflecting choices for global governance directed at protection and respect for human rights, human dignity and human freedom, they fit with the principle of subsidiarity and its consequences for the exercise of government authority.

The exercise of governmental authority to legislate for the UNCRC in Wales is an example of subsidiarity in practice. The Welsh Government, as a subordinate sub-national governance institution, resolved upon a particular legislative approach to give further effect to the human rights of children and young people in Wales. In January 2011 the National Assembly for Wales passed the *Rights of Children and Young Persons (Wales) Measure 2011* (the 'Measure').<sup>8</sup> The Measure is the first general legislative measure of implementation of the United Nations Convention on the Rights of the Child (UNCRC) in the UK. The National Assembly for Wales passed the Measure implementing an international human rights treaty in Welsh domestic law at a time when the UK government shows no sign of doing the

---

<sup>2</sup> For example, Bermann, G.A. 'Taking subsidiarity seriously: federalism in the European Community and the United States' 94 *Colum. L. Rev.* 331.

<sup>3</sup> O'Connor, S. Day, 'Altered States: Federalism and devolution at the "real" turn of the millenium' [2001] *Cambridge Law Journal*, 60(3) 493 – 510.

<sup>4</sup>Carozza, above n. 1, 40 – 42.

<sup>5</sup> Bermann, above n. 2.

<sup>6</sup> Schilling, T., 1995, *Subsidiarity as a Rule and a Principle, or: Taking Subsidiarity Seriously*, Jean Monnet Center for International and Regional Economic Law and Justice, New York.

<sup>7</sup> Carozza, above n.1.

<sup>8</sup> Royal Approval, 16 March 2011

same.<sup>9</sup> At UK level political debate is focused on the possibility of substantive revision of rights, coupled with concern about the legitimacy of supra-national adjudication.<sup>10</sup> Therefore, at UK level, those who are calling for legislative incorporation of the UNCRC are swimming against the tide. In this context, and of discourse on subsidiarity and children's human rights, the Measure is significant for a number of reasons:

[1] The policy process, legislative passage and mechanisms for implementation of the Welsh Measure illustrate the principle of subsidiarity in action.

[2] It is legislation passed by a devolved legislature effecting a form of legal incorporation of the UNCRC despite absence of equivalent action at the UK level.

[3] The method of transposition is innovative, using 'public officer's law'<sup>11</sup> offering a constructive response to difficulties about implementation and enforcement of UNCRC obligations.

[4] The Measure offers mechanisms for accountability which may serve to ameliorate concerns about the legitimacy of supra-national or judicial control particularisation over children's rights implementation.

### **The Purpose of the Measure**

The accompanying Explanatory Memorandum to the Measure sets out the background of political commitment to the UNCRC manifest in the Welsh Government's 'Seven Core Aims' dating back to 2002, providing 'the basis of multi-agency planning at national and local level for services for children and young people aged 0 – 25'.<sup>12</sup> The Memorandum further references the Welsh Government documents, *Rights to Action* and *Getting It Right*,<sup>13</sup> the latter deriving its direction from the process of reporting to the Committee on the Rights of the Child and the Concluding Observations on the UK's third and

---

<sup>9</sup> The UK Government maintains a position that while consideration could be given to children's rights in the context of a future British Bill of rights and responsibilities the preference is for incremental, sectoral reform; see, Joint Select Committee on Human Rights, Tenth Report of Session 2009-10, HL Paper 65, HC Paper 400 and the statement of Sarah Tether, UK Government Minister of State, to House of Commons European Committee C, 12 September 2011:

<http://www.publications.parliament.uk/pa/cm/cmtoday/cmstand/output/euro/eo110912-01.htm>

<sup>10</sup> See the terms of reference of the Commission on a Bill of Rights, established by the UK Government in March 2011: <http://www.justice.gov.uk/about/cbr>

<sup>11</sup> See further: Williams, J. 2012, 'General measures of implementation, individual claims, 'public officer's law' and a case study on the UNCRC in Wales', *International Journal of Children's Rights* 20: 224 – 240.

<sup>12</sup> Paragraph 3.2 of the Explanatory Memorandum. <http://www.assemblywales.org/ms-ld8085-em-e.pdf>.

<sup>13</sup> Welsh Government, Cardiff 2004, 2009.

fourth combined State Party report in 2008.<sup>14</sup> The Measure was designed to be ‘the central plank of an on-going commitment to progressive realisation of a rights-based approach to policy development in respect of children and young people in Wales.’<sup>15</sup> ‘The objective’, the Explanatory Memorandum explains, ‘is to ensure that those requirements will have an even greater prominence in respect of devolved matters in Wales than has so far been the case’.<sup>16</sup> The desire to ensure a prominent place for children’s rights in policy is important when situating the story of the Measure in the conceptual context of subsidiarity.

Children’s rights have been presented as an emblem of devolved governance in Wales.<sup>17</sup> Certainly Welsh political willingness explicitly to embrace the UNCRC stood in contrast to the stance of the UK Government.<sup>18</sup> A pre-Measure audit of rights-focused law and policy in Wales would suggest a progressive stance on children’s rights attracting cross-party support,<sup>19</sup> and which was welcomed the Committee in its 2008 Concluding Observations. But the Committee also noted that in many areas there was a gap between policy and the reality of children’s lives. At the time when the legislative opportunity for the Welsh Measure arose, domestic and international observers had noted that the intentions of successive Welsh administrations were being frustrated by a persistent implementation gap. Both the UN Committee and civil society protagonists in Wales were urging that a general legislative measure of implementation was needed to address this gap.<sup>20</sup>

## The Measure

The Measure incorporates the specified requirements of the Convention and its Protocols into ‘public officer’s law’ rather than creating a new type of individual legal claim for victims of a rights violation.<sup>21</sup> The intention is to secure incremental, programmatic

---

<sup>14</sup> CRC/C/GBR/CO/4.

<sup>15</sup> Explanatory Memorandum, above n12, para. 3.12.

<sup>16</sup> Ibid, para. 3.14.

<sup>17</sup> Butler and Drakeford have characterised the reasons for this by reference to the ‘policy, people and politics’ of post-devolution Wales; Butler, I. and Drakeford, M. 2012, ‘Children’s rights as a policy framework in Wales’ in J. Williams (ed.) *The United Nations Convention on the Rights of the Child in Wales*, University of Wales Press.

<sup>18</sup> Williams, J. 2007, ‘Incorporating children’s rights: the divergence in law and policy’ *Legal Studies* 17 (2): 171-359.

<sup>19</sup> See Appendix accompanying this paper.

<sup>20</sup> CRC/C/GBR/4 para.6; Croke, R. and Crowley, A. *Stop, Look, Listen, The road to realising children’s rights in Wales, NGO alternative report*, Save the Children, Cardiff, 2008.

<sup>21</sup> An alternative is to allow a victim to claim a remedy if a public body acts incompatibly with UNCRC guaranteed rights. This is the approach taken by sections 6 and 7 of the Human Rights Act 1998 which allow a

reform of the kind necessary to realise the UNCRC's wide-ranging requirements about provision, protection and participation by establishing rules which frame the decision-making processes within government.<sup>22</sup> The approach has particular traction in relation to two types of treaty obligation; first, obligations concerning social, economic or cultural rights, where the appropriate role for judicial determination is heavily contested;<sup>23</sup> second, obligations which do not confer a right but require State party action to bring about stipulated conditions.<sup>24</sup> In Wales, as in numerous other countries where federal or federal-type arrangements exist, policy levers which may be used to implement these two types of obligation are under the control, or partial control, of a sub-national institution governance institution.

The authority for legislation in Wales is the Government of Wales Act 2006 (GWA 2006) which governs legislative competence.<sup>25</sup> The Welsh Government took advantage of its competence to legislate in the field of 'Co-operation and arrangements to safeguard and promote the well-being of children or young persons',<sup>26</sup> where 'well-being' includes securing children's rights.<sup>27</sup> Section 1 of the Measure - when fully in force<sup>28</sup> - imposes a duty on the Welsh Ministers to have 'due regard' to the requirements of Part 1 of the UNCRC and specified articles of its Optional Protocols, when exercising any of their functions.<sup>29</sup> Additional duties supporting the due regard duty are: a duty to draw up a children's scheme

---

victim to claim a remedy if a public body acts incompatibly with the rights set out in the European Convention on Human Rights.

<sup>22</sup> Williams, J. 'Multi-level governance and CRC implementation' in A. Invernizzi and J. Williams, *The Human Rights of Children, From Visions to Implementation*, 2011, Farnham, Ashgate.

<sup>23</sup> Even though the once-dominant view of non-justiciability is now outdated. For example: Van Bueren, G. 2002 'Including the Excluded: The Case for an Economic, Social and Cultural Human Rights Act' *Public Law* 456; Ewing, K. 1999, 'Social Rights and Constitutional Law', *Public Law*, 104 – 123; Fredman, S. 2008 *Human Rights Transformed*, Oxford University Press; King, J. 'The Justiciability of Resource Allocation' (2007) 70(2) *Modern Law Review* 197-224; O'Connell, P., 2012, *Vindicating Socio-economic rights*, Routledge; King, J. 2012, *Judging social rights*, Cambridge Studies in Constitutional Law; Palmer, E, 2007, *Judicial review, socio-economic rights and the Human Rights Act*, Hart Publishing; Nolan, A. 2011, *Children's socio-economic rights, Democracy and the courts*, Hart Publishing.

<sup>24</sup> For example, Article 17 UNCRC, which requires government action to stimulate good behaviour by the largely privately-owned media, to facilitate provision of information to children conducive to realisation of their rights.

<sup>25</sup> Superseding the Government of Wales Act 1998. At the time of introduction of the Measure the relevant provisions were contained in Part 3 of and Schedule 5, since replaced by Part 4 of and Schedule 7 to the Act.

<sup>26</sup> Government of Wales Act 2006, Schedule 5, para. 15.6, inserted by the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (S.I. 2008/ 3132).

<sup>27</sup> *Ibid*, para. 15.10.

<sup>28</sup> From 1<sup>st</sup> May 2014.

<sup>29</sup> Section 1 of the Welsh Measure: Welsh Ministers must have due regard to Part 1 of the Convention, articles 1 to 7 (except article 6(2)) of the Optional Protocol on involvement in armed conflict and articles 1 to 10 of the Optional Protocol on the sale of children, child prostitution and child pornography.

setting out how Welsh Ministers will give effect to the due regard duty; a duty to report and account to the National Assembly for Wales on compliance with the due regard duty; and a duty to engage with relevant statutory and non-statutory bodies in drawing up the children's scheme.<sup>30</sup> The Measure creates a positive and pervasive duty applicable across the range of governmental decision-making. It creates new binding legal rules governing the conduct of Welsh Ministers and through them their officials – such as advisers, administrators, case workers and inspectors – when making decisions. Case law on the public sector equality duty<sup>31</sup> confirms that a due regard duty means that a decision-maker must attend to the substance of a right; must be properly informed and aware of what must be considered before and at the time of making a decision; must exercise the duty with 'rigour and an open mind'; and, that the due regard duty must be 'integrated within the discharge of the public functions' of the decision-maker.<sup>32</sup>

### **Rationale for the Mechanism adopted by the Measure**

Structural factors - constraints of devolved law-making competences, the fused legal system for England and Wales - may have inhibited the creation of a stand-alone individualised legal remedy for violation of the UNCRC for children in Wales. But regard to these factors is not what suggested the 'public officer's law' approach as a mode of incorporation of the UNCRC in Wales. The UNCRC contains a range of provisions aimed at securing social, economic and cultural rights, and several of these provisions are phrased in terms of programmatic action. Several UNCRC articles (re)affirm civil and political rights which are often viewed as more readily actionable by individuals, but enforcement in practice is often impeded by prohibitive costs, limited expertise, inaccessibility of legal representation, delay, or judicial caution. These difficulties are exacerbated for excluded social groups, and in the case of under-18s, by lack of legal capacity rendering them dependent on others for support in making a legal claim. The 'public officer's law' approach thus focuses on implementation of rights through policy, this includes civil and political rights, as well as social, cultural or economic rights. The import of the Measure is to require

---

<sup>30</sup> Sections 2 – 4 of the Welsh Measure.

<sup>31</sup> Section 149 of the Equality Act 2010 places a duty on public authorities to have due regard to the need to eliminate discrimination, promote equality of opportunity and foster good relations between persons in different groups.

<sup>32</sup> *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158, per Scott Baker LJ.

consideration of the UNCRC and the obligations it generates to be mainstreamed in Welsh Government decision-making processes. This represents a deliberate policy choice to address the mischief of lack of clear direction from Westminster and Welsh government beyond the rhetoric of high level political strategies.

### **Accountability**

To comply with section 1 of the Measure Welsh Ministers must have due regard to some 42 articles of the Convention together with relevant articles of the Optional Protocols. There is the possibility of judicial review if Welsh Ministers fail to have due regard to the UNCRC when exercising their functions (i.e. they fail to follow the guidance) offered by the courts on the meaning of due regard in equality cases. A child, protective adult, organisation or other person with sufficient interest may seek a judicial review, or the Children's Commissioner for Wales might support a child in making an application for judicial review. Legal challenge would open the way for development of domestic interpretation of the specific requirements of the UNCRC,<sup>33</sup> depending on how far the courts might be prepared to enter into consideration of the obligations created by the UNCRC which arise for consideration by Welsh Ministers as part of the due regard process. However, in the legislative passage of the draft Measure there was an assumption that legal challenge would be rare, and that administrative and political accountability was to be preferred.<sup>34</sup>

An aspect of administrative and political accountability is the requirement on Ministers to set up a children's scheme. In so doing Ministers must have regard to reports, suggestions, general recommendations or other documents issued by the Committee on the Rights of the Child'.<sup>35</sup> Taken together with the substantive due regard duty this places a significant burden of interpretation on 'public officers' (Welsh Ministers, their civil servants and expert advisers). Whilst the possibility of legal accountability will only arise in the event of an application for judicial review, other forms of accountability for interpretation are provided by the Measure. Section 4 of the Measure requires Welsh Ministers to submit

---

<sup>33</sup> Just as litigation using the Human Rights Act has produced a municipal law of human rights protected by the ECHR: Masterman, R., 2005, 'Taking the Strasbourg Jurisprudence into account: developing a 'municipal law of human rights' under the Human Rights Act', *International and Comparative Law Quarterly*, 54 (4). pp. 907-931.

<sup>34</sup> Legislation Committee 5, evidence and transcript:

[http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-lc5-agendas/lc520101125fv-lc5\\_3\\_-19-10.pdf?langoption=3&ttl=LC5%283%29-19-10%20%3A%20Transcript%20%28PDF%2C%20504KB%29](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-lc5-agendas/lc520101125fv-lc5_3_-19-10.pdf?langoption=3&ttl=LC5%283%29-19-10%20%3A%20Transcript%20%28PDF%2C%20504KB%29)

<sup>35</sup> Section 3 of the Measure.



periodic reports to the National Assembly for Wales showing how they have complied with the duty – parliamentary accountability.<sup>36</sup> In addition, the Children’s Commissioner, who is already empowered to make inquiries into and report on the exercise of Welsh Ministers of their functions,<sup>37</sup> will be able to incorporate in any such inquiries questions about compliance with the due regard duty.

## **Legitimacy**

A question arises as to how the task of interpreting and applying the textual system of the UNCRC will be carried out. The problem is not one of deficit in expertise but of participation if interpretation is entrusted to public officers working within the tangled labyrinths that support the Welsh Ministers. In a study on internal controls within the executive Daintith and Page refer to ‘public officers’ law’ as internal rules which regulate the conduct of the executive, as opposed to ‘lawyer’s law’ which focuses solely on the interpretation and application of rules by the courts.<sup>38</sup> A characteristic of the British constitution is that many of these internal rules are not statutory law; but some are and others may be created making it possible to introduce external controls in the form of public law challenge through process of judicial review, complaints procedures, audit, investigation by relevant appointed bodies or parliamentary scrutiny processes.<sup>39</sup> The Measure establishes internal rules or public officer’s law for executive action at the level of the Welsh Government, and introduces potential for deliberative engagement with NGOs.

The potential for deliberative engagement lies in the imperative established by the Measure and the due regard duty to develop an understanding of the rights and obligations (on Ministers) arising from the UNCRC. If this challenging process is seen to be conducted in a superficial or one-sided way, there is a risk that local interpretation will be deficient, and lacking in legitimacy. A potentially useful approach to ensuring internal but also external legitimacy is Tobin’s notion of the ‘interpretive community’. Tobin argues that the act of interpretation of international human rights treaties provisions is partly a process of

---

<sup>36</sup> Provision is made for variation by subordinate legislation of the timing of these reports, with the aim of enabling them to be coordinated with the State party reporting cycle under Article 44 of the UNCRC.

<sup>37</sup> Section 72B of the Care Standards Act 2000, as amended by section 3 of the Children’s Commissioner for Wales Act 2001.

<sup>38</sup> Daintith, T., and Page, A., (1999), *The Executive in the Constitution*, OUP, Oxford.

<sup>39</sup> Williams, J., ‘General legislative measures of implementation: individual claims, ‘public officer’s law’ and a case study on the UNCRC in Wales’, *International Journal of Children’s Rights*, Volume 20, Number 2, 2012 , pp. 224-240(17).

attributing meaning but also ‘an attempt to persuade the relevant interpretive community that a particular interpretation is the most appropriate meaning to adopt’.<sup>40</sup> Tobin cautions that in developing meanings for human rights there is a danger that advocates will refer to personal preferences, and that it is therefore preferable for interested parties to ‘engage’ with and consider the views of divergent interests.<sup>41</sup>

In the context of children’s rights and the Measure, the Welsh Ministers and their officials will have to interpret the UNCRC articles as they become relevant to policy and programmatic action, but so will non-governmental actors, relevant stakeholders and ‘persuaders’ within the Wales ‘interpretive community’. This community cannot be confined to government as policy implementation in contemporary society is dependent on the input and resources of a range of non-governmental participants.<sup>42</sup> If this were not the case, government would find it extremely difficult to deliver its social programmes in an age of fragmented service provision. The ‘communitarian paradigm’ therefore requires the interests and contributions of non-governmental actors to be taken into account in deciding what meaning is to be attributed to substantive articles of the UNCRC.<sup>43</sup> This is consistent with the view of the Committee on the Rights of the Child which argues that in order to make children’s rights a reality government needs to engage all sectors of society, including, it should be noted, ‘children themselves’.<sup>44</sup>

Tobin’s account is illuminating not only because it recognises diversity of understanding of children’s rights, but also because it acknowledges that ‘shared understandings’ of rights can emerge as a consequence of an ‘evolutionary interpretive process’ which takes account of concurring as well as dissonant voices.<sup>45</sup> He argues for principled, clear and practical, coherent interpretation, which is consistent with the system of international law and which is sensitive to the socio-economic context within a state.<sup>46</sup> The notion of a principled, coherently reasoned interpretation consistent with international law suggests a mechanism for negotiating divergent views both within and external to

---

<sup>40</sup> Tobin, J., 2010, ‘Seeking to Persuade: A Constructive Approach to Human Rights Treaty Interpretation’, *Harvard Human Rights Journal*, Vol.23, pp.1-50: 4.

<sup>41</sup> *Ibid*, p.10.

<sup>42</sup> *Ibid* pp.8 – 13.

<sup>43</sup> *Ibid*, p.9.

<sup>44</sup> UN Committee on the Rights of the Child, General Comment No. 5 on General measures of implementation of the Convention on the Rights of the child CRC/GC/2003/5, para. 56.

<sup>45</sup> Tobin, above n.40, p.11.

<sup>46</sup> *Ibid*, p.14.

government, and for reconciling such views around agreed principles. With reference to the Measure, the most obvious source of jurisprudence and principles to ensure coherence and consistency is the textual output of the Committee on the Rights of the Child. The requirement to take into account the socio-economic context guarantees consideration of a key concern for government, that of resources, and suggests an important role for government departments within the interpretive community as information holders on the availability and distribution of resources at the programmatic level.

## **Conclusion**

This paper has sought here to explain a new law and a novel approach to UNCRC implementation within the parameters of devolved legislative competence in Wales. We have argued that the ‘public officer’s law’ model is a useful one given the particular characteristics of the UNCRC and the barriers to individual legal claims brought by children and young people. It is a model that seemed apt at a particular place and time but it will repay close attention in the context of other devolved, federal or federal-type systems. The initiative in Wales speaks in a growing global conversation about human rights implementation in the context of multi-level governance.

It is argued, using Tobin’s model, that stakeholders external to government will need to play a vital role in shaping understanding and promoting implementation of the new law and children’s rights. Informed vigilance and scrutiny as well as collaborative learning and negotiation are indicated so that the interpretive community that emerges measures up to the considerable challenge that lies ahead. This challenge is to internalise children’s human rights values in government decision-making, incorporating in local policy and practice the rules and understandings generated by local negotiation of the treaty obligations, informed and guided by the outputs of the treaty system. It is an exercise in subsidiarity, privileging the role of the level of governance closest to those affected, whilst preserving the role of institutions at remoter levels as guardians of the international human rights norms.

Success may be measured over time by analysis of the composition and nature of the interpretive community that emerges, by the extent of democratic engagement and especially by the ability of non-governmental actors to engage successfully in the processes established by the Welsh Measure. Ultimately, of course, for children and young people in Wales, the most important test is whether real consequences can be discerned in terms of

addressing the issues that engage human rights obligations. Effectiveness, as well as democratic mandate, is a core ingredient of legitimacy.

## **Appendix**

2001: Welsh Assembly Government promoted the UNCRC as the overarching framework for local service planning and delivery for children and young people in Wales - WAG 2001 *Children and Young People A Framework for Partnership*, Cardiff, Welsh Assembly Government.

2001: National Assembly for Wales, first reference to the UNCRC in legislation within the UK in the form of regulation 22, Children's Commissioner for Wales Regulations 2001, S.I. 2001/2787: regulation 22 requires the Commissioner, when exercising his functions, to have regard to the UNCRC.

2004: Welsh Government, National Assembly for Wales resolved to adopt the UNCRC as the overarching framework for policy on children and young people in Wales, Record of Proceedings, National Assembly for Wales, 14 January 2004.

2004: explicit connections with articles of the UNCRC in strategy document on general service provision, *Children and Young People: Rights to Action*, 2004, Cardiff, Welsh Assembly Government.

2004: explicit connections with articles of the UNCRC in strategy document on youth justice, *All Wales Youth Offending Strategy*, 2004, Cardiff, Welsh Assembly Government and Youth Justice Board of England and Wales).

2005: explicit connections with articles of the UNCRC in strategy document on child poverty, *A Fair Future for Our Children: The Strategy of the Welsh Assembly Government for Tackling Child Poverty*, 2005, Cardiff, Welsh Assembly Government.

2008: National Assembly for Wales supported the establishment of the Children and Young People's Assembly for Wales, Funky Dragon, which made a seminal contribution to the third and fourth reporting round for the UK under the Convention, Funky Dragon, 2008, 'Our Rights, Our Story: Funky Dragon's Report to the United Nations Committee on the Rights of the Child', in J. Williams (ed.) *The United Nations Convention on the Rights of the Child in Wales*, University of Wales Press.

2011: National Assembly for Wales confirms its progressive stance on the issue of physical chastisement of children by reiterating its support for removing the defence of physical chastisement as a defence to assault in Wales, Record of Proceedings 19 October 2011.